

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF)
KENTUCKY RURAL WATER)
ASSOCIATION AND STOLL KEENON) CASE NO. 2021-00379
OGDEN PLLC FOR ACCREDITATION)
AND APPROVAL OF A WATER)
DISTRICT MANAGEMENT TRAINING)
PROGRAM)

NOTICE OF FILING

Kentucky Rural Water Association and Stoll Keenon Ogden PLLC give notice of the filing of the following documents in compliance with the Commission’s Order of October 13, 2021:

1. A sworn statement attesting that the proposed course of instruction entitled “Sixth Annual Water Law Series” was performed on October 29, 2021 and that the materials regarding each session were distributed to all program attendees **(Exhibit 1)**;

2. A description of any changes in the presenters or the proposed curriculum that occurred after the submission of the application for accreditation **(Exhibit 2)**;

3. The name of each attending water district commissioner, his or her water district, and the number of hours that he or she attended **(Exhibit 3)**;

4. A copy of the affidavit of each water district commissioner who attended the program virtually attesting to his or her attendance (**Exhibit 4**);
5. A copy of all written materials given to program attendees not included in the Application (**Exhibit 5**);
6. Approval of the program for continuing legal education accreditation by the Kentucky Bar Association (**Exhibit 6**);
7. Approval of the program for accreditation by the Department of Local Government for Elected County Officials Training Incentive Program (**Exhibit 7**);
and
8. Approval of the program for accreditation by Kentucky Board of Certification of Water Treatment and Distribution System Operators (**Exhibit 8**).

Dated: November 16, 2021

Respectfully submitted,



Damon R. Talley
Stoll Keenon Ogden PLLC
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Hodgenville, Kentucky 42748
damon.talley@skofirm.com
Telephone: (270) 358-3187
Fax: (270) 358-9560

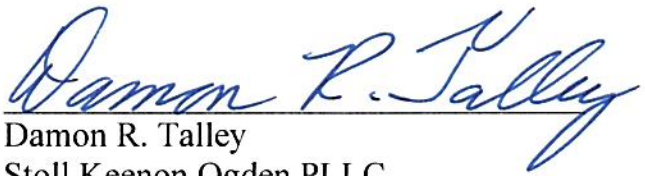
*Counsel for Kentucky Rural Water
Association and Stoll Keenon Ogden PLLC*

CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, and the Commission's Order of July 22, 2021 in Case No. 2020-00085, I certify that this document has been transmitted to the Commission on November 16, 2021; and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

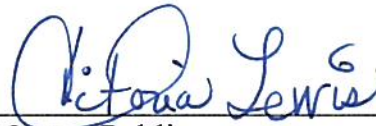

Damon R. Talley

EXHIBIT 1



Damon R. Talley
Stoll Keenon Ogden PLLC
112 North Lincoln Boulevard
P.O. Box 150
Hodgenville, Kentucky 42748

Subscribed and sworn to before me by Damon R. Talley, on this November
16, 2021. My Commission expires: 10-6-2024.



Notary Public
No. KYNP15356

EXHIBIT 2

EXHIBIT 2

CHANGES TO PROPOSED AGENDA AND PRESENTATIONS

The agenda found at Exhibit 1 of the Application was not revised. Mr. Wuetcher revised his presentation. The presentation of presenters LaJuana S. Wilcher and Sarah P. Jarboe had not been previously submitted. A copy of each of these presentations is found at Exhibit 5 of this Notice.

EXHIBIT 3

EXHIBIT 3
WATER DISTRICT COMMISSIONERS ATTENDING PROGRAM

Name	Water District	Number of Hours Attending	Method of Participation
Pasley, Ernest	East Clark County Water District	6	Virtual
Segress, Kenneth	East Clark County Water District	6	Virtual
Short, Roy	North Mercer Water District	6	Virtual
Johnson, Glen	Warren County Water District	6	In-Person
Donnelly, Tad	Warren County Water District	6	In-Person
Johnston, Harvey	Warren County Water District	6	Virtual
Kanaly, Tim	Warren County Water District	6	Virtual
Redden, Larry	Western Mason County Water District	6	Virtual
Carpenter, Pam	Western Mason County Water District	6	Virtual

EXHIBIT 4

COMMONWEALTH OF KENTUCKY)
COUNTY OF Clark) SS:

AFFIDAVIT OF ATTENDANCE

I, Ernest Presley, being duly sworn, state that I
(Print Name of Participant)

attended by videoconference the 6th Annual Water Law Series on October 27, 2021; that I am entitled to claim a total of 6 hours of water management training for my attendance; and that each hour of water management training claimed represents one hour of time I viewed the Webinar's proceedings.

[Signature]
Signature of Participant
Essex Clark County Water Assoc
Organization
118 Hopkins Lane
Address of Organization
Winchester Ky 40391
City State Zip

Subscribed and sworn to before me, a Notary Public in and before said County and State,
this 28 day of Oct 2021.

Carolee J. Stemmure
Notary Public
My Commission Expires: 3/23/2023
Notary ID: 619039

COMMONWEALTH OF KENTUCKY)
COUNTY OF Clark) SS:

AFFIDAVIT OF ATTENDANCE

I, Kenneth L. Secness, being duly sworn, state that I
(Print Name of Participant)
attended by videoconference the 6th Annual Water Law Series on October 27, 2021; that I am
entitled to claim a total of 6 hours of water management training for my attendance; and that
each hour of water management training claimed represents one hour of time I viewed the
Webinar's proceedings.

[Signature]
Signature of Participant

EAST CLARK WATER
Organization

118 Hopkins Lane
Address of Organization

Winchester Ky 40321
City State Zip

Subscribed and sworn to before me, a Notary Public in and before said County and State,
this 29th day of October 2021.

Carla J. Sherman
Notary Public

My Commission Expires: 3/23/2023

Notary ID: 619039

COMMONWEALTH OF KENTUCKY)
COUNTY OF Mercer) 188

AFFIDAVIT OF ATTENDANCE

Ray Short Being duly sworn, state that I
(Print Name of Participant)
attended by videoconference the 20th Annual Water Law Series on October 17, 2021; that I am
entitled to claim a total of 6 hours of water management training for my attendance; and that
each hour of water management training claimed represents one hour of time I viewed the
Webinar's proceedings.

Ray Short
Signature of Participant
North Mercer Water District
Organization
Address of Organization
Salvisa KY 40372
City State Zip

Subscribed and sworn to before me, a Notary Public in and before said County and State,
this 28th day of October, 2021.

John D. Hutchins
Notary Public
My Commission Expires 8-3-24
Notary ID: KYNPI2215



10/28/2021

COMMONWEALTH OF KENTUCKY)
COUNTY OF WARREN) SS:

AFFIDAVIT OF ATTENDANCE

I, TIM KANALY, being duly sworn, state that I
(Print Name of Participant)
attended by videoconference the 6th Annual Water Law Series on October 27, 2021; that I am
entitled to claim a total of 6 hours of water management training for my attendance; and that
each hour of water management training claimed represents one hour of time I viewed the
Webinar's proceedings.

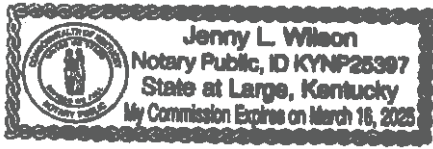
TIM KANALY
Signature of Participant

WARREN COUNTY WATER DISTRICT
Organization

523 US. 31W BYPASS P.O. BOX 10180
Address of Organization

BOWLING GREEN KY 42102-4780
City State Zip

Subscribed and sworn to before me, a Notary Public in and before said County and State,
this 27 day of 10 2021.



Jenny L. Wilson
Notary Public

My Commission Expires: 3/18/25

Notary ID: 25397

COMMONWEALTH OF KENTUCKY)
COUNTY OF WARREN) SS:

AFFIDAVIT OF ATTENDANCE

I, R. Harvey Johnston III being duly sworn, state that I
(Print Name of Participant)

attended by videoconference the 6th Annual Water Law Series on October 27, 2021; that I am entitled to claim a total of 6 hours of water management training for my attendance; and that each hour of water management training claimed represents one hour of time I viewed the Webinar's proceedings.

R. H. Johnston III

Signature of Participant

WLWI

Organization

523 US 31 W 134-POSS

Address of Organization

13.6. KY

City

State

Zip

42101

Subscribed and sworn to before me, a Notary Public in and before said County and State,
this 27th day of October 2021.

Ledwith M

Notary Public

My Commission Expires:

3/23/22

Notary ID:

597955

COMMONWEALTH OF KENTUCKY)
COUNTY OF MASON) SS:

AFFIDAVIT OF ATTENDANCE

I, Pam Carpenter, being duly sworn, state that I
(Print Name of Participant)
attended by videoconference the 6th Annual Water Law Series on October 27, 2021; that I am
entitled to claim a total of 6 hours of water management training for my attendance; and that
each hour of water management training claimed represents one hour of time I viewed the
Webinar's proceedings.

Pam Carpenter
Signature of Participant

Western Mason Water Dist
Organization

2573 Mary Ingles Hwy
Address of Organization

Dover Ky 4034
City State Zip

Subscribed and sworn to before me, a Notary Public in and before said County and State,
this 27th day of October 2021.

Paul A. French
Notary Public

My Commission Expires: 1-29-2023

Notary ID: 435674

COMMONWEALTH OF KENTUCKY)
COUNTY OF MASON) SS:

AFFIDAVIT OF ATTENDANCE

I, Larry Redden, being duly sworn, state that I
(Print Name of Participant)
attended by videoconference the 6th Annual Water Law Series on October 27, 2021; that I am
entitled to claim a total of 6 hours of water management training for my attendance; and that
each hour of water management training claimed represents one hour of time I viewed the
Webinar's proceedings.

Larry Redden
Signature of Participant

Western Mason Water
Organization

PO Box 49
Address of Organization

Booer Ky 410301
City State Zip

Subscribed and sworn to before me, a Notary Public in and before said County and State,
this 27th day of October 2021.

Paul A. Furch
Notary Public

My Commission Expires: 1-29-2023

Notary ID: 435674

EXHIBIT 5



HOT WATER LAW TOPICS 2021 EDITION

Sarah P. Jarboe & Lajuana S. Wilcher

English, Lucas, Priest & Owsley, LLP

1101 College St.

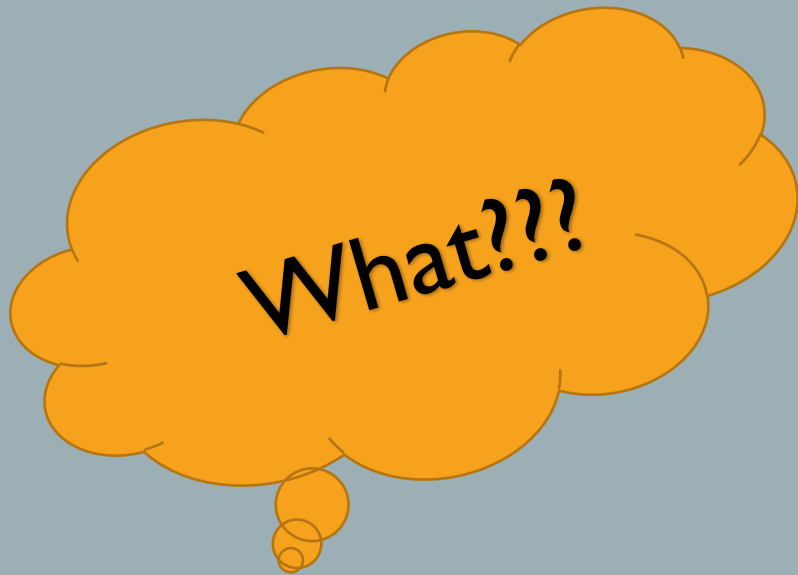
Bowling Green, KY

6th Annual Water Law Series
October 27, 2021



\$

Infrastructure Funding??????



Budget Reconciliation???

TYPICAL PROCESS



- ✓ Bill introduced in House and Senate (same or similar)
- ✓ House and Senate hold Committee hearings and vote on bill(s)
- ✓ Votes held by House and Senate
- ✓ If differences, bills go to Conference
- ✓ Agreed upon bills go back to House and Senate for vote

S. 914 DRINKING WATER AND WASTEWATER INFRASTRUCTURE ACT OF 2021

- Passed the Senate 89-2
- \$35 billion over five years in federal financing and funding to address nation's water infrastructure needs
- SRF
- WIFIA
- Small and disadvantaged communities
- Lead pipe replacement
- Resiliency
- New and emerging technologies
- Water infrastructure and workforce development





2021 INFRASTRUCTURE PROCESS



Bipartisan *Infrastructure Investment and Jobs Act* passed Senate 69-30 August 10, 2021



House Speaker Pelosi announces the House will not vote on this infrastructure bill before vote on the \$3.5 trillion “human infrastructure bill” intended to be passed as part of “budget reconciliation” vote



2 Democratic Senators say they will not vote for the \$3.5 trillion social program increases



WHAT IS BUDGET RECONCILIATION AND WHY DOES IT MATTER?



Senate rules generally require 60 Senators to agree that a bill is ready to be voted upon (Cloture) to avoid filibuster. The Senate currently has 49 Ds, one I, and 50 Rs.



Except – A budget reconciliation bill does not require 60 Senators to agree before a vote can be held on it



The new spending being proposed as part of budget reconciliation needs at least 50 Senate votes

INFRASTRUCTURE BILL HAS BEEN HELD HOSTAGE!



But ... two Senators have been negotiating with the Biden administration and other Congressional representatives and may be ready to sign off on a scaled back “social safety net” package



Several “deadlines” have passed. The latest “deadline” is October 31.



So ... the infrastructure bill and the new spending being proposed as part of budget reconciliation **MAY** pass soon!



The Infrastructure Bill Passes, What does it mean for Water Systems?

SRF and DWSRF funding

- FY 2022 \$2.4 billion
 - FY 2023 \$2.75 billion
 - FY 2024 \$3 billion
 - FY 2025 \$3.25
 - FY 2026 \$3.25 billion
-
- 12% of DWSRF funding to disadvantaged communities
 - Buy America applies to any upgrades made with these funds
 - CWSRF – 10% for grants, negative interest loans, loan forgiveness, or refinance or restructure debt or loans for disadvantaged communities as determined by state



The Infrastructure Bill Passes, What does it mean for Water Systems?

- \$15 billion for capitalization grants to states – 49% to go to grants to local governments for lead service line replacement and associated activities
- \$1 billion funding to address emerging contaminants as grants or loans with 100% forgiveness
- \$5 billion for loans with 100% forgiveness or other loans for PFAS - Perfluoroalkyl or polyfluoroalkyl substances

WATERS OF THE U.S. (WOTUS)

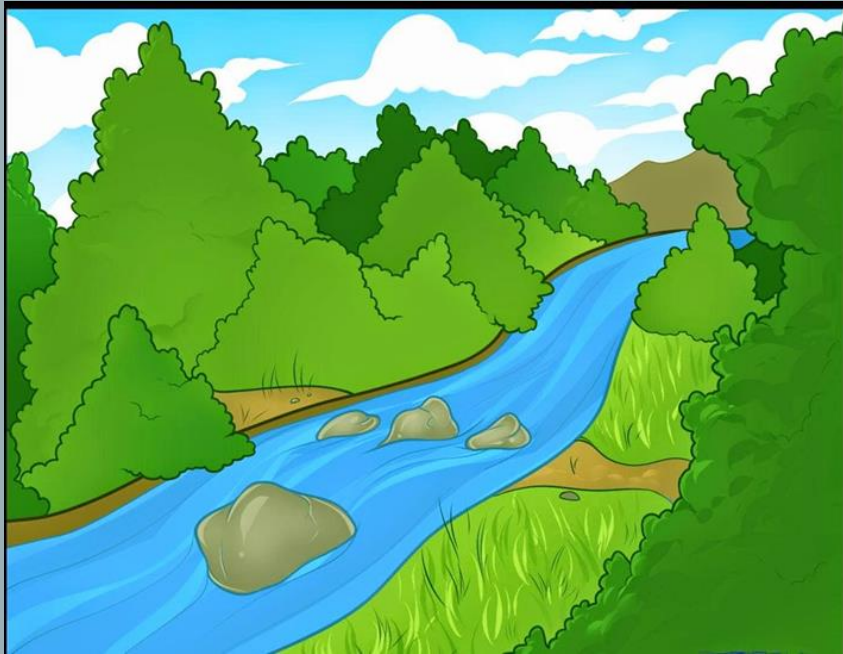
What is Regulated by the Clean Water Act (CWA)

1. 402 NPDES Permit
2. 404 Dredge/Fill Permit
3. Liability for spills and releases





CWA PROHIBITS UNPERMITTED “DISCHARGE
OF ANY POLLUTANT BY ANY PERSON”



Discharge of Pollutant – “any addition of any pollutant to **navigable waters** from any point source.”

Navigable Water – “**Waters of the United States**, including the territorial seas.”



49-YEAR DEBATE

1972 – Congress enacts CWA

1974 - 1977 – Corps issues and revises early CWA jurisdictional rules

1985 – Supreme Court decides *Riverside Bayview Homes*

1986 – Corps issues the “migratory bird rule”

2001 – Supreme Court decides *SWANCC*

■ = Expanding Jurisdiction

■ = Contracting Jurisdiction



49-YEAR DEBATE

2006 – Supreme Court decides *Rapanos*

2008 – EPA and Corps issue Guidance on CWA jurisdiction after *Rapanos*

2015 – Obama Administration issues Clean Water Rule

2015-2019 – Court decisions staying/remanding the Clean Water Rule

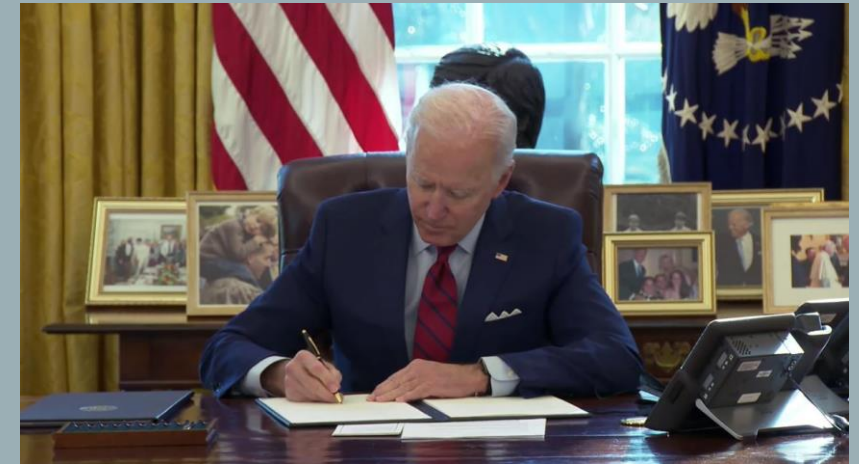
2020 – Trump Administration issues Navigable Waters Protection Rule (NWPR)

■ = Expanding Jurisdiction

■ = Contracting Jurisdiction

BIDEN ADMINISTRATION

- January 2021 – Executive Order 13990: Protecting Public Health and the Environment and Restoring Science to Take the Climate Crisis
- June 2021 – EPA and Army Corps' announce intent to revise the definition of WOTUS
- August 2021 – Agencies request recommendations, comments, input on new definition



NWPR VACATED

Pascua Yaqui Tribe v. United States Environmental Protection Agency, CV-20-00266-TUC-RM,
2021 WL 3855977 (D.Ariz.Aug. 30, 2021)



Arizona District Court **remands**
and **VACATES** the NWPR

EPA halts implementation of
NWPR **nationwide**

WHERE DOES THIS LEAVE US?

2015 Clean Water Rule?



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I'm not
saying
NO
I'm just saying
NOT YET

RETURN TO RAPANOS

“Jurisdiction over wetlands depends upon the existence of a **significant nexus** between the wetlands in question” and traditional navigable waters. 574 U.S. at 779.

Jurisdictional:

TNWs and wetlands adjacent to TNW

Tributaries of TNWs that are relatively permanent

Wetlands that directly abut such tributaries

Generally Not Jurisdictional:

Swales, Erosional features, ditches

Jurisdiction if there is a significant nexus to TNWs:

Tributaries that are not relatively permanent

Wetlands adjacent to such tributaries

Wetlands adjacent to but not abutting relatively permanent tributaries

BUT WAIT...THERE'S MORE

Sackett v. United States Environmental Protection Agency, Petition for Writ of Certiorari in U.S. Supreme Court:

“Should *Rapnos* be revisited to adopt the plurality’s test for wetlands jurisdiction under the Clean Water Act?”



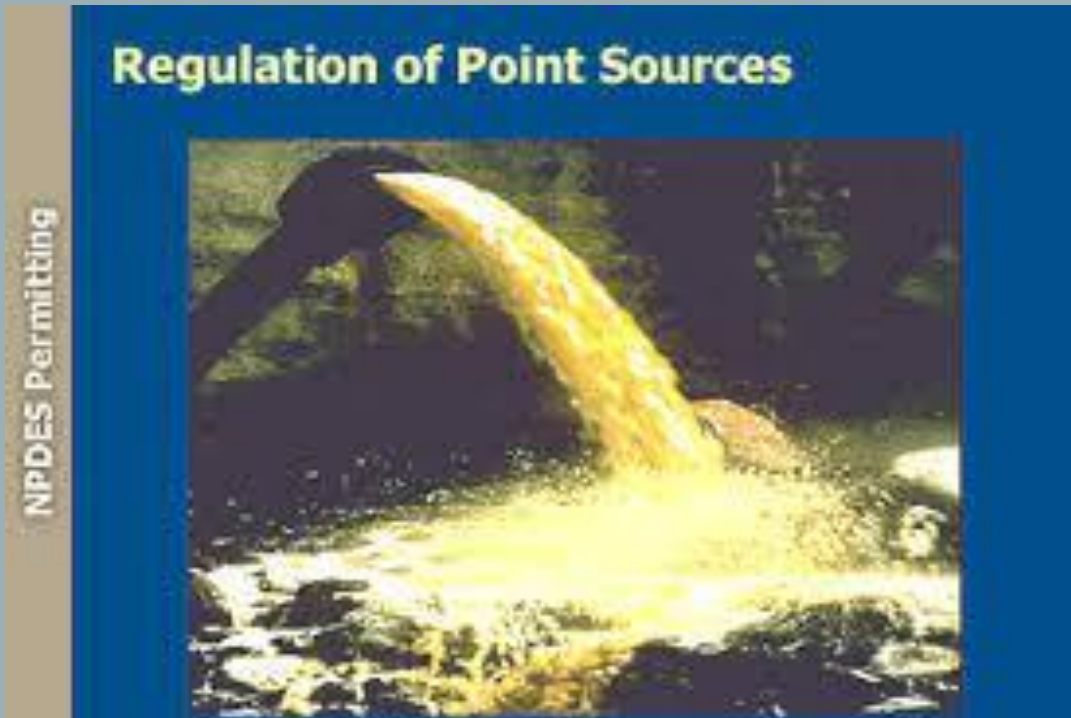
WHAT TO EXPECT FROM BIDEN ADMINISTRATION



- Environmental justice – key initiative of the Biden Administration; but how will that transpire in the rulemaking
- Relevant science – connectivity report; expect this will be revisited;
- Regional, state, tribal interests - Looking at regionalized approaches to the rulemaking
- Implementation – significant nexus test will become the focus once again
- Same key issues on scope – tributaries, ditches, wetlands, exclusions



DISCHARGES TO OR VIA GROUNDWATER



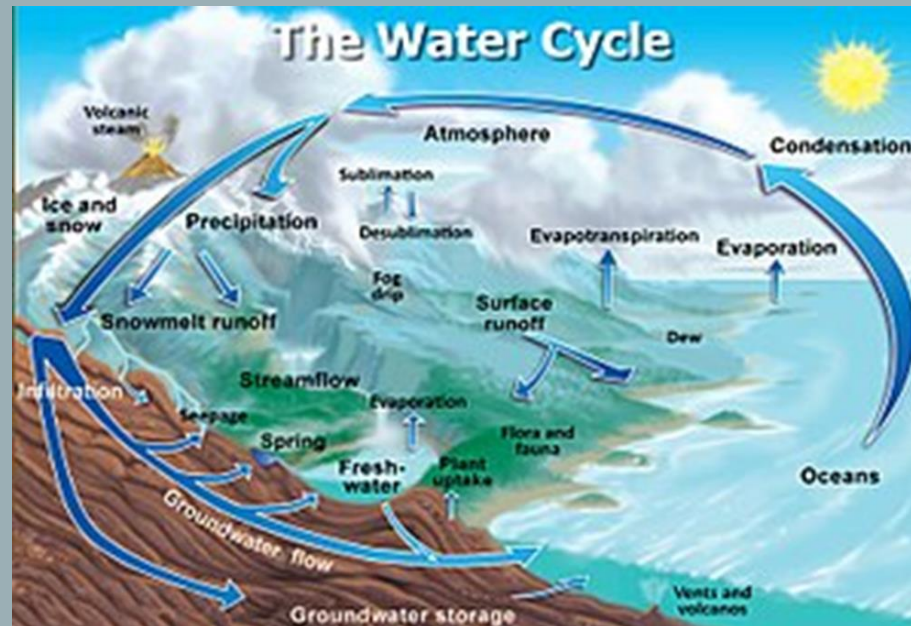
CWA Prohibits Unpermitted
“discharge of any pollutant by any
person”

Discharge of Pollutant – “any addition
of any pollutant **to** navigable waters
from any **point source**.”

Point Source – any discernible,
confined, discrete conveyance, e.g., pipe
or ditch

DISCHARGES TO OR VIA GROUNDWATER

Does the CWA regulate the release of a pollutant from a point source into groundwater which thereafter enters a jurisdictional Water of the U.S.?



COUNTY OF MAUI V. HAWAII WILDLIFE FUND

- Wastewater reclamation facility operated by County of Maui
- Treated water pumped through four underground injection wells hundreds of feet underground to groundwater
- From groundwater the treated water reached the ocean



Point Source = Underground Injection Wells



Groundwater

Traditional Navigable Water = Ocean

U.S. SUPREME COURT
*COUNTY OF MAUI V. HAWAII WILDLIFE
FUND, 140 S.C.T. 1462 (2020)*

A discharge from a point source is regulated by the CWA if it reaches navigable waters directly or is the “**functional equivalent**” of a direct discharge.

- Transit Time
- Distance Traveled
- Nature of the material through which pollutant travels
- Extent to which pollutant is diluted or chemically changed as it travels
- Amount of pollutant entering the TNW v. amount of pollutant that leaves the points source



- Manner by or area in which pollutant enters the TNW
- The degree to which pollutant maintains its specific identity

CWA 401 CERTIFICATION

CWA Section 401 requires that:

Any applicant for a **federal license or permit**

That may result in a **discharge into Waters of the U.S.**

Must obtain a **water quality certification from the State or Tribe**

That the discharge **complies with all applicable water quality requirements**

Unless certification is **waived**



CWA 401 CERTIFICATION

Problem: CWA 401 Certifications held up projects for years

June 2020 – EPA promulgated Clean Water Act Section 401 Certification Rule

A State or Tribe must act on a request for certification within the **reasonable period of time, which shall not exceed one year**





CWA SECTION 401 CERTIFICATION RULE **VACATED**



- June 2021 – Notice of Intention to Reconsider and Revise
- October 21, 2021 – Northern District of California **REMANDS and VACATES** CWA Section 401 Certification Rule: In re Clean Water Act Rulemaking, 2021 WL 4924844.

“EPA is in receipt of the U.S. District Court for the Northern District of California’s October 21, 2021 order vacating and remanding EPA’s 2020 Clean Water Act (CWA) Section 401 Certification Rule (No. 3:20-cv-04636-WHA). As the court stated, this order requires a **temporary return to EPA’s 1971 rule** until EPA finalizes a new certification rule. EPA is reviewing the court decision and considering next steps.”

<https://www.epa.gov/cwa-401/2020-clean-water-act-section-401-certification-rule-0> (October 25, 2021).

EPA'S NEW PFAS STRATEGIC ROADMAP (PER- AND POLY-FLUOROALKYL SUBSTANCES)



- Research
- Restrict
- Remediate

PFAS Roadmap Office of Water – Drinking Water

- Undertake nationwide monitoring for PFAS in drinking water
- Fifth Unregulated Contaminant Monitoring Rule (UCMR 5)
- NPDWR for Perfluorooctanoic acid (PFOA) and Perfluorooctane sulfonic acid (PFOS)
- Toxicity assessments for two PFAS, hexafluoropropylene oxide dimer acid and its ammonium salt (GenX chemicals)
- Health advisories for Perfluorobutane sulfonic acid (PFBS) based on final toxicity assessments.

PFAS Roadmap Office of Water – Wastewater

- Effluent Limitations Guidelines
- NPDES Permits
- New validated analytical method for 40 PFAS
- Final recommended ambient water quality criteria for PFAS
- Monitor fish tissue
- Fish advisories
- Risk assessments for biosolids

QUESTIONS?

Sarah P. Jarboe & Lajuana S. Wilcher

sjarboe@elpolaw.com; lwilcher@elpolaw.com


English, Lucas, Priest & Owsley, LLP

1101 College St.

Bowling Green, KY

Hot Water Law Topics 2021 edition






**STOLL
KEENON
OGDEN**
PLLC

THE PSC AND MUNICIPAL UTILITY WHOLESALE RATE ADJUSTMENTS: A CHANGING LANDSCAPE

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**STOLL
KEENON
OGDEN**
PLLC

Order of Presentation

- ◆ Historical Overview
- ◆ Basic Rules
- ◆ Rate Adjustment Procedures
- ◆ Case Preparation & Management
- ◆ Rate Case Issues
- ◆ Wholesale Contract Provisions


2



**STOLL
KEENON
OGDEN**
PLLC

HISTORICAL OVERVIEW


3



Public Service Commission Act of 1934

- ❖ Created Public Service Commission
- ❖ Defined PSC's authority over "utilities"
- ❖ Established utility's rights & obligations
- ❖ PSC's jurisdiction: rates & service of "utilities"
- ❖ "Utilities" defined to include cities
- ❖ Enacted over the objections of cities


4



1936 Amendment

- ❖ Definition of "Utility" amended to exclude cities: "the term 'utility' or 'utilities' **shall not mean or include any city or town**"
- ❖ Exclusion remains in KRS 278.010(3)
- ❖ *McClellan v. Louisville Water Co.*, 351 S.W.2d 197 (Ky. 1961): Exemption extends to all operations of municipal utility


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Current Definition of "Utility"

"Utility" means any person **except . . . a city**, who owns, controls, operates, or manages any facility used or to be used for or in connection with . . . [t]he diverting, developing, pumping, impounding, distributing, or furnishing of water to or for the public, for compensation


KRS 278.010(3)



Simpson County Water District
v.
City of Franklin

- While cities exempted from PSC regulation because they are not “utilities”, they forfeit exemption if they contract to provide utility service to a utility
- KRS 278.200 – Requires a hearing before PSC before any change in the rate for utility service provided by an agreement between a city and a utility

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Simpson County Water District
v.
City of Franklin

The commission may, under the provisions of this chapter, originate, establish, change, promulgate and enforce any rate or service standard of any utility that has been or may be fixed by **any contract, franchise or agreement between the utility and any city**, and all rights, privileges and obligations arising out of any such contract, franchise or agreement, **regulating any such rate or service standard, shall be subject to the jurisdiction and supervision of the commission, but no such rate or service standard shall be changed, nor any contract, franchise or agreement affecting it abrogated or changed, until a hearing has been had before the commission in the manner prescribed in this chapter.**


KRS 278.200

8



BASIC RULES


9



RULE #1: Some, But Not All, Municipal Transactions are Subject to PSC Jurisdiction

- ❖ Contract for Sale of Service to Water District **Yes**
- ❖ Contract for Sale of Service to Water Association **Yes**
- ❖ Contract for Sale of Service to Investor-Owned Utility **Yes**
- ❖ Retail Service **No**
- ❖ Service to Other Cities **No**
- ❖ Service to Sanitation Districts/Other Special Districts **No**
- ❖ Service to Public Utilities **Without Contract** **No**


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RULE #2: A Written Contract Is Necessary for PSC Jurisdiction

- ❖ KRS 278.200 refers to a **contract** between city and utility
- ❖ *City of Greenup, Ky. v. Pub. Serv. Com'n*, 182 S.W.3d 535 (2005):
 - Contract must be made & executed by the mayor
 - No PSC jurisdiction if no mayor-executed contract
- ❖ *South Shore Water Works v. City of Greenup*, Case No.2009-00247 (Oct. 5, 2010). Sales made without a contract are **NOT** subject to PSC jurisdiction


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RULE #3: Contracts/Rates Must Be Filed With PSC

- ❖ Administrative Case No. 351
 - Cities must file wholesale contracts & schedule of rates with PSC NLT 09/09/1994
 - New/revised contracts must be filed 30 days prior to effective date
- ❖ Case No. 92-084: All municipal wholesale rates prior to 04/21/1994 are presumed reasonable


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RULE #3: Contracts/Rates Must Be Filed With PSC

- ❖ Municipal Utility (**Not Public Utility Purchaser**) is responsible for filing contract
- ❖ Consequences of Failure to Submit
 - Violation of PSC Order
 - Possible Penalty (Min = \$25; Max = \$2,500)
 - Municipal Utility lacks legal authority to charge rate – possible refunds of all monies collected

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RULE #3: Contracts/Rates Must Be Filed With PSC

- ❖ KRS 278.160(1): “[E]ach **utility** shall file with the commission . . . schedules showing all rates and conditions for service established by it and collected or enforced.”
- ❖ KRS 278.160(2): “No **utility** shall charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules . . .”
- ❖ KRS 278.180(1): “[N]o change shall be made by any **utility** in any rate except upon thirty (30) days’ notice to the commission, stating plainly the changes proposed to be made and the time when the changed rates will go into effect.”

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RULE #3: Contracts/Rates Must Be Filed With PSC

Is Your Contract or Rate on File with PSC?

- ❖ Check PSC Tariff Library at: <http://psc.ky.gov>
- ❖ Unfiled Contracts/Tariffs
 - Contact PSC Tariffs Branch (502) 782-2626
 - Submit with Explanation for Failure
 - Possible Sanctions


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RULE #4: A Municipal Utility Must File Its New Rate With PSC Before Charging The Rate

- ◆ Statutory Basis
 - KRS 278.160: Rates Must Be On File With PSC
 - KRS 278.180: 30 Days' Notice Before Becoming Effective
 - KRS 278.200: Hearing Required for Increase
- ◆ New/Revised Conditions of Service
- ◆ Dangers of Ignoring PSC
- ◆ Exception: Rate Formula

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RULE #5: PSC Jurisdiction Is Limited to Rates And Service


Areas Outside of PSC Jurisdiction:

- ◆ Construction of Facilities - Certificates of Public Convenience & Necessity
- ◆ Service Area Disputes
- ◆ Uniform System of Accounts
- ◆ Reports to the PSC
- ◆ Assessments for Maintenance of PSC

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PROCEDURE FOR WHOLESALE RATE ADJUSTMENT



Procedure For Rate Adjustment

- ❖ Municipal Utility Must Give Notice of Rate Change to
 - PSC
 - Wholesale Customer
- ❖ Notice must be made at **least 30 days prior** to the proposed increase
- ❖ Notice must conform with 807 KAR 5:011*


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Procedure For Changing Rates: Notice To PSC

- ❖ File Tariff Sheet
 - Name of Wholesale Customer (if not a uniform rate)
 - Proposed Rate
 - Effective Date (**30 Days From Date of Filing**)
 - Name & Signature of Authorized Official
 - Proof of Notice to Wholesale Customer
 - Tariff Sheets Are Available from PSC Website
- ❖ Electronically Submitted


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Procedure For Changing Rates: Notice To Wholesale Customers

- ❖ Contents of Notice – 807 KAR 5:011, §8(4)
 - Proposed Effective Date
 - Date Filed with PSC
 - Dollar & % Amount of Proposed Change
 - Effect on Average Bill
 - Where Filing Can Be Examined
 - Statements Re: Intervention
 - Where Comments Can Be Directed


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Procedure For Changing Rates: Notice To Wholesale Customers

- ❖ PSC requires **strict compliance** with notice contents regulation
- ❖ Acceptable Methods of Notice: Mail - Personal Delivery - Newspaper
- ❖ Mailed/Delivered/Published **NLT Date of Filing**
- ❖ Notice to the Public is **NOT** required


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Procedure For Changing Rates: Additional Documents

- ❖ Cost-of-Service Study **OR** Rate Study
- ❖ Financial Reports
- ❖ Historical Narrative/Explanation for Increase
- ❖ Ordinance Establishing New Rates*
- ❖ Wholesale Customer's Statement of No Objection/Waiver of Hearing


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PSC's Actions Upon Receipt of Contract/Rate

- ❖ Posts to PSC Website
- ❖ Reviews for compliance with filing requirements
- ❖ If filing requirements met, PSC must act before proposed effective date
- ❖ Before a rate becomes effective, PSC may suspend operation of rate for 5 months for further review
- ❖ Waits for comments/objections
- ❖ May request additional information


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Wholesale Customer's Options

- ❖ No Response Required
- ❖ Notice of No Objection/No Hearing
- ❖ Request PSC Review/Investigation
- ❖ Identify Specific Areas of Concern or Objections


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Models For Reviewing Municipal Rate Proposal

- ❖ Arbitrator Model
 - PSC's sole purpose is to resolve disputes
 - PSC reviews the reasonableness of proposed rate **only when a dispute exists or requested**
- ❖ Utility Model
 - PSC's function is to review and determine the reasonableness of the proposed rate
 - PSC suspends and reviews in **all instances**

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Standard for Investigation

- ❖ Does a **customer** object to the proposed increase?
- ❖ Does the proposed rate/rule conflict with existing PSC regulations/rulings?
 - Rate Indexing
 - Practice that conflicts with PSC Regulations

YES – Suspend
NO – No Action (Rate Takes Effect)

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Procedural Rules

Following the [Supreme] Court’s decision in *Simpson County*, the Commission has allowed city-owned utilities to file rate adjustments by a tariff filing, and if a hearing is requested and the Commission suspends the proposed rate, the requirements, and procedures set forth in KRS Chapter 278, and the Commission’s regulations ***apply equally to filings by a city-owned utility or a jurisdictional utility.***

Case No. 2017-00417, Order of 7/12/2018


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Procedure: Part 1

- ❖ Formal Proceeding Established
- ❖ Proposed Rate suspended for 5 months
- ❖ After 5 months: Rate may be assessed subject to refund
- ❖ Scope of review: Is Rate Reasonable?
- ❖ Burden of Proof on Municipal Utility
- ❖ A final decision must be issued w/i 10 months


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Procedure: Part 2

- ❖ Electronic Filing Procedures apply
- ❖ Extensive requests for information possible
- ❖ Written Testimony required
- ❖ Cost-of-service study recommended – not required
- ❖ Intervening Parties not required to participate

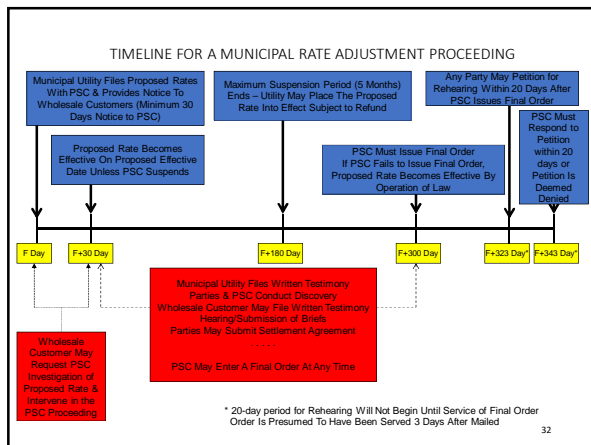
30




Procedure: Part 3

- ◆ Hearing
 - No opening/closing statements
 - Cross-examination only
 - PSC Staff/Commissioners actively participate
- ◆ Decision generally issued 240 -300 days
- ◆ Settlement Agreement may not terminate proceedings

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Appeal Process

- ◆ May request rehearing w/i 23 days of Order
- ◆ PSC must rule on request within 20 days
- ◆ May file action for review in Franklin Circuit Court w/i 23 days of order on rehearing
- ◆ May file action for review w/i 33 days without seeking rehearing
- ◆ Must show order is unlawful or unreasonable


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RATE CASE PREPARATION AND MANAGEMENT

34




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Pre-filing Discussions

- ◆ Explain reasons for rate adjustment
- ◆ Provide supporting data/documents
- ◆ Negotiate before filing the rate with PSC
- ◆ Supplier should consider any objections & critiques of supporting data
- ◆ Customer should voice all reasonable objections and concerns

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Contract Review

- ◆ Limits on rate adjustments
- ◆ Wholesale rate tied to retail rate?
- ◆ Contract Formula
- ◆ Notice requirements
- ◆ Other concerns


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Rate Case Preparation

- ❖ Assemble materials for response to 1st PSC Info Request
- ❖ Working knowledge of PSC processes
- ❖ Research potential issues
- ❖ Retain attorney & rate expert - include in preparations & negotiations
- ❖ Begin tracking rate case expenses

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Cost-of-Service Study – When?

“We place . . . all municipal utilities on notice that, in future proceedings where a municipal utility has failed to conduct such studies **prior** to the filing of its proposed rate adjustment, the additional litigation costs incurred by all parties will be a factor that will be considered in assessing the reasonableness of the costs related to an “after-filing cost-of-service study.”

Case No. 2009-00373, Order of 7/2/2010 at 9.


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Municipal Takeaways

- ❖ Consider performing COSS as part of rate case preparations
- ❖ If study recently performed (< 5 years), across the board rate adjustment may be appropriate
- ❖ Provide wholesale customer with copy of COSS and access to COSS preparer


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Customer Takeaways

- ◆ Request a copy of the COSS
- ◆ Ask to question the preparer
- ◆ Are COSS's assumptions realistic?
- ◆ If unrealistic, propose alternatives assumptions
- ◆ Retain your own expert to review COSS


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Agreement With Customers

- ◆ Agreement should be in writing
- ◆ Ask for (prepare) Wholesale Customer's letter stating no objection
- ◆ Customer acknowledges receipt of notice & waives right to a hearing
- ◆ File letter/acknowledgement with tariff sheet


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Wholesale Customer: Decision to Intervene

- ◆ Customer's Intervention is not required
- ◆ Risks of Non-Intervention
- ◆ Cost of Intervention
 - Attorney fees
 - Experts
 - Internal Resources Expended
- ◆ Participation Level: How much Involvement?

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**Response to Intervention
Request/Initiation of Proceeding**

- ❖ Request proposed rate be placed into effect immediately subject to refund
- ❖ Request expedited discovery & hearing
- ❖ Request Customer be required to identify basis for its objections
- ❖ Request recovery of rate case expenses if not included in original proposal



RATE CASE ISSUES


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Test Period

- ❖ A consecutive 12-month period
- ❖ Usually the 12 month-period reflected in the utility's most recent annual report or audit


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**Test Period:
Municipal Takeaways**

- ◆ Use the most current year
- ◆ Do not base adjustments upon budget projections
- ◆ Inflation factors unlikely to be accepted
- ◆ Time your filing with completion of audit
- ◆ If major construction projects in progress, consider completion date


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**Test Period:
Municipal Takeaways**

- ◆ Implement wage/salary changes NLT rate filing date
- ◆ Review operations for all known and measurable changes


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Depreciation: Part 1

- ◆ Non-cash Item
- ◆ Not considered under Cash-Needs Approach
- ◆ PSC considers depreciation when establishing rates
- ◆ Utility rates allow for recovery of debt service (interest + principal) **AND** depreciation
- ◆ Effect: Customer pays 2X for Utility's Asset


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Depreciation: Part 1 Takeaways

- ◆ Municipal Utility:
 - Proposed rate should include depreciation expense
 - Argue PSC should use same method used for PSC-regulated utilities
- ◆ Wholesale Customer:
 - Argue against the inclusion of depreciation expense if Principal Payments included


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Depreciation: Part 2 Useful Lives

- ◆ Utility bears burden of proof to demonstrate appropriateness of its useful lives
- ◆ In absence of evidence to the contrary, mid-point on NARUC Guide will be used
- ◆ PSC is skeptical of expert testimony questioning the use of NARUC Guide
- ◆ PSC has consistently used NARUC Guide mid-point since 2016 in **ALL** cases


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Useful Lives: Municipal Takeaway

- ◆ Compare your useful lives to NARUC mid-point
- ◆ If significant difference, what support to justify continued use of current useful lives?
- ◆ Retain engineer to analyze & support present useful lives
- ◆ Perform cost-benefit analysis of accepting NARUC mid-point vs. cost of litigating issue
- ◆ Consider adjustments to useful lives when developing proposed rate


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Depreciation: Municipal Takeaway

- ❖ **Tactical Consideration:** Request rates based upon current useful life revision, but consider conceding issue in negotiations or PSC proceeding
- ❖ Make no permanent concession but reserve right to challenge in future proceedings


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Depreciation: Customer Takeaway

- ❖ Request & examine Muni's depreciation schedule
- ❖ Compare Muni's useful lives to NARUC mid-points
- ❖ Highlight significant variances at **each stage** of proceeding
- ❖ Depreciation on debt-financed assets is inappropriate; requires customer to pay 2X


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Employee Compensation

- ❖ PSC closely reviews Wages & Fringe Benefits
- ❖ Support for Wage/Salary Increases
 - Consumer Price Index
 - Bureau of Labor Statistics
- ❖ Document Wage/Benefit Decisions
 - Minutes reflect reasoning for increases
 - Specific reasons preferred over general


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Employee Compensation

- ❖ Compare to Other Utilities
 - KRWA Salary Survey
 - Kentucky League of Cities Survey
- ❖ Identify factors that affect compensation
 - Utility’s Location
 - Local Labor Pool
- ❖ PSC Preference for Evaluation System


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Employee Compensation: Bonuses

- ❖ PSC has historically disallowed bonuses
 - Salary adequate
 - Non-recurring
 - Discretionary
- ❖ Question of Lawfulness
 - KY Constitution Section 3
 - OAG 62-1


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Employee Benefits: Health & Dental Insurance

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


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Bureau of Labor Statistics: 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

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Avoiding the Adjustment

The Commission . . . finds that it should establish a policy delineating when a utility's employees' insurance contribution levels are sufficient to avoid Commission adjustment. . . . **As long as the employee contribution rate for health insurance is at least 12 percent**, it 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, Order of 6/20/2019 at 9


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Dental Insurance

- ❖ PSC limits employer contribution for employee dental insurance to 40%
- ❖ Basis: Willis Benchmarking Survey (2015)


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**Employee Compensation:
Municipal Takeaways**

- ❖ Evidentiary support for increases essential
- ❖ Anticipate limited recovery of contributions for Employee Health/Dental Insurance
- ❖ Anticipate wholesale customer to request reductions based upon PSC past practice


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**Employee Compensation:
Customer Takeaways**

- ❖ Review test period/application for salary/wage increases in excess of inflation
- ❖ Review test period expenses for bonuses
- ❖ Request basis for bonuses/large increases
- ❖ Review Supplier's Contributions for Employee Health/Dental Insurance


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**Free Water Service:
Municipal Takeaways**

- ❖ Municipals may not recover costs related to free services to city
- ❖ Identify all free services
- ❖ City should pay actual cost of service
- ❖ Avoid in-kind transactions
- ❖ Written agreements for in-kind services
- ❖ Meter/measure water service to City


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Free Water Service: Customer Takeaways

- ◆ Request information on services provided to city departments
- ◆ Ensure cost is assigned to such service & revenue requirement calculation reflects imputed income from service
- ◆ Consider other services (billing and collection for sewer/garbage/911)


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Allocation of Common Costs

- ◆ Method of allocation is necessary if shared or common costs
- ◆ Best method: Time Study
- ◆ PSC has established allocation rules
- ◆ Identify all services provided
- ◆ Allocation should be reflected in proposed rate


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Rate Case Expenses: Past Precedent

- ◆ US Supreme Court (1939): “the utility should be allowed its fair and proper expenses for presenting its side to the commission
- ◆ *City of Owenton* (1998): City entitled to recovery regardless of when requested
- ◆ *City of Danville* (2015): City must provide notice of proposed recovery in its notice to PSC


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**Rate Case Expense:
Municipal Takeaways**

- ❖ Surcharge is most effective means of rate recovery
- ❖ Must be identified in initial notice
- ❖ If estimate of costs used, base estimate on robust litigation from PSC & customer
- ❖ Estimate will likely serve as cap
- ❖ Consider “actual costs” ILO estimate


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**Rate Case Expense:
Municipal Takeaways**

- ❖ Avoid re-notice for increased expense level – resets statutory clock
- ❖ Require your attorney to provide detailed invoices
- ❖ Be prepared to address comparisons with customer’s rate case expense level

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**Rate Case Expense:
Customer Takeaways**

- ❖ Request and review Supplier’s invoices supporting expense
- ❖ Argue for longer recovery period
- ❖ Remember: Assessed rate case expense can be recovered through PWA

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CONTRACT PROVISIONS



**Contract Provisions:
Master Meter**

- ◆ Ownership
- ◆ Control
- ◆ Access
- ◆ Maintenance
- ◆ Replacement


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**Contract Provisions:
Master Meter**

- ◆ Testing
 - Who Pays?
 - Presence at Testing
 - Sharing of Test Results


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**Contract Provisions:
Quantity**

- ❖ Specify Amount
 - Monthly
 - Daily
 - Per minute
 - At specific delivery point
- ❖ Penalty provisions for exceeding amount


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**Contract Provisions:
Quantity**

- ❖ Penalty provisions for exceeding amount
 - Buffer (Penalty if usage % above max)
- ❖ Take-or-Pay Provisions


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**Contract Provisions:
Rate Adjustments**

- ❖ Frequency – How Often?
 - Annual Review
 - Minimum time between adjustments
 - When necessary
- ❖ Methodology for determining rate adjustment

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**Contract Provisions:
Automatic Rate Adjustment**

- ❖ Consumer Price Index – **NOT FAVORED**
- ❖ Purchased Water Adjustment
 - Kentucky River Authority
 - Adjustments from Supplier’s Supplier
- ❖ Rate Formula
 - Recalculation of rate using formula is not rate adjustment

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**Contract Provisions:
Other Provisions**

- ❖ Advanced Notice of Rate Adjustments
- ❖ Access to Info Re: Costs/Operations
- ❖ Water Quality Provisions
- ❖ Dispute Resolution

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QUESTIONS?



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EXHIBIT 6

Kentucky Bar Association
Continuing Legal Education Commission
514 West Main Street
Frankfort, KY 40601 - 1812
Phone: 502-564-3795
Fax: 502-564-3225
<http://www.kybar.org>

Jeffrey Frey
Stoll Keenon Ogden
300 West Vine Street Suite 2100
Lexington KY 40507-1801

ID : 8660

Re : CLE Activity Accreditation
Date: October 12, 2021

The application for CLE accreditation for the activity listed below has been approved by the KBA CLE Commission. Kentucky attorneys attending or participating in the activity who have NOT claimed CLE credit must report their attendance either through the Member CLE Portal at www.kybar.org or by submitting a completed form #3.

Please contact Clifford Timberlake at (502) 564-3795 ext. 228 with any questions.

Sponsor:	Stoll Keenon Ogden		
Activity:	Kentucky Rural Water Association • Utility Leadership Institute		
Format:	Live - a program at a specific date and time - On site		
Location:	Bowling Green, Kentucky		
Date:	10/27/2021		
Activity No.	235980	Sponsor No.	8660
TOTAL CREDITS:	6	ETHICS CREDITS	0

Ethics credits are INCLUDED in the TOTAL number of credits.

EXHIBIT 7

Wuetcher, Gerald

From: Thompson, Wendy (DLG) <wendy.thompson@ky.gov>
Sent: Thursday, October 14, 2021 11:34 AM
To: Wuetcher, Gerald
Subject: RE: Request for Approval - DLG County Training Officials Program

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Jerry!

We are just trying to have as normal of a life as possible these days. I hope you all are doing well too!

You have been approved for up to 6 hours for fiscal court members to attend. I have added it to our website.

Thanks!

Wendy Thompson
County Official's Training Coordinator
Counties Branch
Department for Local Government
Office of the Governor
100 Airport Road, 3rd Floor
Frankfort, KY 40601
Direct Line: 502-892-3479



From: Wuetcher, Gerald <Gerald.Wuetcher@skofirm.com>
Sent: Thursday, October 14, 2021 11:06 AM
To: Thompson, Wendy (DLG) <wendy.thompson@ky.gov>
Subject: Request for Approval - DLG County Training Officials Program

****CAUTION** PDF attachments may contain links to malicious sites. Please contact the COT Service Desk ServiceCorrespondence@ky.gov for any assistance.**

Wendy:

Good morning! I hope that you and your family are doing well.

Attached is a request that the 6th Annual Water Law Series Program, which will be held on 10/27/2021 in Bowling Green, Kentucky, be approved as an approved training event for the Department for Local Government (DLG) County Training Officials Program. If additional information is required, please telephone or e-mail me.

Sincerely,

Jerry



Gerald E. Wuetcher
Counsel to the Firm
859-231-3017 Direct
859-550-3894 Mobile
300 W. Vine Street, Ste. 2100
Lexington, KY 40507-1801

The following message, and any documents or previous e-mails attached to it, may contain confidential information protected by the attorney-client privilege. If it was sent to you in error, do not read it. Please inform the sender that you received it and then delete it. Thank you.



Elected County Officials Training Incentive Program Training Approval Request Form

Training Approval Requested By: Gerald E. Wuetcher

Title: Attorney Agency: Stoll Keenon Ogden PLLC

Phone: (859) 231-3017 E-mail: gerald.wuetcher@skofirm.com

Requester: Please complete both pages of this form, attach a copy of the detailed agenda that lists the start and end times of all training sessions while also indicating any breaks that may be given and submit to: Department for Local Government, 1024 Capital Center Drive, Suite 340, Frankfort, KY 40601
Phone: 800-346-5605 Fax: 502-573-3712 E-mail: Wendy.Thompson@ky.gov

Training Event Information

Training Title: Uixth'Cppwcn'Y cvgt'Ncy 'UgtkguÁ

Training Provider: Kentucky Rural Water Association/Stoll Keenon Ogden PLLC

Contact Name: Gerald E. Wuetcher Title: Attorney

Phone: (859) 231-3017 E-mail: gerald.wuetcher@skofirm.com

Fax: (859) 259-3517 Website: krwa.org

Training Intended For: *Fiscal Court* *County Clerk* *Sheriff* *Jailer* *All*

Registration Fees: *Yes: Dollar Amount:* \$ 249 *No*

Enrollment Limitations: *Yes: Maximum Enrollment:* # _____ *No*

Proof of Attendance: *Individual POA Form* *Sign-In/Out Sheets* *Individual Certificate*

Training Dates with Locations: Qevqdtg'49.'4243'/'J qrf c{ 'kpp'Wpkxgtuk{ 'Rrc| c.'Dqy rpi 'I tggp.'Mgpwem{ Á

FOR DLG USE ONLY

Approved By: _____ Date: _____ Hours: _____

Denied By: _____ Date: _____

**Elected County Officials Training Incentive Program Training Approval Request Form
Page Two**

Training Title: Uixj 'Cpwwcn'Y cvgt 'Ncy 'UgtlguÁ **Provider:** KRWA/Stoll Keenon Ogden PLLC

Has this training been specifically designed for Kentucky's elected county officials? Yes No

Describe the learning objectives and how the content pertains to improving job knowledge or skills.

Upon completion of course, elected officials will have increased knowledge of recently enacted legislation and recent Kentucky Court and Public Service Commission decisions that significantly affect the operation and management of water and wastewater utilities, including water districts and municipal utilities. They will gain a greater appreciation of some common legal issues that these utilities face and possible courses of action for addressing these issues.

List Trainers and their Titles/Qualifications (attach short Bio's if necessary):

See attached agenda and biographical materials

Describe any training materials that will be provided to the trainees:Á

Gcej 'cwgpf gg'y km'dg'r tqxkf gf "c"eqr { "qh'vj g'r t guggpvt)u'r t guggpvcvkqp"cpf "r t guggpvcvkqp"pqvgu0 Á

Is this training a requirement for County Officials? (If Yes check applicable officials) Yes No

Fiscal Court County Clerk Sheriff Jailer All

List corresponding KRS, KAR or other requiring entity:

KRS 74.020 (Water District Commissioners)

EXHIBIT 8



ANDY BESHEAR
GOVERNOR

REBECCA W. GOODMAN
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

ANTHONY R. HATTON
COMMISSIONER

300 SOWER BOULEVARD
FRANKFORT, KENTUCKY 40601

October 11, 2021

Kentucky Rural Water Assoc KRWA
Attn: Janet Cole
1151 Old Porter Pike
Bowling Green, Kentucky 42103

Agency Interest Number: 108571
RE: Operator Certification Training Approval for Continuing Education Hours

To Whom It May Concern:

Your training request has been received by the Division of Compliance Assistance, Certification and Licensing Branch. Course approvals are reviewed and approved based on core content outlined by the cabinet and the Kentucky Board of Certification of Wastewater System Operators and the Kentucky Board of Certification of Drinking Water Treatment and Distribution System Operators. The core content list can be located on our website, <http://bit.ly/KY-OCP-trainingproviderinfo>.

Your request was reviewed by the Kentucky Board of Certification of Wastewater System Operators and/or the Kentucky Board of Certification of Water Treatment and Distribution System Operators at their most recent board business meeting. This letter serves as notification of the board and/or cabinet determination for continuing education credit.

Course Title	Date	Hours & Type Approved	DCA Event ID#	Comments
6th Annual Utility Law Seminar	10/27/2021	DWW – 6.0 Hours approved	24295	Approval expires on 01/20/2022

Upon completion of the approved training, the provider shall submit the continuing education hours to the cabinet through our ePortal website at <https://dep.gateway.ky.gov/ePortal>. You may also report training hours by submitting the Continuing Education Activity Report form and \$50 fee to the cabinet. This form can be located on the program's website at <http://bit.ly/KY-OCP-dcaforms>. If a continuing education activity report was attached to the training approval request, please be aware that the operators will only receive credit for the number of hours approved by the board(s).

If you have any questions or need additional information, please contact the Division of Compliance Assistance, Certification and Licensing Branch at (502) 782-6189.

Sincerely,

Veronica Roland
Certification and Licensing Branch