

EXHIBIT 3

**UTILITY
EMPLOYMENT
← OUTLOOK →**

◀ Andy Lange ▶

Kentucky Rural Water Association
Operator EXPO Commissioner/Management
June 23, 2021

UTILITY EMPLOYMENT OUTLOOK

"Water and wastewater treatment plant and system operator jobs are expected to **grow much faster than the average** for all occupations."

20% growth between 2008 and 2018

Source: U.S. Bureau of Labor Statistics, Employment Outlook Handbook, 2012-13 Edition

UTILITY EMPLOYMENT OUTLOOK

Reasons for growth

- ◆ The retirement of the baby-boomer generation
- ◆ Number of applicants usually low because work is physically demanding and sometimes unappealing
- ◆ New plant construction to meet expected increase in demand

Source: U.S. Bureau of Labor Statistics, Employment Outlook Handbook, 2012-13 Edition

US NEWS & WORLD REPORT

50 BEST CAREERS

- ◆ Emergency Management Specialist
- ◆ Civil Engineer
- ◆ Environmental Engineering Technician
- ◆ Environmental Science Technician
- ◆ Hydrologist

UTILITY WAGES

1999 - 2010

Have salaries in the water and
wastewater field kept up with
general wage conditions?

1999 - 2010

Inflation

+30.9%



National Average Wage Index

Source: Social Security Administration

<u>YEAR</u>	<u>AWI</u>	<u>+ % -</u>
1951	\$ 2,799	
1960	\$ 4,007	+ 43%
1970	\$ 6,186	+ 54%
1980	\$ 12,513	+ 102%
1990	\$ 21,028	+ 68%
2000	\$ 32,155	+ 53%
2010	\$ 41,674	+ 30%



National Average Wage Index

Source: Social Security Administration

YEAR	AWI	+ or -
2001	\$ 32,922	+ 0%
2002	\$ 33,252	+ 1.0%
2003	\$ 34,065	+ 2.4%
2004	\$ 35,449	+ 4.0%
2005	\$ 36,953	+ 3.7%
2006	\$ 38,651	+ 4.6%
2007	\$ 40,405	+ 4.5%
2008	\$ 41,335	+ 2.2%
2009	\$ 40,712	- 1.5%
2010	\$ 40,570	- 0.3%

WATER & WASTEWATER TREATMENT PLANT AND SYSTEM OPERATORS

Annual Mean Wage Kentucky - May 2010 \$33,610 43rd	<table border="1"> <tr> <th># National</th> <th>Mean</th> <th>Median</th> </tr> <tr> <td>108,330</td> <td>\$42,530</td> <td>\$40,770</td> </tr> </table>	# National	Mean	Median	108,330	\$42,530	\$40,770
# National	Mean	Median					
108,330	\$42,530	\$40,770					
Top Paying States California \$60,740 Nevada \$55,300 Alaska \$55,020 Connecticut \$53,090	Lowest Paying States Oklahoma \$28,770 West Virginia \$29,260 Mississippi \$29,340 Louisiana \$29,460						

Source: U.S. Bureau of Labor Statistics

KRWA Salary Survey Comparison

Administrative Staff

Position	1999	2010	+%
Manager/Supt	\$36,159	\$54,502	+50.8
Asst Manager	\$28,805	\$42,806	+48.9
Office Mgr./City Clerk	\$23,288	\$35,467	+52.4
CSR	\$18,434	\$27,314	+48.5

AWI: 78.8% Inflation: 38.5%

KRWA Salary Survey Comparison

Field Personnel

Position	1999	2010	+%
Plant Superintendent	\$28,151	\$42,345	+61.9
Plant Operator	\$21,981	\$33,035	+50.3
Distribution/Collection	\$22,410	\$32,509	+45.1
Meter Reader/Laborer	\$17,531	\$25,253	+43.8

AM 38.9% Inflation 31.8%



OPERATOR ?

Is there a better term to describe the modern water and wastewater operator?

If so, what is it?

HydroTechnician

Questions?

WATER COMMISSIONER TRAINING

June 23, 2021



Hot Legal Topics

June 23, 2021

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DISCUSSION TOPICS

1. Notice to PSC
2. Franchises & Contracts
3. Sovereign Immunity
4. Filed - Rate Doctrine 101
5. Open Meetings Act

Continued . . .



DISCUSSION TOPICS

6. Borrowing Money
7. 2020 General Assembly
8. Surcharges
9. Recent PSC Orders
10. Cases to Watch





Reporting Requirements

- Must Notify PSC if . . .
 - Vacancy Exists
 - Appointment Made
- When? Within 30 Days

Vacancy

- Inform CJE 60 Days Before Term Ends (KRS 65.008)
- CJE / Fiscal Court – 90 Days
- Then, PSC Takes Over
 - CJE Loses Right To Appoint



E-Mail Address Regs.

- All PSC Orders Served by E-mail
- Duty to Keep Correct E-mail Address on file with PSC
 - Default Regulatory E-mail Address
- Duty to List E-mail Address in Application & All Other Papers
 - Utility Official
 - Its Attorney



E-Mail Address

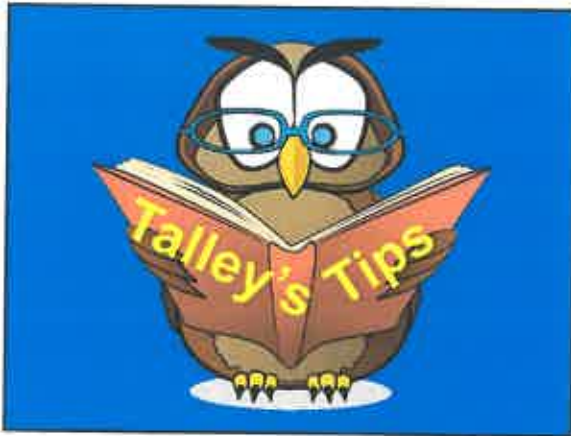
- Who is Covered?
 - Water Districts
 - Water Associations
 - Investor Owned Utilities
 - **Municipal Utilities**



Why Municipals?

- Contract Filing
- Tariff Change (Wholesale Rate)
- Protest Supplier's Rate Increase
- Acquiring Assets of Another Utility
- Avoid Delays





Default Regulatory E-mail Address

- Send E-mail to PSC
 - psc.reports@ky.gov
 - PSCED@ky.gov
- Send Letter to PSC
 - Linda C. Bridwell,
Executive Director

**Franchises
and
Contracts**

Franchise

- Definition
 - Private
 - Rights granted by company to individual or business to sell a product
 - Examples

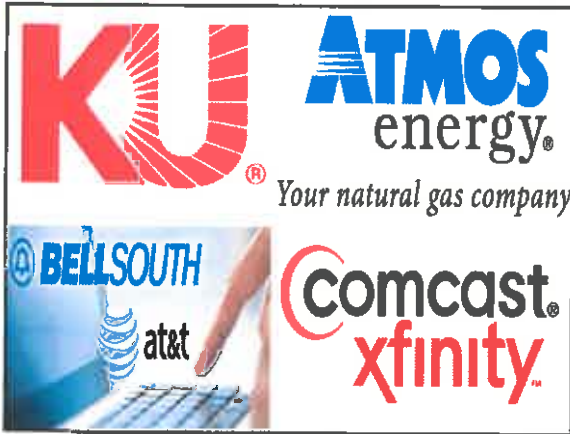




Franchise

- Definition
 - Government
 - Privilege granted by government to utility to provide specific utility service
 - Permission to erect facilities over & under streets, alleys, & sidewalks
 - Fee: 3%
 - Examples





LEGAL ISSUE
40-year
Water Supply Contract
Between 2 Water Districts
Valid or Invalid

- Why? Contract = Franchise
- Over 20 Years
- Basis: Kentucky Constitution Section 164

Ky. Constitution Section 164

No county, city, town, taxing district or other municipality shall be authorized or permitted to grant any franchise or privilege, or make any contract in reference thereto, for a term exceeding **twenty years**. Before granting such franchise or privilege for a term of years, such municipality shall first, after due advertisement, receive bids therefor publicly, and award the same to the highest and best bidder; but it shall have the right to reject any or all bids.

Court of Appeals

Crittenden-Livingston WD

vs.

Ledbetter WD

Case No. 2017-CA-000578

Oral Argument: 4-24-18

Decided: 8-17-18

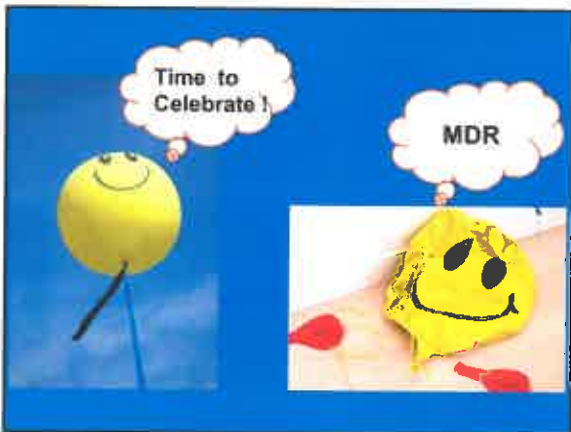
Holding: No Franchise



Court of Appeals @ Page 4

A **franchise** is generally defined as a **right or privilege granted by a sovereign power, government or a governmental entity to a party to do some act which such party could not do without a grant from the government.** A franchise is a grant of a right to use public property or at least the property over which the granting authority has control.





Ky. Supreme Court

Ledbetter W.D.

vs.

Crittenden-Livingston WD

Case No. 2018-SC-000494-DG

Motion DR: 09-12-18

DR Granted: 02-07-19

Oral Arguments: None

Decided: 02-20-20

Ky. Supreme Court

Ledbetter W.D.

vs.

Crittenden-Livingston WD

Decided: 02-20-20

Petition for Rehearing: 03-10-20

Decision Final: 07-09-20

NOT TO BE PUBLISHED

Ky. Supreme Court Holding

- Reversed C/A by 4-2 Vote
- Contract is Franchise
- Section 164 of Const.
 - Must Advertise
 - 20 Years or Less



Ky. Supreme Court Rationale

- Ky. AG Opinion - 1981
- KRS 96.120 (City)
- Broad Definition of Franchise
- Unique Facts

Dissents by 2 Justices

- Justice VanMeter
 - 2 Pages
 - "Simple contract for the sale of water from one district to the other . . ."
 - Explained Meaning of Franchise in Context of Utilities
 - Delivering Water to Retail Customers
 - Billing Customers Directly

Dissents by 2 Justices

- Chief Justice Minton
 - 3 Pages
 - Agreed with J. VanMeter
 - Look at Big Picture
 - Nature of Right Being Conveyed
 - No Special Privilege
 - Supplier Already Had Right to Produce and Sell Water

Why?

- 340 Water Utilities
- 169 WTPs
- 50% Buy Water
- Need Water Supply Contract
- Long Term

How Long Is Long Term?

- Lender
 - RD: 40 years
 - KIA: 20 or 30 years
 - Bonds: Length of Bonds

Significance

- If Franchise 20 Year Limit
 - Can't Borrow \$ from RD
 - Other Sources – Only if < 20 years
 - KIA
 - Bonds
 - KRWFC

What's Next

- Rural Development Response
 - 20 - Year Contract and 40 - Year Loan ? ? ?
 - OGC Opinion
- PSC Response ? ? ?

FAQ

1. My Utility's Contract Was Originally a 40 - Year Contract. Is It Null and Void?

Answer: NO

- Opinion Did **Not** Void All Such Contracts
- Someone Must File Suit

Unique Facts in Ledbetter

- Supplier Constructed 6 Miles of Water Line Inside Purchaser's Service Area
- Master Meter Located on Purchaser's Property (Water Tank)
- Building Constructed to House Master Meter on Purchaser's Property

FAQ

2. Our Utility is a City. We Supply Water to a Water District. Does This Court Case Affect Us?

Answer: YES

FAQ

3. Our Utility is a City. We Supply Water to Another City. Does This Court Case Affect Us?

Answer: YES

But . . . Don't Have to Worry About PSC

FAQ

4. Our Utility's Contract Was Only for 15 Years. Does This Court Case Affect Us?

Answer: NO

FAQ

5. Our Utility's Contract Was Originally for 40 Years, But It Only Has 15 Years Left. Does This Court Case Affect Us?

Answer: YES

Same Facts as in Ledbetter Case

FAQ

6. What is the Significance of the Supreme Court Opinion Being an Unpublished Opinion?

Answer:

It Cannot Be Cited as Authority in Another Case Without Providing Copy to Judge and Opposing Attorney. Judge Can Still Rely on the Case as Authority

KRWA's Role

- Filed Amicus Brief in C/A & S/C
 - "Friend" of Court
- Protect Validity of Contracts
- Protect Ability to Obtain \$
- Working With RD



STOLL
BENON
OGDEN
LLP

Sovereign Immunity

The
King
Can Do
No
Wrong



Campbell County Case

Kate Carucci

vs.

Northern Ky. WD

Circuit Court

Case No. 2016 - CI - 00476

Decided: 04-12-17

Ruling: Case Dismissed

Why? S/I Defense



Court of Appeals

Kate Carucci

vs.

Northern Ky. WD

Case No. 2017-CA-000941-MR

Decided: 01-18-19

Holding: Abolished S/I
For Water Districts





Ky. Supreme Court

Northern Ky. WD vs. Carucci
Case No. 2019-SC-000105-DG
Citation: 600 S.W.3d 240
Motion DR: 02-19-19
DR Granted: 08-29-19
Affirmed: 08-29-19
Final: 02-20-20

Court of Appeals

South Woodford WD vs. Byrd
352 S.W.3d 340 (Ky. App. 2011)
Holding: WD Immune from
Negligence Suit
Because of S/I

Supreme Court

Coppage Construction Co., Inc.
vs.

Sanitation District No. 1

459 S.W.3d 855 (Ky. 2015)

Holding: SD Not Entitled to
S/I Because It Was
Not a County-Created Entity

Ky. Supreme Court

Northern Ky. WD vs. Carucci

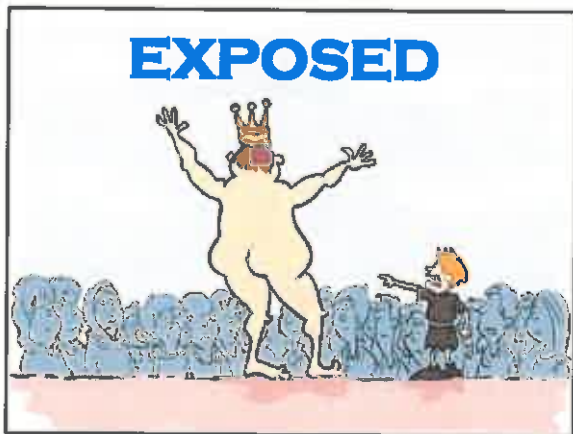
DR Granted: 08-29-19
Oral Arguments: None
Decided: 08-29-19
Final: 02-20-20
Holding: No S/I for
W.D.

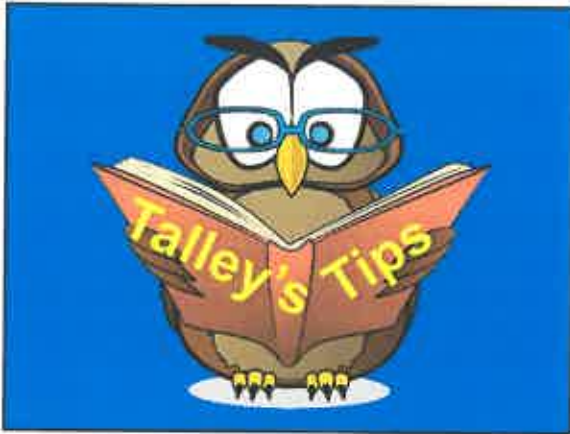
Holding

- O/R South Woodford Case
- No S/I for W.D.
- Adopted by Sup. Court
- Providing Drinking Water
Is **NOT** Integral State Function









Talley's Tips

- Exercise Reasonable Care
- Use Best Practices
- Adopt Policies
- Follow Policies





QUESTIONS?



Filed - Rate Doctrine 101

Filed - Rate Doctrine

- **Definition:** No utility shall charge a greater or less rate for any service than the rate contained in its filed schedules (Tariff).

KRS 278.160

Filed - Rate Doctrine

- Application - 2 Aspects
 1. If it is in your Tariff, you **must** charge it.
 2. If it is **not** in your Tariff, you can **not** charge it.

Filed – Rate Doctrine

Requires Filing of:

- Rates
- Rules & Conditions of Service
- **Contracts**

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Filed – Rate Doctrine

- File Wholesale Contracts with PSC
 - War Stories (2)
 - Length of Contract
 - Buy All Water
- Check PSC Website When You Return

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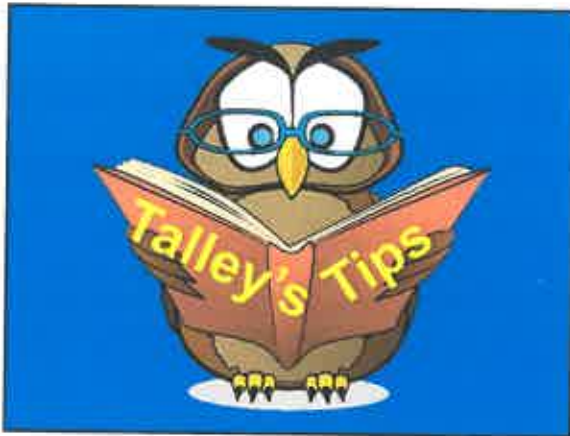
Open Meetings Act

Attending Board Meeting Via Zoom

- KRS 61.826 Amended: 2018
- Now Easier to Conduct Meeting via Video Teleconference (VTC)
 - All Meetings
 - Board Member Attend Remotely
 - Count in Quorum Call
 - Fully Participate
 - More Than One


Special Rules - VTC

- Identify Primary Location
- Everyone Must Be Able to **See** and **Hear** Everyone Else
- Notice Requirements
 - Meeting Will Be VTC
 - Primary Location




Notice of VTC Meetings

1. Regular Meetings
 - Adopt Schedule (61.820)
 - Some or All of the Regular Meetings Will Be VTC
 - Primary Location at _____
 - Public May Attend at Primary Location



Notice of VTC Meetings

2. Special Meeting
 - Normal Rules (61.823) Plus
 - May Be VTC Meeting
 - Primary Location at _____
 - Public May Attend at Primary Location
3. Minutes
 - Comm. _____ Attended via VTC







KRS 278.300(1)

No utility shall issue any securities or evidences of indebtedness . . . until it has been authorized to do so by order of the Commission.

Practical Effect

- Must Obtain PSC Approval Before Incurring Long-term Debt (Over 2 Years)
- Exception:
 - 2 Years or Less
 - Renewals
 - (3 X 2 = 6 Years)
 - (6 X 1 = 6 Years)





Violation

**Show
Cause
Cases**



Show Cause Case # 3

Case No. 2017 - 469
Opened: 01- 11 - 2018
Hearing: 02 - 27- 2018
Issue: KRS 278.300
Decision: 09 - 17 - 2018

Show Cause Case # 3

This is the **third** case in the last year and a half involving a show cause order against a water district utility and/or its commissioners for violating KRS 278.300 by obtaining a loan, the term of which is in excess of two years, without prior approval of the Commission. To date the Commission has **assessed, but not sought, to collect** civil penalties against individual water district commissioners for essentially two reasons.

(Continued)

Show Cause Case # 3

First, the Commission's goal has been to obtain **compliance** with the requirements of the statute and not to exact a penalty and, **second**, the Commission was determined to **send a message** to these utilities and their local commissioners that they were out of compliance and **future violations** could result in **individual penalties** as well as a **separate penalty against the utility**.

(Continued)

Show Cause Case # 3

The Commission also intended to place **all other water districts on notice** that obtaining loans in violation of KRS 278.300 could subject both the utility and its commissioners to civil penalties, and **to provide fair notice that strict enforcement could be expected in future cases.**

Show Cause Case # 3

Water districts and their commissioners are hereby put on **final notice** that unauthorized debt incurred after the date of this order may well result in **substantial** civil penalties being **assessed and collected against both** in future show cause cases.

Pages 7 and 8 of Order

Show Cause Case # 3

- District Fined \$2,500
 - Pay \$500
 - \$2,000 Suspended
 - Good Behavior
 - One Year
- Commissioner Matthews Dissented

Show Cause Case # 3

- Commissioners Fined \$2,000
 - Pay Zero
 - Entire \$2,000 Suspended
 - Good Behavior
 - One Year
- 12 Hours Training

Show Cause Case # 3

- Develop Written Policy
 - Borrow \$
 - Hire Lawyer
- Adopt Policy
- File Policy with PSC

2019 Show Cause Cases

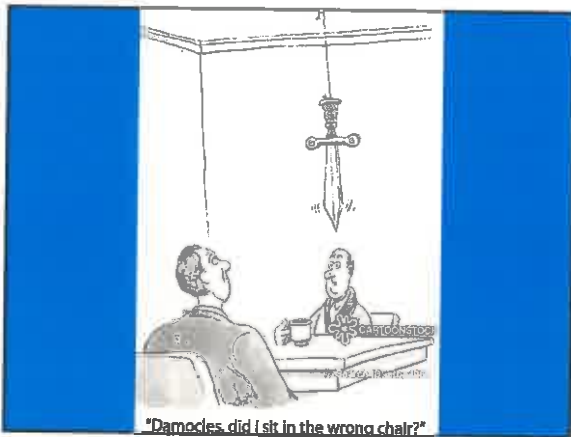
- WD # 1
 - All Commissioners Resigned
 - General Manager Resigned
 - PSC Dismissed Case

2019 Show Cause Cases

- WD # 2
 - Commissioners Settled with PSC
 - \$500 Fine (suspended)
 - 12 Hours Training Per Year
 - WD Not Fined
 - See Timeline

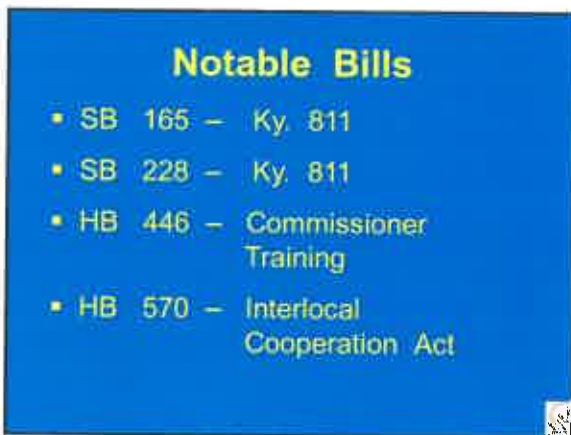
Timeline

09-27-17	Staff Report
01-11-18	Show Cause Order
02-27-18	Hearing (Rescheduled)
04-08-19	Offer of Settlement
06-19-19	Order Accepting Offer of Settlement









Surcharge Cases

W.D. Surcharges

Cannonsburg	2014-267 & 2018-376
Martin Co.	2018-017
Estill Co.	2019-119
Graves Co.	2019-347
Farmdale	2020-021
Southern	2019-131

- ### Water Loss Reduction Surcharge
- Mechanism to Recover Reduction in Revenue Requirement Because of Unaccounted for Water Loss over 15%
 - Time Limit: 36 or 48 Months
 - Monetary Limit
 - Restrictions

Restrictions

- Separate Bank Account
- Water Loss Reduction Plan
- Prior PSC Approval
- Monthly Reports

How to Get Surcharge

1. File ARF Case
 - Staff Report
 - Motion for Surcharge
2. File Separate Application



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STOLL
LEBNON
OGDEN
INC.

Recent PSC Orders

Thou Shall File a Rate Adjustment Case

- Over 2 Dozen Utilities . . .
- Case Type
 - PWA
 - Refinancing
 - .023

cont.

Rate Adjustment

- Case Type
 - Defending Wholesale Rate Increase
 - Intervention
 - Deviation
 - Any Application

Rate Adjustment

- Reasons
 - No Recent General Base Rate Adjustment
 - Negative Cash Flow
 - Decreasing Depreciation Reserves





PSC Case No. 2019 - 041

Filed: 03-12-2019
Utility: 11 Water Utilities
Type: Investigation
Issue: Excessive Water Loss
Hearings: 11 Separate Hearings
Decided: 11-22-19

Leaky 11 Cases

Findings:

- High Water Loss is Symptom of Larger Problems
- Poor Board Oversight
- Poor Management
- Poor Financial Health
- Need Rate Increase

Leaky 11 Cases

Utilities Ordered to:

- Develop Water Loss Reduction Plan
- Perform Water Loss Audit
- Adopt Policies
- Adopt Procedures
- Board Training

Leaky 11 Cases

PSC Published

Comprehensive Report:

- November 22, 2019
- 82 Pages
- Summarized Findings
- Legislative Recommendations

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PSC Case No. 2019 - 080

Filed: 02-21-2019

Seller: Pikeville

Buyer: Mountain WD

Type: Municipal Wholesale
Rate increase

Hearing: 09-11-2019

Decided: 12-19-19 & 01-31-20

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Pikeville

Issues:

- COSS: M1 vs. M54 Manual
- Discovery
- Rate Case Expense

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Pikeville

Holding:

- COSS: Invalid
- Wholesale Rate Increase ↓
- Rate Case Expense
 - No COSS Expert \$
 - Attorney Fees OK



Pikeville Holding (cont.)

- Other Wholesale Customer
 - Settled Before Case Filed
 - PSC Reduced Rate
 - Must Pay ½ of Rate Case Expense



Pikeville Status

Decided: 12-19-19 & 01-31-20
Appealed: Franklin Cir. Court
Status: Pending



PSC Case No. 2019 - 444

Filed: 11-27-2019
Seller: Princeton
Buyers: Caldwell Co. WD &
Lyon Co. WD
Type: Municipal Wholesale
Rate increase
Hearing: 05-05-2020
Decided: 06-15-2020

Princeton

Issues:

- Unit Cost Approach
- No True COSS
- Allocation of Expenses
- Rate Case Expense

Princeton

Holding:

- Unit Cost Approach: Invalid
- Wholesale Rate Increase ↓
- Rate Case Expense
 - Reduced
 - Attorney Fees OK

Princeton Holding (cont.)

- Rate Case Expense Shared by Princeton & Wholesale Customers
- Criticized for No Negotiations
- Both Wholesale Customers Must File Rate Adjustment Application

PSC Case No. 2019 - 268

Filed: 07-31-2019
Seller: Knott Co. WD
Type: ARF Case
Hearing: 01-22-2020
Decided: 01-31-20

PSC Case No. 2019 - 268

- Utility Requested 48% ↑
- Staff Recommended 70% ↑
- PSC Granted Increase:
 - Year One 46%
 - Year Two 15%
- Hearing Noteworthy

PSC Case No. 2019 - 268

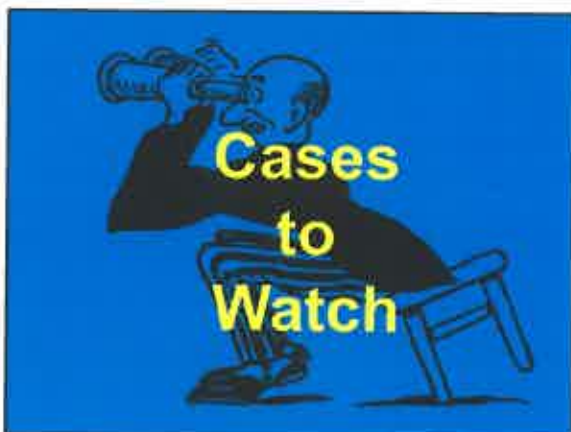
- No Rate Increase – 17 Years
- Commissioners' Benefits
- Open Meetings Act Violation
- Other Issues

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PSC Case No. 2019 - 115

Filed: 4-11-2019
Utility: Grayson Co. WD
Type: Deviation
Issue: 15 Year Meters
Sample Testing
Decided: 4-28-20

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PSC Case No. 2020 - 137

Filed: 6-8-2020
Utility: West Daviess Co.
Type: Deviation
Issue: 15 Year Meters
Sample Testing
Decided: Pending

PSC Case No. 2020 - 138

Filed: 6-8-2020
Utility: Southeast Daviess Co.
Type: Deviation
Issue: 15 Year Meters
Sample Testing
Decided: Pending



QUESTIONS?

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STULL
KENNON
OGDEN
INC.

"Serving Our Commonwealth"



Hazard Mitigation Assistance Programs
Geni Jo Brawner, State Hazard Mitigation Officer
June 23, 2021

Hazard Mitigation




KENTUCKY DEPARTMENT OF ENERGY AND ENVIRONMENT

Hazard Mitigation Assistance

Learning Objectives

- HMA Programs
- Hazard Mitigation Grant Program (HMGP) Intent
- Eligibility Requirements
- Types of HMGP funding (regular, initiative, planning)



KENTUCKY DEPARTMENT OF ENERGY AND ENVIRONMENT

Mitigation Programs



KENTUCKY'S OFFICE OF EMERGENCY MANAGEMENT



Building Resilient Infrastructure and Communities (BRIC)

Federal funds are available through BRIC to states, and local communities for pre-disaster mitigation activities. BRIC is a new FEMA pre-disaster hazard mitigation program that replaces the existing Pre-Disaster Mitigation (PDM) program.



BRIC priorities are to:

- incentivize public infrastructure projects;
- incentivize projects that mitigate risk to one or more lifelines;
- incentivize projects that incorporate nature-based solutions; and,
- incentivize adoption and enforcement of modern building codes.

KENTUCKY'S OFFICE OF EMERGENCY MANAGEMENT



Flood Mitigation Assistance (FMA)

The goal of FMA is to reduce or eliminate National Flood Insurance Program (NFIP) claims.



FEMA provides FMA funds to assist States and communities to implement measures that reduce or eliminate the long-term risk of flood damage to buildings, manufactured homes, and other structures insurable under the NFIP.

KENTUCKY'S OFFICE OF EMERGENCY MANAGEMENT





The Hazard Mitigation Grant Program provides grants to State and Local governments to implement long-term hazard mitigation measures after a major disaster declaration.



Table 3: Eligible Activities by Program

Eligible Activities	HMGP	FEMA	EMA
1. Mitigation Projects			
Property Acquisition and Structure Demolition	✓	✓	✓
Property Acquisition and Structure Relocation	✓	✓	✓
Structure Elevation	✓	✓	✓
Mitigation Reconstruction	✓	✓	✓
Dry Floodproofing of Historic Residential Structures	✓	✓	✓
Dry Floodproofing of Non-residential Structures	✓	✓	✓
Generators	✓	✓	✓
Localized Flood Risk Reduction Projects	✓	✓	✓
Non-Localized Flood Risk Reduction Projects	✓	✓	✓
Structural Retrofitting of Existing Buildings	✓	✓	✓
Non-structural Retrofitting of Existing Buildings and Facilities	✓	✓	✓
Safe Room Construction	✓	✓	✓
Wind Retrofit for One- and Two-Family Residences	✓	✓	✓
Infrastructure Retrofit	✓	✓	✓
Soil Stabilization	✓	✓	✓
Wildfire Mitigation	✓	✓	✓
Post-Disaster Code Enforcement	✓	✓	✓
Advance Assistance	✓	✓	✓
5 Percent Reliance Projects	✓	✓	✓
Non-Disaster/Other	✓	✓	✓
2. Hazard Mitigation Planning			
Planning Related Activities	✓	✓	✓
3. Technical Assistance			
4. Management Cost			

* Miscellaneous/Other indicates that any proposed action will be evaluated on its own merit against program requirements. Eligible projects will be approved provided funding is available.



Intent of HMGP: To provide Federal, State, and Local partnerships the ability to develop and fund eligible mitigation activities

- Only mitigation grant program where state contributes towards project total
- Reimbursable program
- Funds become available after presidentially declared disaster
- Entire State is eligible to apply



Hazard Mitigation Grant Program

- The entire state is eligible.
- Communities in affected areas receive priority.
- Kentucky Mitigation Council (KYMC) sets priorities and selects proposed projects to proceed to the application process.

STATE OF KENTUCKY DEPARTMENT OF ENERGY



As KY is an "Enhanced State," an additional 5% is available, resulting in 20% of other disaster aid available for mitigation

- Typically, 15% of value of other disaster aid (Public Assistance and Individual Assistance)

STATE OF KENTUCKY DEPARTMENT OF ENERGY



Hazard Mitigation Grant Program

Eligible Applicants:

- Local Governments
- State Agencies
- Certain Private Non-Profit Organizations

STATE OF KENTUCKY DEPARTMENT OF ENERGY



Project Eligibility Minimum Criteria

1. Conforms with state and local hazard mitigation plans
2. Conforms with environmental laws and regulations
3. Solves a problem independently
4. Provides a long-term solution
5. Is cost-effective (Benefit Cost analysis of 1.0 or higher)
6. National Flood Insurance Program participation of applicant

STATE OF KENTUCKY DEPARTMENT OF ENERGY



Types of HMGP Funding

1. Regular Program
2. Initiative Program
3. Mitigation Planning Program

STATE OF KENTUCKY DEPARTMENT OF ENERGY



HMGP Regular Program

- Any project that will result in protection to public and private property from future damage from a major disaster event where damages (documented and or projected) either equal or exceed the project costs
- Must perform Benefit Cost Analysis (BCA)
 - If the benefit outweighs the cost, it is deemed to be cost effective.

STATE OF KENTUCKY DEPARTMENT OF ENERGY



HMGP Regular Program

- Projects that have already been initiated or completed are not eligible.
- Structures deemed as "Substantially Damaged" do not have to perform BCA.
- Typically larger, more difficulty project activities

STATE OF TEXAS DEPARTMENT OF EMERGENCY MANAGEMENT



HMGP Regular Program Eligible Activities

- Acquisition, demolition, or relocation of flood-prone or landslide-prone home
- Elevation of flood-prone homes
- Dry flood proofing of commercial property
- Infrastructure protection measures (seismic structural or non-structural projects)
- Minor structural flood control projects

STATE OF TEXAS DEPARTMENT OF EMERGENCY MANAGEMENT



HMGP Regular Program Eligible Activities

- Green Infrastructure
- Flood Diversion and Storage
- Aquifer Recovery
- Floodplain and Stream Restoration
- Road and Bridge Elevation

STATE OF TEXAS DEPARTMENT OF EMERGENCY MANAGEMENT



**HMGP Regular Program
Eligible Activities**

- Seismic Structural or Non-structural Retrofits
- Generators for Critical Facilities
- Tomado Safe Rooms
- Utility Protection Measures
- Soil Stabilization

KENTUCKY DEPARTMENT OF ENERGY MANAGEMENT



HMGP Initiative Program

• Can fund projects for which it may be difficult to conduct BCA to prove cost effectiveness

- Benefit Cost Analysis (BCA) exempt
- Up to 10% of HMGP Funds
 - 5% Initiative Projects
 - 5% promote resilience through the use of disaster-resistant building codes
- Not funded through Non-Disaster HMA grants

KENTUCKY DEPARTMENT OF ENERGY MANAGEMENT



**Initiative Program
Eligible Activities**

- Weather Radios
- Warning Sirens
- Educational Projects
- Generators

KENTUCKY DEPARTMENT OF ENERGY MANAGEMENT



HMGP Planning Program

- Plans demonstrate a community's commitment to reduce risks from natural hazards and serve as a guide for decision makers
- Up to 7% of HMGP Funds
- Local and State Plans
- Mandated by DMA 2000 as a condition for receiving mitigation grant funding
- Currently:
15 Area Development Districts,
Louisville/Jefferson County Metro, LFUCG, UofL,
UK, KCTCS, and KSU have plans

FLORIDA DEPARTMENT OF EMERGENCY MANAGEMENT



HMGP Process

- Notice of Funds Availability
- Mitigation Action Form
- Mitigation Council Prioritization
- Benefit Cost Analysis
- Grant Application
- State Approval
- FEMA Approval
- State Contracting
- Work according to Approved Scope of Work, Budget, and Period of Performance
- Quarterly Reports
- Closeout Process

FLORIDA DEPARTMENT OF EMERGENCY MANAGEMENT



Local Process

- Consider community needs
- Consider content of Local Plan
- Document "substantially damaged" structures
- Identify resources for the Local match
- Identify administrative capabilities for project management
- Assume responsibility for maintenance
- Submit Mitigation Action Form (MAF)

FLORIDA DEPARTMENT OF EMERGENCY MANAGEMENT



Applicant Roles and Responsibilities

- Submit of project grant application to State
- Coordinate participating homeowners and businesses
- Oversee grant funding distribution
- Implement the approved project
- Comply with all grant requirements and applicable Federal, State, and Local laws
- Provide supporting documentation to the state for project expenditures
- Maintain program and project records, as required by law



Hazard Mitigation Assistance Unified Guidance

Hazard Mitigation Grant Program, Pre-Disaster Mitigation Program, and Flood Mitigation Assistance Program



Federal Emergency Management Agency
Department of Homeland Security

<https://www.fema.gov/media-library/assets/documents/103279>




Mitigation Team

ADD Assignments

Brittany Duvall	Lake Cumberland, Green River, Pennyrile, Northern KY
Brian Gathy	FIVCO
Meagan Mollohan	Barren River, Lincoln Trail, Purchase
Stacy Smith	Big Sandy, KY River, Buffalo Trace, Gateway
Esther White	KIPDA, Bluegrass, Cumberland Valley
Nick Grinstead	Planning Grants Manager
Geni Jo Brawner	State Hazard Mitigation Officer

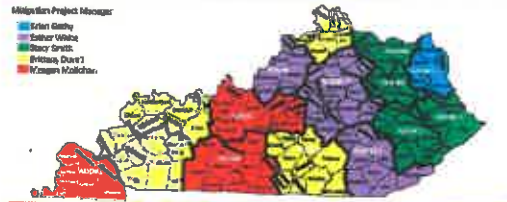


ADD Water Examples
1976-008
1976-013



KENTUCKY DEPARTMENT OF FISH AND GAME COMMISSION


Mitigation Staffing Assignments



Mitigation Project Manager

- Ernest Gentry
- Kathryn Wilcox
- Sherry Smith
- Michael Davis
- Kramer Malcher

1976-008 Kathryn Wilcox 1976-008 Kathryn Wilcox Kathryn Wilcox Kathryn Wilcox Kathryn Wilcox Kathryn Wilcox	1976-013 Kathryn Wilcox 1976-013 Kathryn Wilcox Kathryn Wilcox Kathryn Wilcox Kathryn Wilcox Kathryn Wilcox	1976-014 Kathryn Wilcox 1976-014 Kathryn Wilcox Kathryn Wilcox Kathryn Wilcox Kathryn Wilcox Kathryn Wilcox	1976-015 Kathryn Wilcox 1976-015 Kathryn Wilcox Kathryn Wilcox Kathryn Wilcox Kathryn Wilcox Kathryn Wilcox	1976-016 Kathryn Wilcox 1976-016 Kathryn Wilcox Kathryn Wilcox Kathryn Wilcox Kathryn Wilcox Kathryn Wilcox	1976-017 Kathryn Wilcox 1976-017 Kathryn Wilcox Kathryn Wilcox Kathryn Wilcox Kathryn Wilcox Kathryn Wilcox	1976-018 Kathryn Wilcox 1976-018 Kathryn Wilcox Kathryn Wilcox Kathryn Wilcox Kathryn Wilcox Kathryn Wilcox
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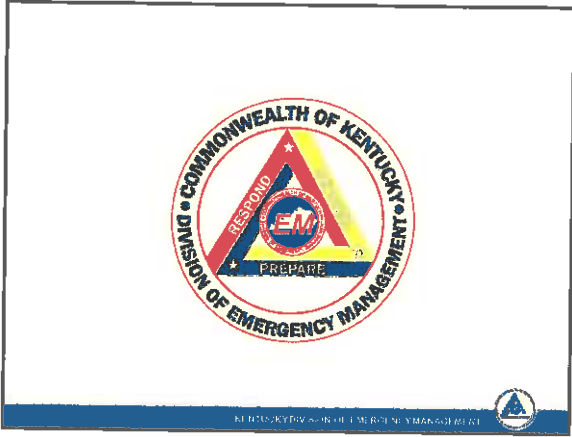


KENTUCKY DEPARTMENT OF FISH AND GAME COMMISSION

QUESTIONS




KENTUCKY DEPARTMENT OF FISH AND GAME COMMISSION



STOLL KEENON OGDEN

RATE ADJUSTMENTS MADE EASY

PRESENTATION TO

KRWA OPERATOR EXPO 2021

JUNE 23, 2021

Gerald Wuetcher
Stoll Keenon Ogden PLLC
gerald.wuetcher@skofirm.com
<https://twitter.com/gwuetcher>
(859) 231-3017


STOLL KEENON OGDEN

Order of Presentation

- Overview
- Ratemaking Process: How Are Rates Set?
- Preparing the Application
- Rate Case Procedure
- Common Issues
- Practical Suggestions
- Resources


STOLL KEENON OGDEN

OVERVIEW

STILL BEYOND BOUNDARIES 


Importance of Adequate Rates

- Necessary to Maintain Service Quality
 - Ensure Proper Maintenance/Operation Practices
 - Provide Wages & Benefits to Attract/Retain Competent Personnel
 - Replace Aging Infrastructure
 - Meet Demands to Extend/Expand Service
- Send Proper Pricing Signals to Users

STILL BEYOND BOUNDARIES 

Methods For Adjusting Rates

- Purchased Water Adjustments
 - Adjustments to Reflect H₂O Supplier Increases
 - KRS 278.012/KRS 278.015/807 KAR 5:068
- RD-Financed Construction Project
 - Required by RD Financing Agreement
 - KRS 278.023
- General Rate Adjustment
 - KRS 278.180-.190/807 KAR 5:001

STILL BEYOND BOUNDARIES 

Reasons for Not Filing General Rate Adjustments

- Lack of Knowledge of Rate-Making Process
- PSC Procedures: Too Complex & Bureaucratic
- Time & Effort Required to Apply for Rate Increase
- Too Expensive (Lawyers, Accountants)
- Customer Resistance/Anger at Rate Increases
- Adverse Publicity
- Political Interference

STATE ENERGY BOARD

Alternative Rate Filing Procedures

- Adopted in 1982 as 807 KAR 5:076
- Purpose: Provide a **simplified & less expensive** procedure for small utilities to adjust rates
- Use of Pre-Printed/Fill-in Blank Application Form
- Key Document: Utility's Annual Report
- Few Supporting Documents Required
- No Experts/Attorneys Needed
- Designed to Encourage More Frequent Filings

STATE ENERGY BOARD

Alternative Rate Filing Procedures: Eligibility Requirements

- Gross annual revenues < \$5M
 - Only 9 of 136 H₂O Utilities Ineligible
 - Only 1 of 43 Sewer Utilities Ineligible
 - Combined Utilities: Only Division Revenues considered
- Maintain Adequate Financial Records
- Must Have File Annual Report for Immediate Past Year and Prior 2 Years

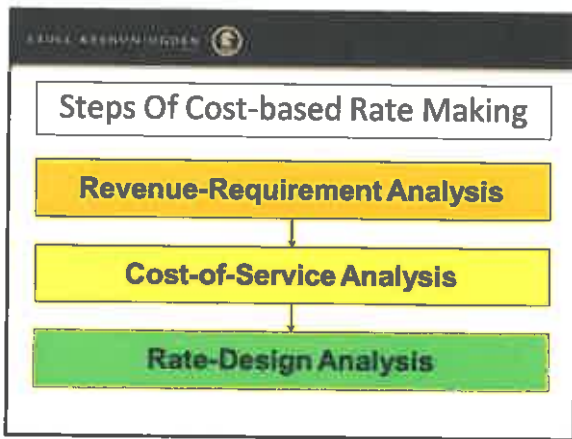
STATE ENERGY BOARD

General Rate Adjustment Procedures (Non-Alternative Rate Filing)

- Utility Specific Application Must Be Prepared
- Written Testimony/Cost-of-Service Study
- Extensive Info Re: Operations Required
- Advanced Notice To PSC/Attorney General
- Greater Flexibility in Establishing Test Period
- Application May Request Non-Rate Relief
- Attorney Required

STILL BEHIND US


RATEMAKING PROCESS



STILL BEHIND US

What is a Revenue Requirement?


- The reasonable level of revenue required for a utility to **properly operate** and **maintain its system** and meet its **financial obligations**
- Provides basis for determining the amount of revenue **collected from rates**

STILL KENNEDY GROUP 

Revenue Collected from Rates


TOTAL REVENUE REQUIREMENT

- Misc Operating Revenues
- Unrestricted Interest Income
- = **Operating Revenue from Rates**

STILL KENNEDY GROUP 


Methods of Determining Revenue Requirements

- Debt Service
- Operating Ratio
- Rate of Return

STILL KENNEDY GROUP 


**Determining Revenue Requirements:
Debt Service Method**

Adjusted Operating Expenses
+
Average Annual Debt Service Requirement
+
Debt Service Coverage
=
Total Revenue Requirement

STOLL KENNEDY BOON 

Average Annual Debt Service Requirement


- Principal + Interest payable on long-term debt
- PSC generally uses a 3-year average
- **Exception:** 5-year average if greater time between rate cases

STOLL KENNEDY BOON 

Debt Service Coverage

Debt service coverage (DSC) is calculated based on the DSC required to issue bonds. This requirement is generally stated in the bond indenture.

- RD Debt 120% or 1.2x
- KIA Debt 110% or 1.1x
- Private Debt Varies

STOLL KENNEDY BOON 

Determining Revenue Requirements: Operating Ratio

Adjusted Operating Expenses
÷ .88
= **Total Revenue Requirement**

STOLL KENNEDY HUBBS & ASSOCIATES

**Determining Revenue Requirements:
Rate of Return**

Total Revenue Requirement = Adjusted
Operating Expenses + Return on Rate Base

RATE BASE = Net Plant in Service* + Working
Capital - Contributions in Aid of Construction

*(Original Cost of Plant - Accumulated Depreciation)

STOLL KENNEDY HUBBS & ASSOCIATES

Test Period

- A consecutive 12-month period
- Generally period used in utility's most recent annual report or audit
- ARF Application: Must use Calendar Yr for most recent annual report
- 807 KAR 5:001: Appliant's choice of any consecutive 12-month period

STOLL KENNEDY HUBBS & ASSOCIATES

Review of Test Period

- Reconciliation of books to test period
- Review accountant's adjusting journal entries
- Review for proper accrual accounting
- Review of test year expenses

STILL A PERSON UNDER

Adjustments to Test Year

- Test year is adjusted to reflect 12 months that are **representative of on-going, normal operations**
- Adjustments must be:
 - **known and measurable**
 - **adequately documented**

STILL A PERSON UNDER


Types of Adjustments

- Pro forma
- Normalizing

STILL A PERSON UNDER


Pro forma Adjustments

- **Known or anticipated** increases or decreases in revenues and expenses
 - Increase in wage rates **after end of test period**
 - Changes in Insurance/Taxes/CERS Contributions **effective prior to date of PSC decision**
- Adjustments require evidentiary support

STAFF / PERSON / OTHER 


Normalizing Adjustments

- Adjustments made to reflect a full 12 months of operations for revenue and expense items that changed during the test period.
 - Example: Electric Rates Increased During Test Period
- Adjustments require evidentiary support

STAFF / PERSON / OTHER 


Operation & Maintenance Expenses

- Salaries & Wages
- Employee Benefits
- Purchased Power
- Purchased Water Rent
- Chemicals
- Materials & Supplies
- Repairs & Maintenance
- General Overhead

STAFF / PERSON / OTHER 

Allocation of Common Costs


- Allocations are necessary to ensure that the water department is not subsidizing other utility divisions or vice-versa.
- Some type of system should be in place for allocating the appropriate level of each expense to the water utility.
- If a system is not currently in place, a basis for logical estimates must be determined.

STILL KEENON GROUP 

Depreciation Expense


“[D]epreciation is the loss, not restored by current maintenance, which is due to all the factors causing the ultimate retirement of the property. These factors embrace wear and tear, decay, inadequacy, and obsolescence. **Annual depreciation** is the loss which takes place in a year. In determining reasonable rates for supplying public service, it is proper to include . . . an allowance for consumption of capital . . .”

Lindhelmer v. Illinois Bell Tele. Co., 292 U.S. 151, 167 (1934)

STILL KEENON GROUP 

Depreciation Expense

- Depreciation Permits Recovery of the Cost of A Capital Asset
- Annual Depreciation Expense = $(\text{Asset Cost} - \text{Salvage Value}) \div \text{Useful Life (years)}$
- Two Critical Components
 - Asset Cost
 - Useful Life

STILL KEENON GROUP 

Depreciation Expense

- Depreciation expense included in revenue requirement determination
- Utility should maintain depreciation schedules
- Separate schedules for each Utility division
- Depreciation schedules **required**

STEWART & KERRON ENGINEERS

Significance of Depreciation Expense

CASH NEEDS METHOD (Rural Development)
 Operating Expenses + **Principal** + **Interest** + **WC**

PSC METHOD – Water Districts
 Operating Expenses + **Principal** + **Interest** +
Depreciation Expense + **WC**

UTILITY METHOD (IOUs)
 Operating Expenses + **Interest** + **Depreciation Expense**
 + **ROI**

STEWART & KERRON ENGINEERS

Significance of Depreciation Expense

- Cash Needs Approach: CapEx recovered through Principal Payments (No Depreciation Recovery)
- Utility Approach: CapEx recovered through Depreciation
- PSC Method (WD): CapEx recovered **2X** thru Principal Payments & Depreciation

STEWART & KERRON ENGINEERS

Significance of Depreciation Expense

	Cash Needs (RD)	PSC Water District	Utility
Operating Expenses	\$3,509,584	\$3,509,584	\$3,509,584
Principal	340,666	340,666	
Interest	379,102	379,102	379,102
Depreciation		978,744	978,744
Working Capital	143,954	143,954	143,954
Revenue Requirement	\$3,994,204	\$5,353,050	\$5,011,384

STOKA REGION ÖZGÜN

Implications

- Fairness/Equity?
- Promotes Infrastructure Replacement?
- Effect on State/Federal Policies to Promote Affordability?
- Effect on PSC's Ability to Regulate?
- Effect on Rate Case Strategy?

STOKA REGION ÖZGÜN

Other Adjustments to O&M Expenses

- **Non-recurring expenses** such as tank painting or rate case expense may be amortized over the life of expense
- **Capitalization** of improperly classified expenses such as meters or pumps

STOKA REGION ÖZGÜN

Other Considerations

- Requirements specified in any applicable bond ordinance (e.g., funding of specified reserves)
- Provisions in Water Supply Agreement or other contracts or agreements
 - Financing costs of specific capital improvement
 - Exclusion of depreciation expense in rate calculation

REGULATORY SERVICES

PREPARING THE APPLICATION

REGULATORY SERVICES

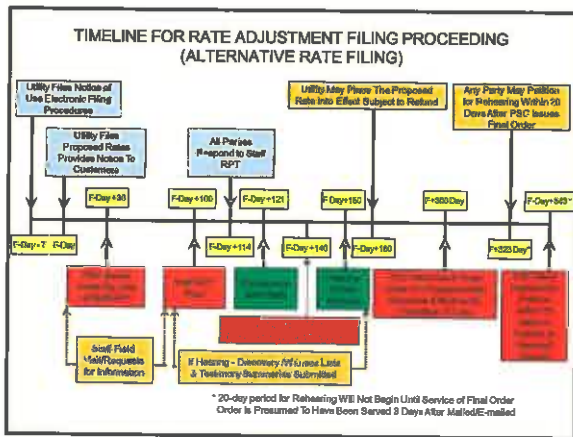
RATE CASE PROCEDURE

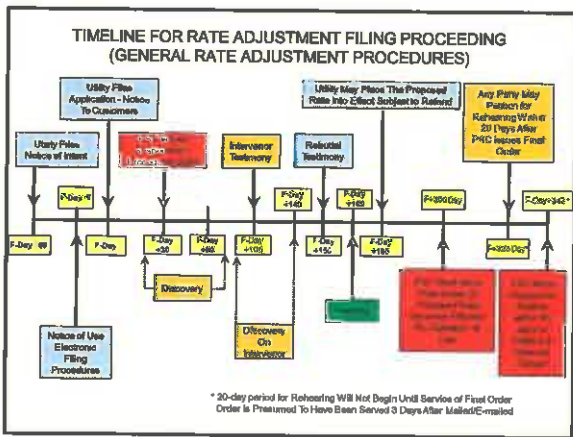
REGULATORY SERVICES

Order Of Events

1. Pre-filing Notices
2. Filing of Application
3. PSC Order Designating Procedures
4. Staff Field Visit
5. Staff Report
6. Response to Staff Report
7. Conference
8. Hearing
9. Final Order

Order Of Events	
ARF Procedures	General Rate Filing
1. Pre-filing Notices	1. Pre-filing Notices
2. Filing of Application	2. Filing of Application
3. Order Re: Procedures	3. Rate Suspension/Procedural Schedule
4. Staff Field Visit	4. Discovery
5. Staff Report	5. Intervenor Testimony
6. Response to Staff Report	6. Rebuttal Testimony
7. Conference	7. Hearing
8. Hearing	8. Final Order
9. Final Order	





STATE OF NEW YORK PUBLIC SERVICE BOARD

Pre-filing Notices

- Notice of Intent to File Application
 - 30 - 60 days before filing of Application
 - PSC and Attorney General Served
- Notice of Intent Use Electronic Filing Procedures (At Least 7 Days Before Filing)
- Notice to Customers
- Public Posting Of Notice

STATE OF NEW YORK PUBLIC SERVICE BOARD

Notice: Customer Notice

- If 20 customers or less – Must be Mailed
- More than 20 customers:
 - Mail with Customer Bills (NLT Date of Filing)
 - Mail Separately to each customer by Date of Filing
 - Publish in Newspaper of General Circulation weekly for 3 weeks (1st publication by Date of Filing)
 - Combining Methods Permitted
- Copy of Notice Must Be **Attached to Application**
- **Proof of Notice** Must be Filed w/i 45 days of application

STATE OF NEW YORK PUBLIC SERVICE BOARD

Notice: Public Posting

- Post Notice At Utility's Place of Business NLT Date of Filing with PSC
- Web Sites – If Utility maintains Web Site:
 - Post Notice on Its **Website**
 - Post **Link to documents' location** on PSC Web Site
 - Utility's Facebook Page considered Website
- Postings May Not Be Removed Until Final Decision

STATE BARREN BOARD

Filing Application

- Mail/Personal Delivery of **Original & 10 Copies**
- Electronic Procedures
 - Establish Account At PSC
 - Timely Notice of Use Electronic Procedures
 - Upload Electronic Version
 - File **1 Copy** of Paper Version w/ 2 Business Days
- PSC Reviews Application – Issues Letter Re: Acceptance Within 7 – 10 days
- Application Not Deemed Accepted Until All Deficiencies Cured

STATE BARREN BOARD

Significance of Application's Acceptance

- Starts the Clock
- PSC has **30 days** from date of filing to suspend the proposed rates
- Utility May Not Place Proposed Rates Into Effect for **5 months from Proposed Effective Date**
- If No Decision Within 5 Months, Proposed Rates May Be Placed Into Effect Subject To Refund
- PSC Must Issue Final Decision within **10 Months**

STATE BARREN BOARD

Procedural Schedule

- PSC Establishes Procedural Schedule
- Generally 2 rounds of Discovery on Applicant
- Intervening Parties May Conduct Discovery
- Intervenor May File Written Testimony
- Discovery on Intervenors Permitted
- Rebuttal Testimony Permitted
- No Settlement Agreements with PSC Staff

STATE OF VERMONT PUBLIC UTILITIES BOARD

Hearing

- Formal Hearing
- Utility Must Be Represented By Attorney
- Witness Must Testify Re: Written Testimony
- PSC Staff/Commissioners Will Cross-Examine
- AG/Other Parties May Participate
- Recorded/Streamed Over Internet
- Upon Completion – Case Stands Submitted

STATE OF VERMONT PUBLIC UTILITIES BOARD

Final Decision

- PSC Must Issue Order NLT 10 Months Of Filing
- PSC Generally Issues Order Within 140 days of Filing (ARF)/180 days (General Rate Procedures)
- Requests for Rehearing must be Filed Within 23 Days of Order
- PSC has 20 days from Request to Deny or Grant Rehearing
- Any Party May Bring Action For Review in Franklin Circuit Court 23 days after Order Denying Rehearing or 30 days after Final Order

STATE OF VERMONT PUBLIC UTILITIES BOARD

COMMON ISSUES

STILL AERWIN DODEN

Employee Compensation

- Employee Compensation
 - Wages/Salaries
 - Health Insurance
 - Special Allowances
- Previously Accepted with limited PSC review
- PSC considered expenditures controlled by competitive forces
- Scope of Review: Is compensation excessive?

STILL AERWIN DODEN

Employee Compensation: Case No. 2015-00312

- Electric Utility Sought Rate Increase
- Attorney General (AG) raised concerns re: wage & salary increases/fringe benefits
- PSC:
 - Shares AG's concerns
 - No basis in record to justify determination that wages and benefits are not reasonable
 - Notes problems with studies re: wages

STILL AERWIN DODEN

Employee Compensation: Case No. 2015-00312

"[T]he Commission believes that employee compensation and benefits need to be more sufficiently researched and studied. The Commission will begin placing more emphasis on evaluating salary and benefits as they relate to competitiveness in a broad marketplace. **Future rate applications will be required to include a salary and benefits survey that is not limited exclusively to electric cooperatives, electric utilities, or other regulated utility companies. The study must include local wage and benefit information for the geographic area where the utility operates and must include state data where available.**"

Order of 9/15/2016 at 15

STILL KERNON JUDGE

**Employee Compensation:
Case No. 2016-00054**

- Water District Sought Rate Increase
- PSC Staff challenges annual increases for select employees who receive percentage increases greater than other employees
- PSC **disallowed** higher increases:
 “The annual wage rate increase for all employees should be comparable **unless there is evidence demonstrating a reasonable basis for a different increase amount**, such as when an employee receives a promotion for accepting additional responsibilities.”

STILL KERNON JUDGE


**Employee Compensation:
Case No. 2016-00054**

- AG challenged wage expense related to annual wage increase of 3% for all employees & health, life & vision insurance (at no cost)
- PSC rejected challenges and found wage increase & fringe benefit package reasonable
- PSC subsequently granted rehearing to consider AG’s objections but eventually affirmed its decision

STILL KERNON JUDGE


**Employee Compensation:
Supporting Compensation Package**

- Closer review of Wage/Salary & Fringe Benefits packages
- Include support in Applications for Rate Adjustment
- Compare with other utilities and general community
 - KRWA Salary Survey
 - Kentucky League of Cities’ Wage and Salary Survey
 - AWWA Wage/Salary Survey
 - Bureau of Labor Statistics
 - PSC Annual Reports

STEWART KENNEDY JOHNSON 


**Employee Compensation:
Supporting Compensation Package**

- Support for Wage/Salary Increases
 - Consumer Price Index
 - Bureau of Labor Statistics
- Identify factors that affect compensation
 - Utility's Location
 - Local Labor Pool
- Annual Increases: Provide the basis for any percentage increases that are greater than most employees

STEWART KENNEDY JOHNSON 


**Employee Compensation:
Supporting Compensation Package**

- Document Wage/Benefit Decisions
 - Bd Minutes should reflect Bd's reasoning for increases
 - Specific, detailed reasons preferred over general
- Fringe Benefits
 - Use State Government Fringe Benefits As Baseline
 - Explain the need for benefits packages that exceed the baseline
- Consider Implementing Evaluation System to provide better support for selective wage/salary increases

STEWART KENNEDY JOHNSON 


Employee Compensation: Bonuses

- PSC has historically disallowed bonuses
 - Salary adequate
 - Non-recurring
 - Discretionary
- Question of Lawfulness
 - KY Constitution Section 3
 - OAG 62-1
- Consider Implementing Incentive Compensation Policy to Overcome PSC Objections

STILL KENNEDY OPEN 


Employee Health Insurance

- PSC reviewing employers' contribution for health insurance cost
- If employer's contribution (%) exceeds BLS estimate of national average, recovery for excess **DENIED**
- PSC **encouraging** utility policies requiring employees to pay portion of health & dental insurance costs

STILL KENNEDY OPEN 


BLS: Estimate of National Average

Coverage	Average	Private Industry	State & Local Government
Family	67/33	66/34	71/29
Single	80/20	78/22	86/14

STILL KENNEDY OPEN 


PSC Orders: Common Characteristics

- No discussion health insurance plan specifics
- No comparison of utility's health costs with other utilities
- Ignores Utility arguments and evidence
- No finding that utility's cost for health insurance is unreasonable
- No explanation for use of the private firm standard or why other standards are inappropriate

STILL TAKING NOTES 


Commissioner Cicero: PSC Policy On Health Insurance Benefits

- Appearance before KY Chamber of Commerce Energy Conference (01/18/2018)
- All PSC Commissioners present
- VC Cicero stated PSC Policy
- Posted at <http://bit.ly/2sBUL1d>

STILL TAKING NOTES 

Commissioner Cicero: PSC Policy On Health Insurance Benefits

- “[F]or rates to be fair, just, and reasonable - both to the ratepayers and the utility - the **utility’s employees should reasonably participate in the cost of their health and dental insurance premiums**”
- “Absent any employee participation, PSC will apply 21% contribution for single & 32% for family”

STILL TAKING NOTES 

Commissioner Cicero: PSC Policy On Health Insurance Benefits

“From a personal perspective, I’m concerned that the utility industry in general, regardless of the entity’s financial viability, seems to have a philosophy that health, dental and many other benefit programs should be completely or majority funded by the company; that somehow all employees, regardless of their skill level or occupation, are so valuable as to be irreplaceable.”

Commissioner Cicero's Policy On Health Insurance Benefits

"The Commission has been questioned as to why it doesn't utilize the statistical percent-ages for "Service-providing industries – utility category" instead of the "all workers" category. The reason is obvious: **if all utilities offer the same program benefits the comparative percentages will be skewed for that category.**"


Commissioner Cicero's Policy On Health Insurance Benefits

"I will emphasize this point - if the employee percent cost participation is not exactly at the standard percentage levels, but the company does require employee cost participation **at a reasonable level**, the Commission will not adjust those costs. However, the further the actual percentage is below the **standard statistical average percent participation**, the greater the probability that the Commission could make an adjustment."

What Is A Reasonable Level?


"As long as the employee contribution rate for health insurance is **at least 12 percent**, [the Commission] will not make a further adjustment to the national average. If a utility's employees' health insurance contribution is less than 12 percent, the Commission will adjust all contributions to the national average."

Case No. 2019-00053, June 20, 2019

STOLL KERNON GREEN 


Problems With PSC Approach

- Due Process Concerns
 - No notice to utilities
 - Utility has no opportunity to confront BLS “National Average” Statistics
 - Failure to Address Utility Arguments
- KRS Chapter 13A: PSC adopts a rule without following proper procedure

STOLL KERNON GREEN 


Problems With PSC Approach

- PSC Assumption: Utility Industry and Government payment of insurance costs is “skewed” – no supporting evidence
- Improper Use of BLS Statistics
 - No recognition of State/Local Gov’t Data
 - Refusal to Use “Utilities Information”
- No empirical or statistical evidence to support any finding that current compensation costs are unreasonable

STOLL KERNON GREEN 


PROBLEMS WITH PSC APPROACH

- Disallowance is not based upon the cost of insurance but employees share of cost
- PSC refuses to consider:
 - Insurance Policies of Utility
 - Local Labor Markets
 - Utilities’ Efforts to contain/reduce health insurance costs
 - Reputable/recognized studies on issue

STILL KEENON/QUEEN 


Responses To PSC Approach

- Use Good Procurement Practices
 - Request Bids/Seek cost estimates from various suppliers annually
 - Document costs/efforts to reduce costs
- Determine the amount of likely disallowance prior to filing and if cost-effective to mount significant protest
- If not cost-effective, still document the record

STILL KEENON/QUEEN 

Responses To PSC Approach

- Compare **Total Compensation Cost** vs. Other Regulated Utilities/Municipal Utilities
- Offer comparisons of benefits/costs by other regional/state utilities (Use KRWA/KLC Surveys)
- Provide evidence on local labor markets
- Emphasize unique aspects of your workforce

STILL KEENON/QUEEN 

Responses To PSC Approach

- Consider differences between the quality of WD's insurance coverage & National Average Policy (e.g. deductibles, benefits)
- Propose use of BLS State/Local Government Category or Private Firm Utility or KY State Contribution Rate
- Argue for use of different study to determine National Average (e.g., Kaiser Family Foundation)

STATE OF NEW YORK

PSC Authority To Mandate Employee Contribution

- Employer Contribution is a **matter of managerial discretion**
- PSC jurisdiction limited to ratemaking
- PSC **CANNOT** restrict what employer pays for employee health insurance
- PSC **CANNOT** mandate employees contribute to health insurance cost

STATE OF NEW YORK

Donations

- PSC has historically disallowed as an expense unrelated to provision of utility service
- Water District donations view as unlawful, inconsistent with statutory purpose
- 1956 OAG 36,219
- OAG 92-043
- Recommended Response: Do not request recovery/Implement Policy Prohibiting

STATE OF NEW YORK

Commissioners' Salaries/Benefits

- Submit Fiscal Court Ordinances re: salary level as exhibit to Application
- Submit proof of training attendance if compensation > \$3,600 awarded
- No free or reduced service
- Insurance benefits should not exceed those provided employees
- Why are benefits other than salary needed?

STATE OF KENTUCKY

Commissioners' Health Insurance

- Case No. 2019-00268
- WD sought recovery of health insurance provided to WD Commissioners
- Cost: \$50,500
- Procedural Irregularities in Authorizing Health Insurance for Commissioners
- Value of Total Package (Salary + Benefits) termed "excessive"

STATE OF KENTUCKY

Commissioners' Health Insurance

- KRS Chapter 74 limits Commissioner Compensation limited to salary
- Notes that only County Judge & Fiscal Court can fix compensation level
- Unlawful for WD to provide health insurance coverage at no cost to Commissioners

STATE OF KENTUCKY

Commissioners' Health Insurance

- PSC Staff Opinion 2013-012:
 - KRS 79.080(3) permits WD to provide health insurance coverage to employees & officers
 - *Caldwell County Fiscal Court v. Paris*, 945 S.W.2d 952,954 (Ky.App. 1997), providing health insurance under a group policy does not constitute "compensation" or "salary" to public officials as the terms are used in the Kentucky Constitution or statutes.

STOLL, KERN, GORDON

Commissioners' Health Insurance

- Court likely to hold provision of health insurance coverage lawful
- PSC likely to find expenses to be unreasonable & deny recovery
- Recommendation: Do not request recovery
- **BEWARE:** PSC may use provision of health insurance as a basis to remove water district commissioners

STOLL, KERN, GORDON

Depreciation

"[D]epreciation is the loss, not restored by current maintenance, which is due to all the factors causing the ultimate retirement of the property. These factors embrace wear and tear, decay, inadequacy, and obsolescence. **Annual depreciation** is the loss which takes place in a year. In determining reasonable rates for supplying public service, it is proper to include . . . an allowance for consumption of capital . . ."

Lindheimer v. Illinois Bell Tele. Co., 292 U.S. 151, 167 (1934)

STOLL, KERN, GORDON

Depreciation

- Depreciation Permits Recovery of the Cost of A Capital Asset
- Annual Depreciation Expense = $(\text{Asset Cost} - \text{Salvage Value}) \div \text{Useful Life (years)}$
- Two Critical Components
 - Asset Cost
 - Useful Life

STOLL KEENE GARDEN

Useful Life: Effect On Revenue Requirement

Assume: \$10 Million Water Mains

25	\$400,000
30	\$333,334
40	\$250,000
50	\$200,000
62.5	\$160,000
75	\$133,334

STOLL KEENE GARDEN

Effect Of Useful Life On Revenue Requirement

- Increases/Decreases Revenue Requirement
- Erroneous Useful Life creates
 - Generational Inequities (Earlier Generation pays for Asset that a Later Generation Uses)
 - Inadequate Revenue for Infrastructure Replacement
 - “Money Left on Table” That Utility Never Recovers (PSC Staff)

STOLL KEENE GARDEN

Methods For Determining Asset’s Useful Life

- Engineering Estimate/Judgment
- Depreciation Study
- NARUC’s *Depreciation Practices for Small Water Utilities*

STOLL KERRICK GIBBS

Depreciation Studies: Generally

- Involves an analysis of past performance and engineering estimates of future
- Requires detailed historical records (30 Years) re: plant additions and retirements
- Survivor Curves plotted
- Supplemented with information from management and operating personnel re: current plant operations & practices
- Interpretation

STOLL KERRICK GIBBS

PSC Re: Use of Depreciation Studies For Smaller Utilities

Detailed property records specific to historic plant additions, plant retirements, and salvage practices are required to complete a depreciation study. Generally, "small" water utilities, such as Pendleton District, do not maintain property records with enough detail to properly complete a formal study. Furthermore, even if adequate records were maintained, "small" utilities do not have the financial resources to fund a formal study.

Case No. 2012-00412, PSC Staff Report at 9-10

STOLL KERRICK GIBBS

Depreciation Practices For Small Utilities

- National Association of Regulatory Utility Commissioners (NARUC) Publication (Aug. 15, 1979)
- Intended to address the needs of regulatory commissions to establish realistic depreciation rates for small H₂O utilities
- Provided in table format a range of average service lives then in use by H₂O utilities throughout the US for H₂O facilities designed & installed & maintained in accordance with good H₂O works practice

EDDL KENNEDY HUBEN

Depreciation Practices For Small Utilities

"The commission has previously used . . . [the NARUC] survey when establishing the appropriate depreciable lives for water utilities such as Rattlesnake Ridge when historic property records are not maintained in the manner necessary to perform a formal depreciation study or the utility does not have the financial resources to fund a formal study. Application of the NARUC Study is appropriate in this instance."

Case No. 2013-00338, Order of 02/07/2014 at 4.

EDDL KENNEDY HUBEN

PSC Treatment Of Useful Lives

- Recent Focus on Useful Lives (Mains/Meters)
- PSC Staff Routinely Recommending Changes To Conform to NARUC Guide
- PSC has consistently accepted Staff Recommendations

EDDL KENNEDY HUBEN

Response To Staff Recommendation

- Only 1 Utility has contested recommendation
- Why?
 - Contest would delay rate increase
 - Cost of contesting
 - Surprise
 - Limited time to respond/Lack of expertise
 - Limited benefit: Staff recommended rate increase near requested amount

STILL REASONABLE

PSC Decisions Re: Depreciation

- Utility bears Burden of Proof to Demonstrate Why Its Current Useful Life Is Appropriate
- In absence of evidence to the contrary, NARUC Guide will be used to establish useful lives
- PSC has not required PSC Staff proposals to be supported by engineering/technical evidence when maximum range recommended
- Staff Recommendations adopted in **ALL** Cases
- Adopted for Ratemaking & **Accounting** Purposes

STILL REASONABLE

Steps To Avoid Or Reduce Disallowance In Rate Case: Pre-application

- Review Useful Lives – Are they within NARUC range? (Emphasize Mains/Meters)
- Revise for Compliance with Lower Range (Unless basis for variance)
- Estimate effect of Revision on Revenue Requirement at Mid-Point & Higher Range
- If Effects of Mid-Point/Higher Range Revision Significant, Include **Supporting Evidence** for Useful Lives in Application

STILL REASONABLE

Supporting Evidence

- Past PSC Treatment of Depreciation Expense
- Depreciation Study
 - Adequate Records?
 - Potential Cost
- Engineer Testimony
 - Sworn Affidavit
 - Greater Weight

STEELE, KERNON, GIBBEN

Arguments to Support A Lower Useful Life

- Prior PSC Position on Depreciation in Prior Cases
- Legal Objections to Use of NARUC Guidelines
- Policy/Fact Objections to Use or Application of NARUC Guidelines
- Met Standard (Within Range And Produced Evidence)

STEELE, KERNON, GIBBEN

Depreciation: Summary

- **Major Issue** in Water Utility Rate Proceedings
- Examine Useful Lives **NOW**/Determine if Valid
- **(BEFORE FILING APPLICATION)** Assess the Effects on Revenue Requirement of Major Revisions in Useful Lives
- Address in Application for Rate Adjustment
- Start Maintaining the Records to Perform Depreciation Study

STEELE, KERNON, GIBBEN

Late Payment Fees

- Case No. 2020-00141: PSC held Late Payment Fees Unreasonable – Directed Collection Cease
- Rationale:
 - Fees are not cost based
 - Fees do not serve as an incentive to pay bills on time
 - Creates a hardship on customers already unable to timely pay for service

STATE REVENUE CODES

Late Payment Fees

- PSC has struck down 5 other utilities' late payment fees
- Problems With PSC Order
 - Lack of Due Process
 - Lack of Evidence to Support Holding
 - Failure to Consider Cost of Late Payment Customers
 - Effect: Increases Rates for Timely Paying Customers

STATE REVENUE CODES

Non-Recurring Charges

- Case No. 2020-00141: PSC announced new method for calculating NRCs
- No longer consider the cost of labor in charges for services provided during business hours
- Contrary to long-serving methodology & accepted industry practice
- Shifts cost to general water service

STATE REVENUE CODES

PRACTICAL SUGGESTIONS

STEELE BERTRAM JOHNSON

Strategic Considerations

- What are the limits to your request?
- What are your time constraints for recovery of additional revenue?
- What is the cost of delaying implementation of proposed rates?
- What are the utility's priorities for using additional revenues?
- How much revenue increase does utility need to meet objectives?

STEELE BERTRAM JOHNSON

Practical Suggestion: Application & Planning

- Incorporate Attachments SAO-W & RR-DC Into Planning
- Annually Review the Need For Rate Increase
- Rate Review Includes Non-Recurring Charges & Fees
- Consider More Frequent Filings To Reduce Rate Shock & Increase Customer Acceptance

STEELE BERTRAM JOHNSON

Practical Suggestion: Preparing Application

- Review all test year expenses for:
 - Improper or unlawful expenditures
 - Non-mission related expenses
 - Expenditures contrary to PSC Policy
 - Embarrassing Expenditures
- Make Adjustments to remove these expenses before filing
- Correct the Problem & Note the Correction

STATE OF NEW YORK PUBLIC SERVICE

Practical Suggestion: Preparing Application

- Incorporate By Reference Any Documents Already Filed with PSC (e.g., bond ordinances)
- Use Electronic Filing Procedures
- Provide Non-required Documents
 - General Ledger
 - Minutes of Board Meetings
 - Accountant’s Adjusting Entries
 - Commissioner Compensation Documents

STATE OF NEW YORK PUBLIC SERVICE


**Practical Suggestion:
Non-Recurring Charges**

- **NRC:** Charge or fee assessed to a customer to recover the specific cost of an activity
- **Examples:**
 - Tap-on Fee
 - Reconnection Charge
 - Service Visit

STATE OF NEW YORK PUBLIC SERVICE


**Practical Suggestion:
Non-Recurring Charges**

- Application provides opportunity to ensure NRCs reflect cost of service
- Revision ensures NRCs are not resulting in net losses
- Reduces the Cost of Updating
- Avoids limits placed upon revisions when made outside of general rate case

STOLL KENNEDY GIBLIN 


Practical Suggestions

- Review Utility for potential non-rate issues
 - Unauthorized Charges
 - Unauthorized Loans
 - Litigation/Disputes with State/Local Agencies
 - Excessive Water Loss
 - Problems identified in PSC Inspection Reports
- Identify & Contact Potential Intervenors

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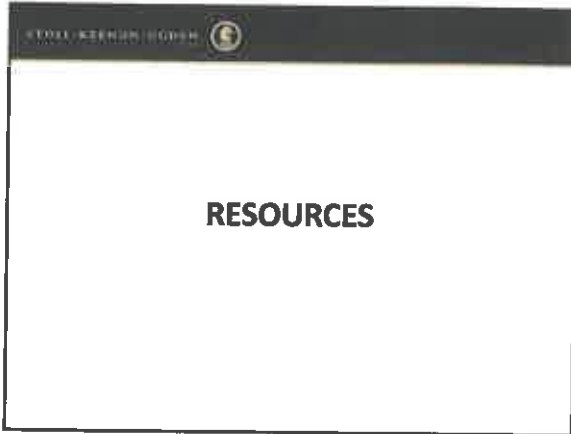
Practical Suggestions

- Begin a public education program on need for rate adjustment well before application filing
 - Public Officials
 - News Media
 - Local Businesses
 - General Public
- Select lawyer with PSC/ratemaking experience

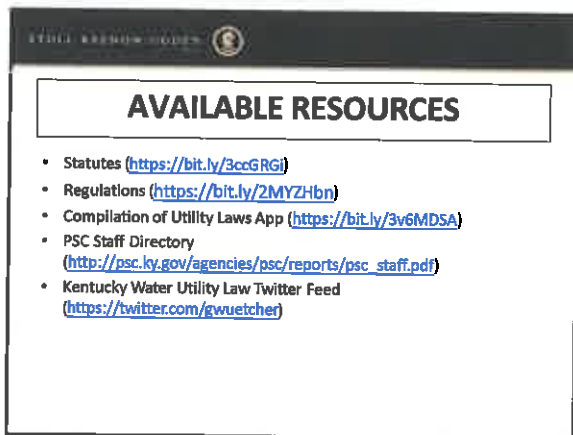
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Practical Suggestions

- Lawyer should be involved in all phases of planning and preparing application
- Identify major issues and address in written testimony – confront problems
- Use Responses to Requests for Information as opportunity to emphasize the utility's arguments for rate adjustment
- Overestimate Rate Case Expenses








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Questions?

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