

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)
APPROVAL OF A PROPOSED WATER)
DISTRICT MANAGEMENT TRAINING)
PROGRAM)**

APPLICATION

Kentucky Rural Water Association (“KRWA”) and Stoll Keenon Ogden PLLC (collectively “Joint Applicants”) jointly apply for an Order from the Kentucky Public Service Commission (“Commission”) accrediting and approving a proposed water district management training program pursuant to KRS 74.020 and 807 KAR 5:070.

In support of their application, the Joint Applicants state:

1. KRWA is a non-profit corporation incorporated in the Commonwealth of Kentucky pursuant to KRS Chapter 273 on March 19, 1979 and is currently in good standing.
2. KRWA’s mailing address is: 1151 Old Porter Pike, Bowling Green, Kentucky 42103. Its email address is: j.cole@krwa.org.
3. KRWA was organized to foster professionalism in the water and wastewater industry through non-regulatory training, technical assistance programs,

and advocacy. Its membership consists of water districts, water associations, municipalities which serve no more than 25,000 customers, and other similar entities that provide water and wastewater utility services to rural Kentucky.

4. Stoll Keenon Ogden PLLC is a Kentucky Limited Liability Company that was organized under the laws of the Commonwealth of Kentucky on December 28, 2005 and is currently in good standing. It provides legal services to local, regional, national, and international clients.

5. Stoll Keenon Ogden PLLC's mailing address is: 112 North Lincoln Boulevard, P.O. Box 150, Hodgenville, Kentucky 42748. Its email address for purposes of this Application is: damon.talley@skofirm.com.

6. The Joint Applicants propose to sponsor and conduct a water management training program on October 27, 2021 at Holiday Inn University Plaza/Sloan Convention Center, 1021 Wilkinson Trace, Bowling Green, Kentucky. The program is entitled "Sixth Annual Water Law Series." A copy of the proposed agenda is attached to this Application as **Exhibit 1**.

7. This program is expected to be conducted in-person, with the possibility that some or all presenters may present virtually if the COVID-19 pandemic continues to worsen. The presenters, all water district commissioners, and staff in attendance at Holiday Inn University Plaza/Sloan Convention Center will abide by all COVID-19 safety protocols and social distancing measures.

8. As reflected in **Exhibit 1**, the proposed training program will include presentations on recent developments in utility regulatory law, including a general overview of recent Kentucky court and Commission decisions; the major challenges facing water districts today, including financing and planning of major infrastructure replacement, compliance with announced and anticipated revisions to federal and state safe drinking water laws, increased operating costs, and overcoming public reluctance to rate adjustments to finance improvements; the current environmental law issues relevant to water and wastewater utilities, including PFAS regulation and litigation, infrastructure funding for utilities, the status of the Trump Administration's Navigable Waters Protection Rule, developments in Clean Water Act point source liability for discharges via groundwater, and federal and state environmental enforcement discretion policies related to COVID-19; how to assess a utility's financial health; wholesale rate adjustments; and a panel discussion on recurring legal issues present in the operation and management of water and wastewater systems. These presentations will enhance the attendees' understanding of relevant legal issues involved in the management, operation, and maintenance of water treatment and distribution systems and are calculated to enhance and improve the quality of the management, operation, and maintenance of the attendees' water systems.

9. The proposed training program consists of six hours of instruction and should be accredited and approved as water management training satisfying the

requirements set forth in KRS 74.020(7) to establish a water district commissioner's eligibility for a maximum annual salary of \$6,000. **Joint Applicants are not requesting that the proposed training program be accredited as a program of instruction for newly appointed commissioners.**

10. A biographical statement containing the name and relevant qualifications and credentials for each presenter is attached at **Exhibit 2** of this application.

11. The written materials that each attendee will be provided are attached at **Exhibit 3**. These materials are of the same type and nature as those provided at accredited training programs that Stoll Keenon Ogden PLLC has previously sponsored.¹ Should any presenter revise or amend his or her presentation prior to the presentation or provide additional written materials to the attendees, the Joint Applicants will include a copy of the revised presentation with their sworn statement and report regarding the instruction.

¹ See *Electronic Application of Hardin County Water District No. 2 For Accreditation and Approval of A Proposed Water District Management Training Program*, Case No. 2019-00082 (Ky. PSC Mar. 27, 2019); *Application of Northern Kentucky Water District and Stoll Keenon Ogden PLLC For Accreditation and Approval of A Proposed Water District Management Training Program*, Case No. 2019-00081 (Ky. PSC Mar. 27, 2019); *Electronic Application of Hardin County Water District No. 2 For Accreditation and Approval of A Proposed Water District Management Training Program*, Case No. 2018-00110 (Ky. PSC May 9, 2018); *Electronic Application of Northern Kentucky Water District and Stoll Keenon Ogden PLLC For Accreditation and Approval of A Proposed Water District Management Training Program*, Case No. 2018-00091 (Ky. PSC May 9, 2018); *Application of Kentucky Rural Water Association Request For Approval of Commissioner Training And Continuing Education Credit*, Case No. 2017-00436 (Ky. Mar. 28, 2018); *Application of Northern Kentucky Water District For Accreditation and Approval of A Proposed Water District Management Training Program*, Case No. 2017-00144 (Ky. PSC March 23, 2017); *Application of Northern Kentucky Water District and Stoll Keenon Ogden PLLC For Accreditation and Approval of A Proposed Water District Management Training Program*, Case No. 2016-00146 (Ky. PSC May 5, 2016); *Application of Northern Kentucky Water District and Stoll Keenon Ogden PLLC For Accreditation and Approval of A Proposed Water District Management Training Program*, Case No. 2015-00147 (Ky. PSC May 18, 2015).

12. The Joint Applicants have applied or will shortly apply for accreditation of the proposed training program to the Kentucky Bar Association; the Department of Local Government; and the Department of Environmental Protection (Division of Compliance).

13. The Joint Applicants have sent notice of the proposed training program by electronic mail to the water districts, water associations, and municipal utilities that are under Commission jurisdiction as well as representatives of investor-owned utilities, county judge/executives, county attorneys, and members of the Kentucky Bar Association who are believed to have an interest in the proposed program's subject matter.

14. The Joint Applicants will retain a record of all water district commissioners attending the proposed training program.

15. Within 30 days of the proposed training program's completion, the Joint Applicants will file with the Commission a sworn statement:

- a. Attesting that the accredited instruction was performed;
- b. Describing any changes in the presenters or the proposed program curriculum that occurred after certification; and
- c. Containing the name of each attending water district commissioner, his or her water district, and the number of hours that he or she attended.

16. The Joint Applicants will include with the sworn statement documentary evidence of the program's certification by certifying authorities and a copy of any written material given to the attendees that has not been previously provided to the Commission.

17. Joint Applicants will admit representatives of the Commission to the proposed training program at no charge to permit such representatives to assess the quality of the program's instruction, monitor the program's compliance with Commission directives, regulations or other requirements, or perform any other supervisory functions that the Commission deems necessary. If the proposed training program is conducted virtually, the Joint Applicants will grant access to the online platform to representatives of the Public Service Commission upon request.

WHEREFORE, the Joint Applicants request that the Commission approve and accredit the proposed training program entitled "Sixth Annual Water Law Series" for six hours of annual water district management training.

Dated: September 24, 2021

Respectfully submitted,



Damon R. Talley
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damon.talley@skofirm.com

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

CERTIFICATE OF SERVICE

In accordance with the Commission's Order of July 22, 2021 in Case No. 2020-00085 (Electronic Emergency Docket Related to the Novel Coronavirus COVID-19), this is to certify that the electronic filing has been transmitted to the Commission on September 24, 2021; and that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means



Damon R. Talley

EXHIBIT 1

6th Annual Water Law Series
Presented by

Kentucky Rural Water Association • Utility Leadership Institute
Stoll Keenon Ogden PLLC
Holiday Inn University Plaza | Sloan Convention Center
Bowling Green, Kentucky

October 27, 2021

7:45 - 8:25 Registration and Refreshments

8:25 - 8:30 Welcome and Program Overview – Gary Larimore

8:30 - 9:30 Recent Developments in Utility Regulation – Damon Talley

This presentation reviews recent developments in public utility law and regulation. Topics include unaccounted water loss, revisions to the Open Meetings Act and Open Records Act, borrowing money, keeping Minutes, and laws enacted by the 2021 General Assembly. The presenter will also examine and discuss recent court and PSC decisions.

9:30 - 9:45 BREAK

9:45 - 10:45 Challenges Facing Water Utilities – Greg Heitzman and Robert Miller

This presentation will provide a summary of the major challenges facing Kentucky Drinking water systems, including: regulations, infrastructure, water loss, affordability, and funding. Twelve recommendations will be presented to make proactive changes in management of Kentucky water systems and take advantage of unprecedented infrastructure funding from the 2021 American Rescue Plan Act.

10:45 - 11:00 BREAK

11:00 - 12:00 Hot Water Topics – LaJuana Wilcher and Sarah Jarboe

This presentation will cover the current environmental law issues relevant to water and wastewater utilities. We will address PFAS regulation and litigation, infrastructure funding for utilities, the status of the Trump Administration's Navigable Waters Protection Rule, developments in Clean Water Act point source liability for discharges via groundwater, and federal and state environmental enforcement discretionary policies related to COVID-19.

12:00 - 1:00 LUNCH (Provided On-Site)

AFTERNOON AGENDA

1:00 - 2:00 Utility Financial Health Checkup – Mary Ellen Wimberly

This presentation analyzes various financial statements contained in a utility's Audit Report and discusses how certain items and adjustments included in those financial statements may distort the reader's perception of the utility's financial health. The presenter will also explain the different types of audit opinions, compare the Audit Report to the Annual Report, and discuss recent PSC orders regarding financial health.

2:00 - 2:15 BREAK

2:15 - 3:15 Municipal Wholesale Rates – Gerald Wuetcher and Damon Talley

The Presenters will provide an overview of the PSC's regulation of municipal utility rates for providing wholesale water and wastewater service to public utilities. Common mistakes made by both municipal utilities and public utilities will be discussed. The presenters will stress the importance of communicating with wholesale customers and highlight recent PSC decisions. Strategies that a wholesale customer may use to oppose or minimize wholesale rate increases will also be discussed.

3:15 - 3:25 BREAK

3:25 - 4:25 Ask the Lawyers – Gerald Wuetcher and Damon Talley

A panel of attorneys will entertain audience questions regarding frequently recurring legal issues faced by water utilities. Discussion is expected to address KRS Chapter 74 and its effects on the management and operation of water districts, as well as other highly relevant statutory provisions, such as the Claims against Local Government Act, Bidding Requirements provision of KRS Chapter 424, Eminent Domain, Local Model Procurement Law, Whistle Blowers Act, and general laws related to special districts. PSC regulatory requirements will also be discussed.

4:25 - 4:30 Closing Remarks & Administrative Announcements – Gary Larimore

EXHIBIT 2



Damon R. Talley

Direct Phone: 270.358.3187

damon.talley@skofirm.com

BAR & COURT ADMISSIONS

Kentucky

U.S. District Court, Eastern
District Of Kentucky

U.S. District Court, Western
District Of Kentucky

United States Supreme Court

EDUCATION

University of Kentucky College of
Law
1975, J.D.

University of Kentucky College of
Engineering
1972, B.S.M.E.

RECOGNITION

Best Lawyers in America®, 2021-
present

Sullivan Medallion, presented to
Outstanding Graduating Student,
University of Kentucky

Damon R. Talley

Damon joined Stoll Keenon Ogden's Utility & Energy practice as Of Counsel in 2015 and serves clients through the firm's Hodgenville, Lexington and Louisville offices.

Before his time at SKO, Damon worked for decades in private practice and has provided legal representation to public utilities throughout Kentucky. He has focused primarily on water utilities, and his deep expertise in drinking water has earned him a reputation statewide as a go-to legal resource in this area. Damon is general counsel of the Kentucky Rural Water Association and has served in this capacity since 1979.

Given his substantial experience, Damon is frequently called upon to speak at training sessions sponsored by the Kentucky Rural Water Association, Division of Water, Utility Management Institute and other utility groups in the state.

Damon is highly active in the local community and serves as a board member of several nonprofit organizations. He is a past board member of the Kentucky Infrastructure Authority. He was a charter member, long-time board member and two-term board chairman of the Kentucky FFA Foundation.

Utility & Energy: Damon represents public utility clients before federal and state courts at the trial and appellate levels. He handles matters such as rate adjustments, transfers of control, financing and construction applications, and consumer complaint proceedings.

Work Highlights

Damon serves as General Counsel of the Kentucky Rural Water Association and has served in this capacity since 1979.

Damon serves as General Counsel of the Kentucky Rural Water Finance Corporation and has served in this capacity since 1995.

Moot Court Board,
president, University of Kentucky
College of Law

Outstanding Student, University
of Kentucky College of
Engineering

Omicron Delta Kappa,
president, University of Kentucky

Kentucky Association of Future
Farmers of America, president

Outstanding Citizen Award,
LaRue County Chamber of
Commerce, 1990

Outstanding Citizen Award, Cave
City Chamber of Commerce,
1981

Outstanding Citizen Award,
Horse Cave Chambers of
Commerce, 1979

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Biography

**Greg C. Heitzman, PE, MBA
President
BlueWater Kentucky
Louisville, KY**

2016

Greg Heitzman is President of BlueWater Kentucky, a management consulting firm serving the water and wastewater industry. From 2011 to 2015, he served as Executive Director/CEO of the Louisville Metropolitan Sewer District (MSD). Prior to MSD, he worked 31 years with the Louisville Water Company serving as Chief Engineer from 1991 to 2007 and President/CEO from 2007 to 2013.

In his executive roles for Louisville MSD and Louisville Water, Greg provided leadership for Mayor Fischer's One Water Partnership to consolidate water services and administrative functions of Louisville MSD and Louisville Water. Greg also led strategic initiatives to expand water and wastewater services in the region, develop high performance teams, establish model programs for corporate controls (policy, procedures and work instructions), and develop new lines of business and technology to enhance revenue and reduce costs.

Greg obtained his Bachelor and Master's degrees in Civil Engineering from the University of Kentucky and an MBA from the University of Louisville. He is a licensed Professional Engineer in Kentucky and recipient of AWWA George Warren Fuller Award. He is an active member in both AWWA and the Water Environment Federation/Association. He currently serves on the following industry and community boards: Water Research Foundation; Water Information Sharing and Analysis Center (Water ISAC); Louisville Water Foundation; Better Business Bureau; and Tree Louisville Commission.

He and his wife, Linda, reside in Louisville. Their daughter, Claire, is married and teaches high school in Lexington, KY.



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LaJuana S. Wilcher

Partner;
Co-Chair, Environmental Law Practice Group

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LaJuana S. Wilcher

Partner;
Co-Chair, Environmental Law Practice Group

LaJuana Wilcher is a nationally known environmental attorney who has served in top-level environmental policy positions in federal and state government **currently serving as the Chair of the Board of Directors for the Federal Agriculture Mortgage Corporation (Farmer Mac)**. LaJuana is also a Fellow of the American College of Environmental Lawyers. She has unparalleled knowledge and experience representing clients before environmental administrative agencies and courts throughout the country, including a matter before the U.S. Supreme Court. Regularly pressing cases relating to environmental permitting, compliance and enforcement issues involving wastewater, air, wetlands and hazardous waste, she also counsels clients on the National Environmental Policy Act, Endangered Species Act, and the National Historic Preservation Act.

LaJuana's experience crafting laws and regulations has served her well in her work. **She served as the nation's senior regulatory official for water programs at the U.S. Environmental Protection Agency (EPA) from 1989 to 1993.** She led EPA's involvement in the Exxon Valdez oil spill litigation negotiations, in which the

government reached a settlement of more than \$1 billion with Exxon for the environmental damage sustained because of the Valdez spill. She was also instrumental in launching EPA's watershed protection approach and Clean Water Act section 319 nonpoint source grant program, and in major policy decisions involving federal drinking water, wetlands and stormwater requirements and permitting.

Following her position with EPA, **she served as a partner in the Washington, D.C. offices of two large international law firms**, working with corporations (including Fortune 100 companies), municipalities, startup firms and not for profit professional and environmental organizations. She left the east coast after 19 years to work at ELPO in 2002, fulfilling a dream to return to her hometown of Bowling Green.

Another opportunity came her way in 2003 that she hadn't expected: public service in her home state of Kentucky. "I had no intention to leave for state government, but I do believe in public service," LaJuana said. "I felt that I had a bit of a debt to pay. The citizens of Kentucky gave me quite an opportunity . . . a great education. I felt it was something I ought to do."

LaJuana served as Secretary of Kentucky's Environmental and Public Protection Cabinet from 2003 to 2006. During her tenure, Ms. Wilcher worked on issues as diverse as mine safety legislation and enforcement, air and water quality issues, broadband deployment, insurance and banking regulations, occupational safety and health initiatives, recycling, wildland arson, new regulations for Kentucky horse racing and the regulation of professional boxing and wrestling in the state, among other things. She served as the Co-chair of the Governor's Energy Policy Task Force and was a member of a number of boards and commissions, including the Kentucky Horse Racing Authority (ex officio), the Kentucky Infrastructure Authority, and the Kentucky State Board on Electric Generation and Transmission Siting.

Focusing her career on environmental issues was born from a simple love of the outdoors and a strong belief in the importance of stewardship. Her grandfather was a logger, spending every day outdoors cutting timber. Her father regularly took LaJuana camping. "**Since I was 15 years old, I wanted to do things to help us have a good place to live on the Earth,**" LaJuana says. "God has entrusted this Earth to us and we have an obligation to do the best we can. I like to find creative ways to do things that are good for the client and good for the environment."

LaJuana taught law courses as an adjunct faculty member at Vanderbilt Law School and environmental law and policy during the summers at Vermont Law School, which is top ranked for environmental law. She is frequently asked to speak to groups on environmental law topics, and has spoken at the Indiana University School of Public and Environmental Affairs, the Annual Conference on Environmental Law of the American Bar Association's Section of Environment, Energy and Resources Law, the Kentucky Bar Association Annual Convention and the International Conference on Water and the Environment, among others.

She's happy to be back home. **LaJuana owns and operates Scuffle Hill Farm in Alvaton, KY.** "My whole life I had wanted to live in the country and have a farm, and I decided to move home and try a different way of life," LaJuana said. "Not a single day do I regret it. I'm happy to be where my heart is."

LaJuana is currently serving on the Board of Directors for the [Warren County Conservation District](#), the [Kentucky Chamber of Commerce](#), and as Board Chair for the [Federal Agriculture Mortgage Corporation \(Farmer Mac\)](#).

Attorney Practice Areas

- Civil Litigation
- Dispute Resolution
- Environmental Law
- Utilities Law
- Appellate Practice

Education

- [Western Kentucky University](#), B.S., magna cum laude, 1977
- [Salmon P. Chase College of Law](#) at [Northern Kentucky University](#), J.D., 1980

Bar Admissions

- Kentucky, 1980
- District of Columbia, 1997

Court Admissions

- U.S. Supreme Court
- U.S. Court of Appeals for the D.C. Circuit
- U.S. Court of Appeals for the Ninth Circuit
- U.S. District Court for the Western District of Kentucky

Appointed Federal and State Government Positions

- Secretary, Kentucky Environmental and Public Protection Cabinet, 2003 to 2006
- [U.S. National Park System Advisory Board](#), 2004 to 2006
- U.S. Commission on the United Nations Educational, Scientific and Cultural Organization (UNESCO) 2003 to 2009
- Assistant Administrator for Water, U.S. EPA, 1989 to 1993
- Assistant to the Deputy Administrator and Special Assistant to the General Counsel, U.S. [EPA](#), 1983 to 1986
- Special Assistant to the General Counsel, [U.S. Department of Agriculture](#), 1983
- [Kentucky Horse Racing Authority](#), 2003 to 2006 (ex-officio)
- [Kentucky Infrastructure Authority](#), 2003 to 2006
- Ohio River Valley Water Sanitation Commission, 2003 to 2006
- Kentucky State Board on Electric Generation and Transmission Siting, 2003 to 2006
- Board of Directors, [Federal Agricultural Mortgage Corporation \(Farmer Mac\)](#), 2019; Board Chair, 2020

Published Works

- "Wetlands and the Constitutional Balance," National Wetlands Newsletter, March-April 1995
- Contributing Author, "From Flammable to Fishable: The Story of Improving U.S. Water Quality," Water Pollution Law and Liability, June 1992
- Co-author, 22nd chapter of the Fifth Edition of the American Bar Association's Environmental Aspects of Real Estate and Commercial Transactions: Acquisition, Development, and Liability Management

Professional Associations

- [American, Kentucky](#) and [Bowling Green-Warren County Bar Associations](#)
- [D.C. Bar Association](#)
- [American Water Works Association](#) (Honorary Member)
- [Salmon P. Chase College of Law](#) Board of Visitors (2010 to 2018)
- Advisory Board for the Environmental Law and Policy Annual Review ([Environmental Law Institute](#) and [Vanderbilt University Law School](#))
- [Warren County Conservation District](#), Board of Supervisors
- [Ogden College of Science and Engineering at Western Kentucky University](#), Advisory Council
- [Kentucky Chamber of Commerce](#), Board of Directors
- Fellow, American College of Environmental Lawyers

Martindale-Hubbell Ranking

- [Rated AV-preeminent](#)

Awards

- Selected for inclusion in [The Best Lawyers in America](#), 2009-2021. Currently listed in Environmental Law and Litigation - environmental.
- [American Waterworks Association](#), Lifetime Honorary Membership, 1993
- Home Builders Association of Kentucky, Housing Hero Award, 2004
- National Association of Clean Water Agencies' State Public Service Award, 2006
- [Salmon P. Chase College of Law](#) Alumni Association Gold Medal, 2005

Community Involvement

- [Friends of Mammoth Cave National Park](#), Board Member Emeritus



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Sarah P. Jarboe

Partner;
Co-Chair, Environmental Law Practice Group

Sarah Jarboe primarily practices environmental law and civil litigation. She grew up in rural Kentucky near Owensboro, and the outdoors formed the fabric of her childhood. Sarah's enthusiasm for nature is reflected in her legal practice. For her undergraduate education, Sarah attended the University of Louisville where she double majored in psychology and philosophy and minored in history. The analytical reasoning that intertwined Sarah's college courses led to her general interest in the legal field.

During Sarah's challenging studies at Vanderbilt Law School, it became clear that finding an area of law that was meaningful to her was vital to academic, professional, and personal success. Environmental law was a perfect match for Sarah – it is a natural outgrowth of her upbringing in the countryside. Uniting her interest in nature with her legal practice gives Sarah the advantage enjoyed by those who truly love their work.

Sarah joined ELPO in 2013 after working as a law clerk for two years for Chief Justice John D. Minton of the Kentucky Supreme Court in his Bowling Green office.

As part of her practice with ELPO, Sarah has represented clients in permitting and policy issues and enforcement actions. She has advised clients on various environmental matters, including the Clean Water Act, the Clean Air Act, the Underground Injection Control Program under the Safe Drinking Water Act, the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund), Oil Pollution Act, and the Resource Conservation and Recovery Act, and the Nonindigenous Aquatic Nuisance Prevention and Control Act. Sarah is an experienced negotiator, having participated in negotiations in enforcement and permitting cases with the U.S. Environmental Protection Agency and the Kentucky Department for Environmental Protection.

“I concentrate on helping companies comply with the complex and often confusing web of environmental regulations without sacrificing their business objectives,” says Sarah. “My favorite days are when I get to wear work boots and a hard hat because it means I am in the field working side-by-side with my clients.”

In addition to her work at ELPO, Sarah is an active member and contributor to national and statewide environmental associations and boards. Sarah currently serves on the Board of the Friends of Mammoth Cave National Park and on the American Bar Association's Section of Environment, Energy, and Resources' (SEER) 2020 Fall Conference Planning Committee. Previously, she sat on the SEER 2016 and 2017 Fall Conference Planning Committees. Sarah was one of 12 participants selected nationwide for SEER's Leadership Development Program from 2014 to 2015. In addition, she devoted five years to the position of Newsletter Vice Chair for SEER's Smart Growth and Green Building Committee. Sarah also served as Chair of the Environment, Energy and Resources law section of the Kentucky Bar Association from 2016 to 2017, and previously served as Chair Elect and Vice Chair of that section.

Sarah is a frequent speaker at environmental conferences, presenting on topics such as environmental liability related to waste issues, federal and state environmental audit policies, green infrastructure and consent decrees for water and wastewater utilities, the value of water to the U.S. economy, cooperative federalism, brownfields, and environmental common law actions and remedies.

Sarah and her husband have two young children. Locals frequently can find their family enjoying Kereiakes Park or Mammoth Cave National Park with their Vizsla.

Attorney Practice Areas

- Environmental Law
- Civil Litigation

Education

- [Vanderbilt University Law School](#), Nashville, J.D., 2011
- [University of Louisville](#), Bachelor of Arts in Psychology and Philosophy, 2008

Bar Admissions

- [Kentucky](#), 2011
- U.S. District for the Eastern and Western Districts of Kentucky, 2013
- [U.S. Court of Appeals, Sixth Circuit](#), 2014

Published Works

- Co-author, 22nd chapter of the Fifth Edition of the American Bar Association's Environmental Aspects of Real Estate and Commercial Transactions: Acquisition, Development, and Liability Management

Professional Associations

- [Bowling Green-Warren County Bar Association](#), Member and past chair of Young Lawyers Committee, past member of the Board of Directors
- [Kentucky Bar Association](#), Member and Chair of the Environment, Energy and Resources law section, 2016-2017
- [American Bar Association](#), Member; Section of Environment, Energy, and Resources' (SEER) 2016 and 2017 Fall Conference Planning Committees Member; Leadership Development Program, 2014-2015; and Vice Chair of Newsletter, Smart Growth and Green Building Committee, 2010-2015
- 2020 Fall Conference Planning Committee

Awards

- Best Lawyers Ones to Watch, 2021
- SuperLawyers Rising Star, 2020-2021

Community Involvement

- Leadership Bowling Green, Class of 2015
- [Friends of Mammoth Cave](#), Board Member, 2019 - present
- [ELEVATE Kentucky](#), Class of 2019

Presentations

- Leadership Bowling Green speaker, Summer 2012
- CERCLA Secured Creditor Exemption, Bowling Green Area Chamber of Commerce, 2013
- The Value of Water: Considering Regulatory Costs and Benefits...Never the Twain Shall Meet?, Third Annual Kentucky Energy Management Conference, 2013
- In Concrete? . . .With Green Infrastructure Looming Large, Consent Agreements Aren't What They Used To Be, Kentucky Stormwater Association Conference, 2014
- Getting and Complying with Your Stormwater Permit, Kentucky Chamber Environmental Permitting and Reporting Conference, 2015
- Updates on Environmental Liability in Real Estate Transactions, Kentucky Law Update, 2015
- Common Law Environmental Torts, Kentucky Bar Association Annual Meeting, 2016
- Environmental Audits, Kentucky Chamber Environmental Permitting and Reporting Conference, 2016
- [Clean Air Act: Risk Management Program Rule & Water Utilities](#), 2016 Water Law Series
- Welcoming Remarks, Section News, and Conference Overview, Kentucky Bar Association Environment, Energy and Resources Law Section Annual Meeting, 2017
- States' Rights, Federalism, and EPA: Who's Calling the Shots?, Environmental Practitioners' Workshop, 2018
- Opportunities for Relief from Environmental Liability under the Kentucky Brownfields Redevelopment Program, Eyesore to Asset: Redeveloping Distressed Properties Program, 2018
- Top 10 Legal Issues Facing Water and Wastewater Utilities, October 2018, Kentucky Rural Water Association's Water Law Conference
- Regulatory Hokey-Pokey at EPA: What's In, What's Out, and What It's All About; 17th Annual Kentucky Chamber of Commerce Environmental Conference; March 15, 2019



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Co-Chair, Environmental Law Practice Group

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1101 College Street • Bowling Green, KY 42102 • Phone: (270) 781-6500 • Fax: (270) 782-7782





Mary Ellen Wimberly

Direct Phone: 859.231.3047
maryellen.wimberly@skofirm.com

BAR & COURT ADMISSIONS

Kentucky

EDUCATION

University of Kentucky
College of Law
2016, J.D., magna cum
laude

University of Kentucky
2013, B.S.B.E., summa cum
laude

RECOGNITION

Singleton Scholar

Wethington Fellowship

John Todd Shelby Memorial
Merit Scholarship

Staff Editor, *Kentucky Law
Journal*, 2014-2016

Mary Ellen Wimberly

Mary Ellen joined Stoll Keenon Ogden's Lexington office as an Associate in 2016, after previously serving as a Summer Associate. She focuses on Utility & Energy law and represents utility companies throughout Kentucky.

Before she began her practice at SKO, Mary Ellen was a student at the University of Kentucky. Her bachelor's degree in finance and economics allows her to look at complex legal challenges from a business perspective and offer clients quick, actionable advice.

Mary Ellen earned her J.D. at UK College of Law, where she was elected to the Order of the Coif. During her time in law school, she served as a staff editor of the Kentucky Law Journal, was the president of the Women's Law Caucus and volunteered with the VITA (Volunteer Income Tax Assistance) Program.

Utility & Energy: Mary Ellen works with large, investor-owned electric, water and gas utilities, as well as smaller utility companies and water districts. She has experience in a range of regulatory matters, including rate proceedings, certificates of public convenience and necessity, and environmental surcharges.

Order of the Coif

LOUISVILLE | LEXINGTON | INDIANAPOLIS | EVANSVILLE | FRANKFORT

WWW.SKOFIRM.COM



Gerald E. Wuetcher

Direct Phone: 859.231.3017
gerald.wuetcher@skofirm.com

BAR & COURT ADMISSIONS

Kentucky
U.S. Court Of Appeals For The
Armed Forces
U.S. District Court, Eastern
District Of Kentucky
U.S. District Court, Western
District Of Kentucky

EDUCATION

Emory University
1984, J.D.
Johns Hopkins University
1981, B.A.

RECOGNITION

Best Lawyers in America®, 2021-
present

Gerald E. Wuetcher

Jerry is Counsel to the Firm in SKO's Lexington office and is part of the Utility & Energy practice. He joined the firm in 2014, after working for more than 26 years at the Kentucky Public Service Commission (PSC) as a staff attorney, deputy general counsel and executive advisor.

Over the course of his career, Jerry has frequently appeared before the PSC in administrative proceedings involving electric, natural gas, water and sewer utility issues and has represented the PSC in state and federal courts. He also served as the PSC's representative in several interagency groups addressing water and wastewater issues. He drafted amendments to various provisions of Kentucky's public utility statutes and revisions to the PSC's administrative regulations.

From 2009-2013, Jerry was PSC's representative on the board of the Kentucky Infrastructure Authority. He developed and implemented the PSC's training program for water utility officials and was an instructor for that program.

Jerry is a frequent speaker on utility and local government issues before such organizations as the Kentucky Rural Water Association, Kentucky League of Cities, Kentucky Association of Counties and Utility Management Institute.

Along with his significant experience in the realm of civilian law, Jerry served for 27 years in the U.S. Army as a judge advocate before retiring at the rank of colonel in 2011. He occupied numerous roles on active duty and in a reserve status.

Utility & Energy: Jerry concentrates on public utility law in Kentucky, but also participates in general and commercial litigation, transactions, employment concerns, securities issues and mergers and acquisitions involving gas, electric and water companies. He handles all facets of regulatory matters, including the negotiation of complex agreements and representation before state agencies and courts.

Work Highlights

Attorney, Kentucky Public Service Commission (1987-2014). Served as a staff attorney, deputy general counsel and executive advisor. Frequently appeared before the Commission in administrative proceedings involving electric, natural gas, water and sewer utility issues and represented the Commission in state and federal courts. Responsible for drafting and revising the Commission's

regulations. Served as the Commission's representative in various interagency groups addressing water and wastewater issues. Served as the Commission's representative on the Kentucky Infrastructure Authority's Board of Directors (2009-2014). Developed the Public Service Commission's water training program for water utility officials.

Judge Advocate, U.S. Army (1984 – 2011). Served as a judge advocate in the U.S. Army on active and reserve status in numerous roles. Retired at the rank of Colonel.

Adjunct Professor of Law, University of Louisville (2011)

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EXHIBIT 3



6th ANNUAL WATER LAW SERIES
October 27, 2021



Sponsored by:






HOT LEGAL TOPICS

Damon R. Talley
Stoll Keenon Ogden PLLC
damon.talley@skofirm.com



October 27, 2021



DISCUSSION TOPICS

1. PSC Filings
2. Minutes
3. 2021 General Assembly
4. Filed - Rate Doctrine 101
5. Open Meetings Act

Continued . . .



DISCUSSION TOPICS

6. Notable PSC Orders
7. Borrowing Money
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

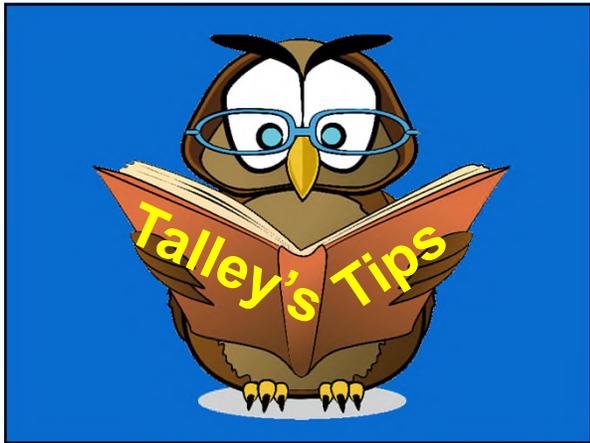
- Who is Covered?
 - Water Districts
 - Water Associations
 - Investor Owned Utilities
 - **Municipal Utilities**



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





No More Paper Copies

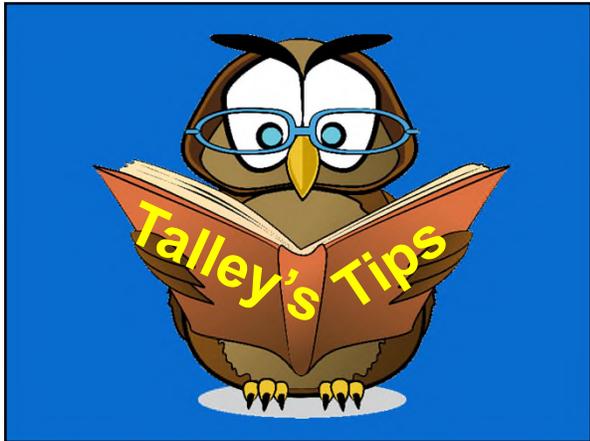
Case No: 2020-085 (COVID)

Order: 07-22-2021

Holding: Electronic Filings Only

- Utilities
- Lawyers
- Complainants
- Everyone



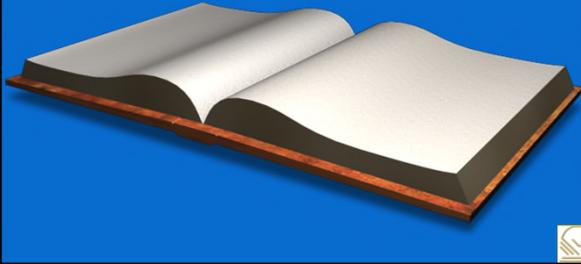


Electronic Filing

- Don't Procrastinate
 - Must Register to File
 - 2 Step Process (1 or 2 Days)
- Go Ahead and Register Now
- Call KRWA
- Call SKO Attorneys
- No Originals



MINUTES



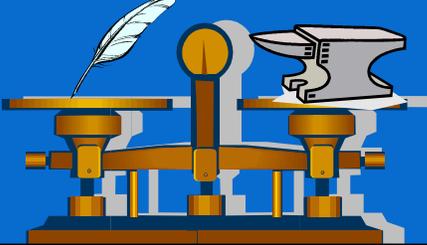
What Are MINUTES?

- Official Record
- Much, Much More . . .

Excerpt From Minutes

"Motion was made by Commissioner X and seconded by Commissioner Y to hire Commissioner Z to perform water line inspections on the Knob Hill Project at an hourly rate of \$20."

**AN OUNCE
OF
PREVENTION = A POUND
OF CURE**



Board Minutes

- A Board “speaks only through its minutes.”
- War Stories:
 - Ownership of water line and service of disputed territory
 - Careless Conversations

Preparation of Minutes

- Who prepares minutes?
 - Board Secretary or Staff
- Who edits minutes?
 - Staff or legal counsel
- Are meetings recorded on audio and/or video?
- Signing of Minutes
- Approval of Minutes

ADJOURNMENT

There being no further business to come before the meeting, motion was made by Commissioner Steven Douglas and seconded by Commissioner Henry Clay to adjourn the meeting. Motion carried unanimously.

Respectfully submitted,

BY: _____

**Henry Clay, Secretary
ABRAHAM LINCOLN WATER
DISTRICT**

DATE APPROVED: _____

BY: _____
Jefferson Davis, Chairman



Approval Of Minutes

I hereby certify that the foregoing Minutes were duly approved by the Board of Commissioners of the Abraham Lincoln Water District at a meeting held on the date shown below:

ABRAHAM LINCOLN WATER DISTRICT

BY: _____

JEFFERSON DAVIS, CHAIRMAN

DATE APPROVED: _____



Board Minutes

A complete set of APPROVED Minutes SHALL be maintained at the utility office for inspection by the general public, regulators, customers, and the media.



Board Minutes

When are the Minutes considered in “**final form**” and available for public inspection?



Minutes

What **MUST** Be Included?

- Board Member Attendance
- Official Actions



Minutes

What **SHOULD** Be Included?

- Board Member Attendance
- Acknowledge Guests (Visitors)
- Official Actions
- Acknowledge Receipt of Reports
 - PSC Inspection Report

Cont.



Minutes

What **SHOULD** Be Included?

- Summarize **Some** Discussions
- Provide Context
- Toot Your Own Horn



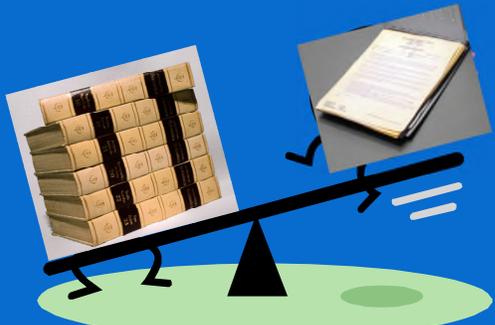
Minutes

Tooting Your Own Horn

- Give Yourself Credit
 - “Best Tasting Water”
 - Wooden Bucket Award
 - AWOP Award
 - Governor’s Safety Award



How much information **SHOULD** be included in the MINUTES?



Minutes

How MUCH is too MUCH?

- No definitive answer
- Art not a science

Cont.



Minutes ...

How MUCH is too MUCH?

- Guidelines . . .
 - > Minutes are **NOT** a transcript
 - > Minutes are **NOT** the Congressional Record
 - > Include rationale for action taken if it might avoid lawsuit



“Conversations are
NOT official actions of
the Board.”

Virginia W. Gregg
Former PSC Staff Attorney



WHY Include Summary of Conversations in Minutes?

- Document Board's Due Diligence (e.g. Use of safety equipment; Training of Staff re confined space entry)
- Document Board's Oversight Role (e.g. Cyber Security)
- Avoid or Win Litigation



TALLEY'S TIPS



Talley's Tips

Prepare Minutes for a Reader ...

1. Who did not attend the meeting.
2. Who will not read the Minutes until at least one year later.
3. Who is employed by PSC.
4. Who will access Minutes via www.



2021 General Assembly

- ### Notable Bills
- HB 272 – Late Payment Fees
 - HB 312 – Open Records Act
 - HB 393 – Commissioner Training

- ### Notable Bills
- HB 570 – Interlocal (2020) Cooperation Act
 - SB 465 – Acquisition of Water & Sewer Assets
 - SB 36 – ARPA Funds \$250,000,000

**Open Records Request
Standardized Form**

<https://ag.ky.gov>

Resources

**Open Records / Open Meetings
Request Form**



Open Records Request

- No Form or AG Form
- Written Request Submitted By:
 - Hand Delivered
 - Mailed
 - Fax
 - E-mail



**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**





Filed – Rate Doctrine

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

Open Meetings Act

Attending Board Meeting Via Zoom

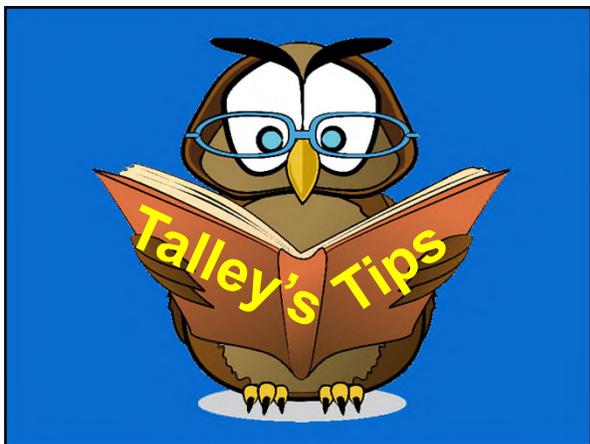
- KRS 61.826 Amended: 2018
- Now Easier to Conduct Meeting via Video Teleconference (VTC)
 - All Meetings
 - Board Member Attend Remotely
 - Count in Quorum Call
 - Fully Participate
 - More Than One



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





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KEENON
OGDEN
LLP

Notable PSC Orders

PSC Case No. 2020 - 028

Filed: 2-24-2020
Utility: Bluegrass Water Utility
Operating Co.
Issue: Is PSC Approval Needed to
Acquire 4 sewer "Utilities"?
Decided: 6-19-20

Bluegrass Water

Holding: Yes
PSC Approval Required
Rationale: 24 - Page Order

- 8 Pages Devoted to This Issue
- Implied Authority
- Plenary Power

Southgate 1954

In *Public Service Commission v. Cities of Southgate and Highland Heights*, 268 S.W.2d 19 (Ky. 1954), this Court concluded that the PSC's power included not only powers expressly provided by statute but could also encompass powers **necessarily implied** to take action to meet its statutory duties. Specifically, in that case this Court concluded that the PSC had the **implied power** to approve or disapprove a utility systems sale, despite the lack of express statutory authority to do so, because of the PSC's general statutory authority under KRS 278.040 to regulate utility service.

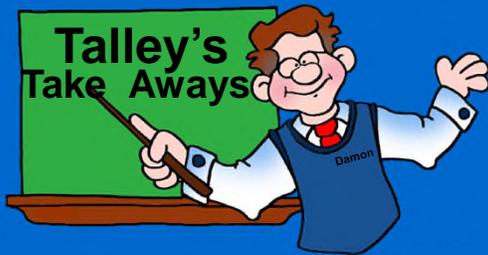


Bluegrass Water

O/R Precedents:

- Ky. American – Owenton
PSC Case 2005-206
Order Dated 7-22-05
- Many Others







PSC Case No. 2021 - 222

Filed: 6-9-2021

Utility: Southeastern Water Assoc.

Type: CPCN - AMI

Issue: Reasonable Alternatives Considered

Decided: 8-12-21



PSC Case No. 2021-222

- CPN: Standard of Review
 - Need
 - Absence of Wasteful Duplication



PSC Case No. 2021-222

- Need:
 - Substantial Inadequacy of Existing Facilities
 - Substantial Deficiency or
 - Inability to Render Adequate Service



PSC Case No. 2021-222

- Absence of Wasteful Duplication:
 - Excess Capacity Over Need
 - Excess Investment
 - Unnecessary Multiplicity of Physical Properties



PSC Case No. 2021-222

- Proving Lack of Wasteful Duplication:
 - All Reasonable Alternatives Considered
 - Cost is Not Sole Criteria
 - Initial Cost
 - Annual Operating Cost





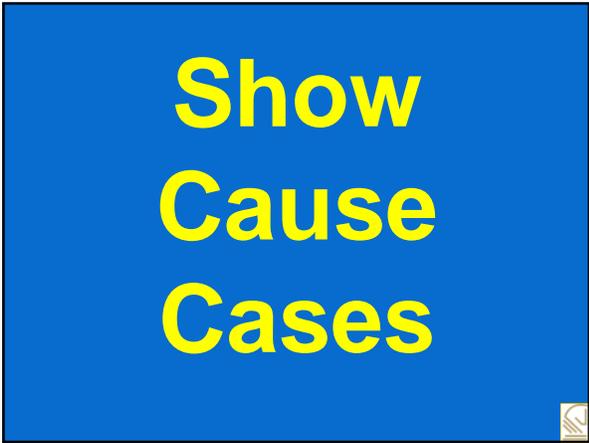
KRS 278.300(1)

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)







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



2018 Show Cause Cases

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



2018 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







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OGDEN
LLP

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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KEENON
OGDEN
INC.

Recent PSC Orders

Thou Shall File a Rate Adjustment Case

- Over 3 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







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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



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



Pikeville

Issues:

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



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 1/2 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. 2020 - 137

Filed: 6-8-2020
Utility: West Daviess Co.
Type: Deviation
Issue: 15 Year Meters
Sample Testing
Decided: 12-02-20



PSC Case No. 2020 - 138

Filed: 6-8-2020
Utility: Southeast Daviess Co.
Type: Deviation
Issue: 15 Year Meters
Sample Testing
Decided: 12-02-20





PSC Case No. 2021 - 071

Filed: 2-4-2021
Utility: Hyden - Leslie Co. WD
Type: Tariff Review
Issue: Imputed Liability
Decided: Pending





QUESTIONS?

damon.talley@skofirm.com
270-358-3187



Presented by
Greg C. Heitzman
BlueWater Kentucky
And
Robert K Miller
StraightLine Kentucky



BlueWater
Kentucky

StraightLine Kentucky



CHALLENGES AND RECOMMENDATIONS FOR KENTUCKY WATER SYSTEMS

Stoll Keenon and Ogden
COMMISSIONER TRAINING SEMINAR
September 27 and October 27, 2021

2019 Kentucky Infrastructure Report Card

“Mediocre”

Drinking Water = C+

Waste Water = C-



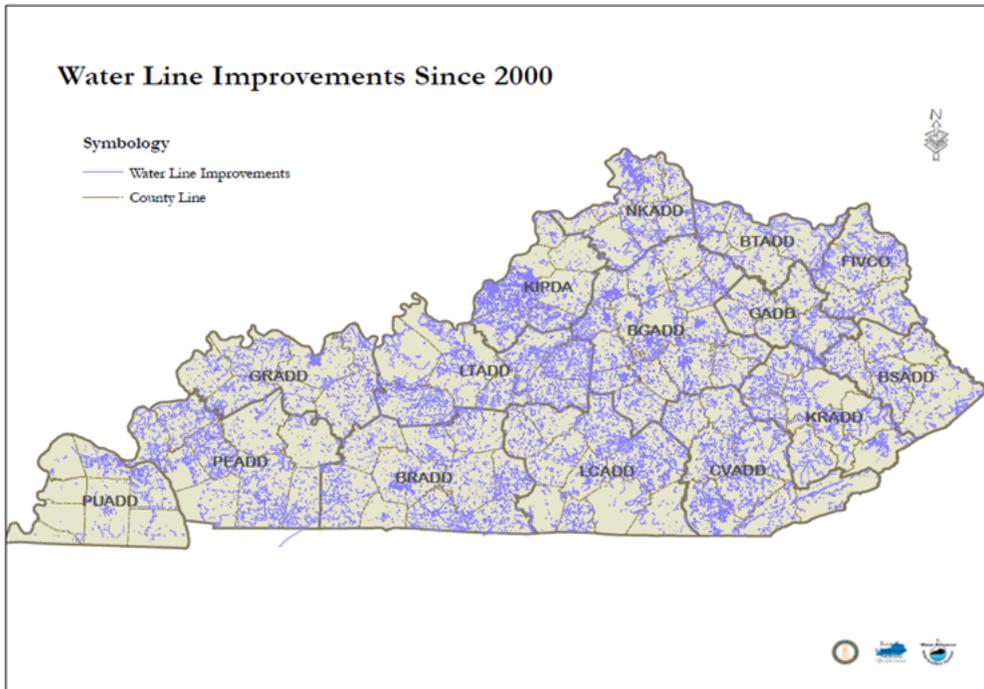
A	EXCEPTIONAL
B	GOOD
C	MEDIOCRE
D	POOR
F	FAILING

<https://www.infrastructurereportcard.org/state-item/kentucky/>

**KENTUCKY'S
SUCCESS SINCE
SB 409
AUTHORIZED IN
2000**

- ✓ 15 Regional Water Management Councils to coordinate planning
- ✓ State-wide water GIS database => KY WRIS
- ✓ Drinking Water coverage at 95%
- ✓ Water and Wastewater system consolidation
- ✓ Water System interconnections through regional cooperation
- ✓ Improved compliance record in water and wastewater
- ✓ Industry Collaboration through KY Water Advisory Council
- ✓ Active Industry Associations (AWWA, KMUA, KWWOA, Rural Water, etc.)
- ✓ Coordinated Agency Funding (KIA, RD, DLG, AML, ARC, CDBG, etc.)
- ✓ Training from AWWA, KDOW, RCAP, Rural Water, UK, etc.
- ✓ R&D support from UK, UL, WKU
- ✓ Partnerships among Best Practice Water/WW systems

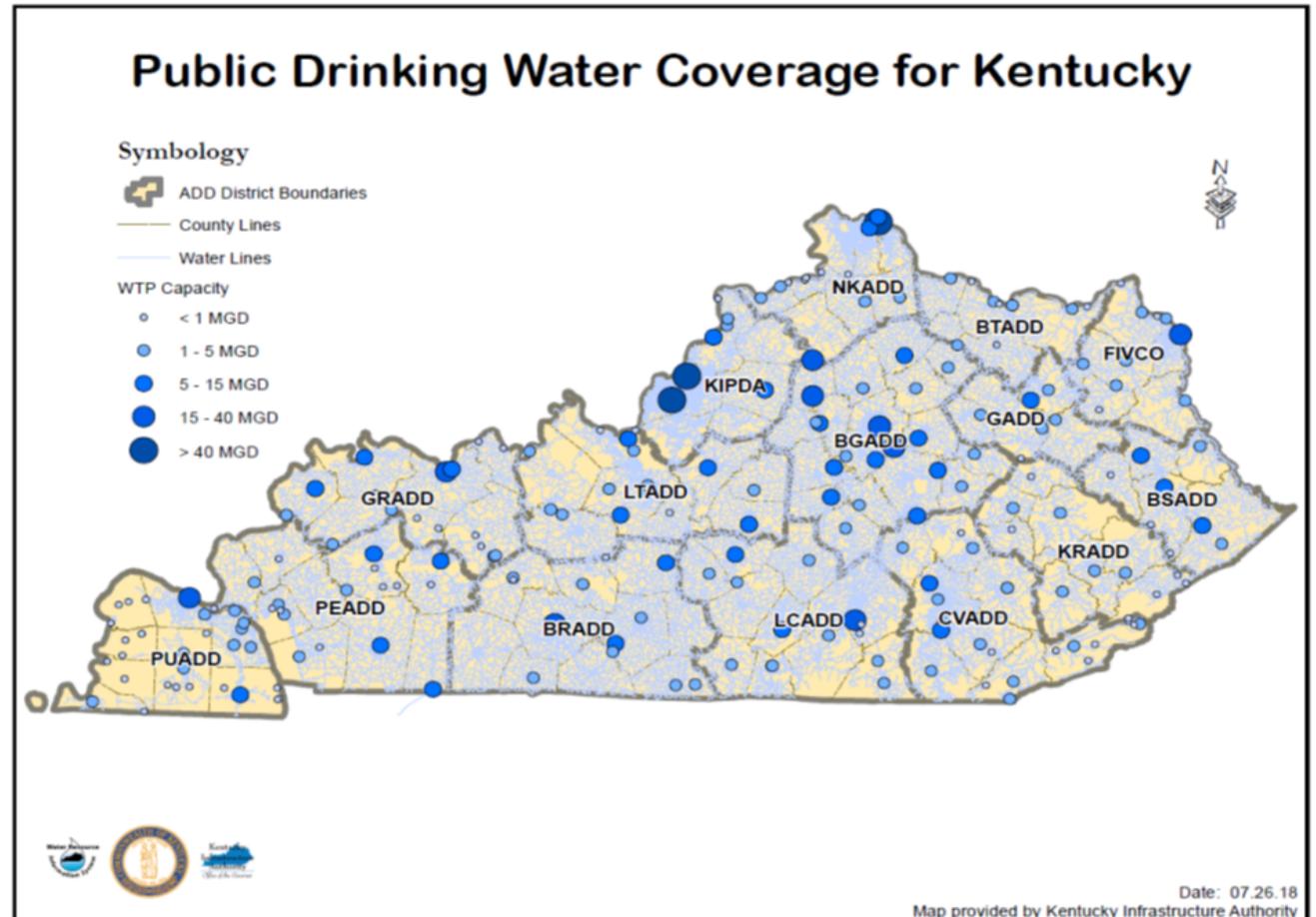
KENTUCKY WATER SYSTEMS



- ✓ **435 Public Water Systems**
- ✓ **213 Water Treatment Plants (average age 36 years)**
- ✓ **1,842 Water Storage Tanks (average age 26 years)**
- ✓ **58,783 Miles of Water Main**
 - Average age 38 years
 - 20% over 50 years
- ✓ **Estimated 25,000 lead service lines**

KY PUBLIC WATER SERVICE AVAILABILITY

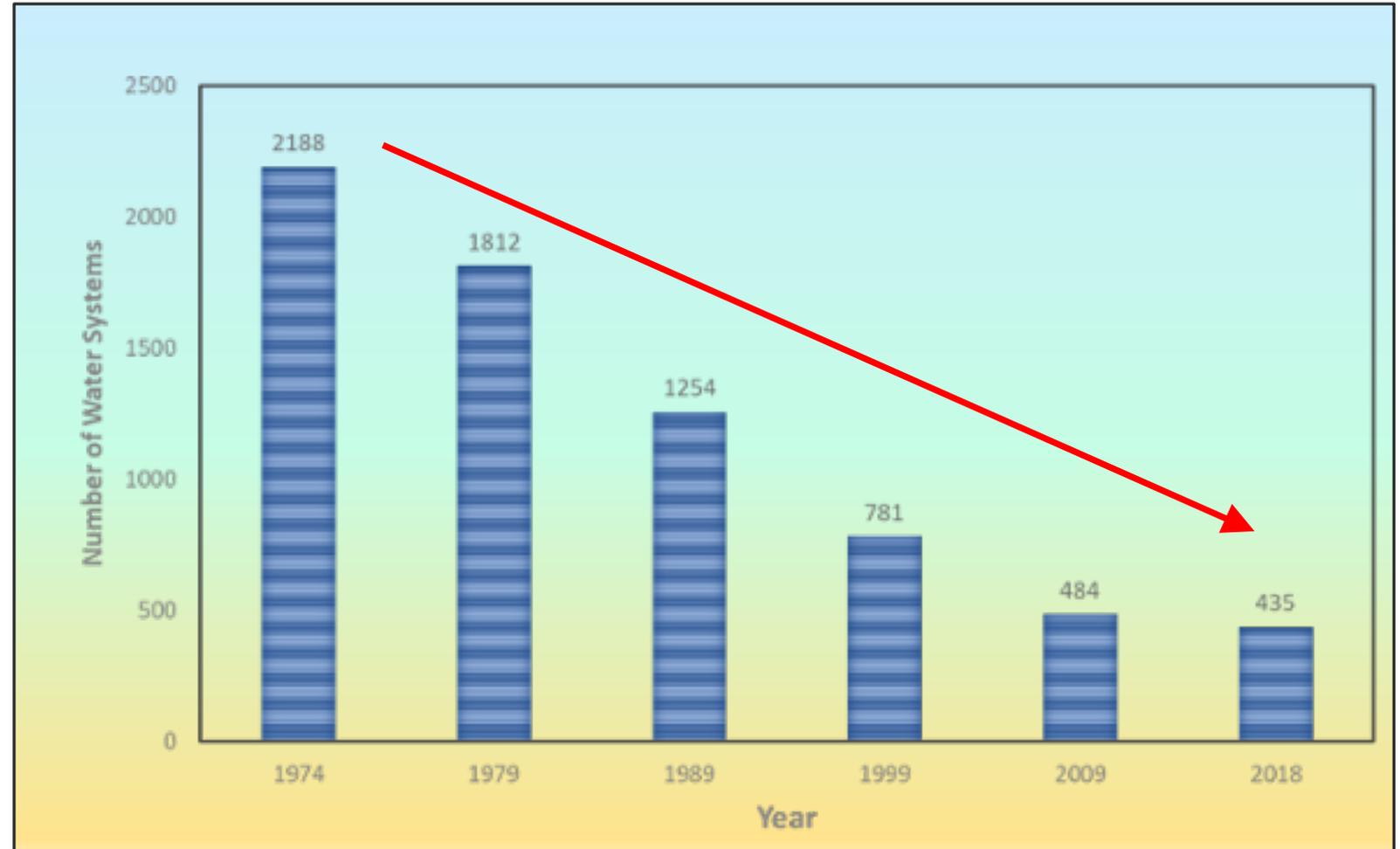
- ✓ 2000 - Governor Paul Patton's 2020 Water Vision thru Senate Bill 409
- ✓ 435 Kentucky Public Water Systems serve 4.5 million people
- ✓ 95% of Kentuckians have access to public water system (top 5 in US)
- ✓ Recognized nationally for regional planning and consolidation



Source: KY Infrastructure Authority and KY Division of Water

Consolidation of KY Water Systems

✓ 80% decline in number of water systems over 45 years (one of best in US)



Source: KY Division of Water

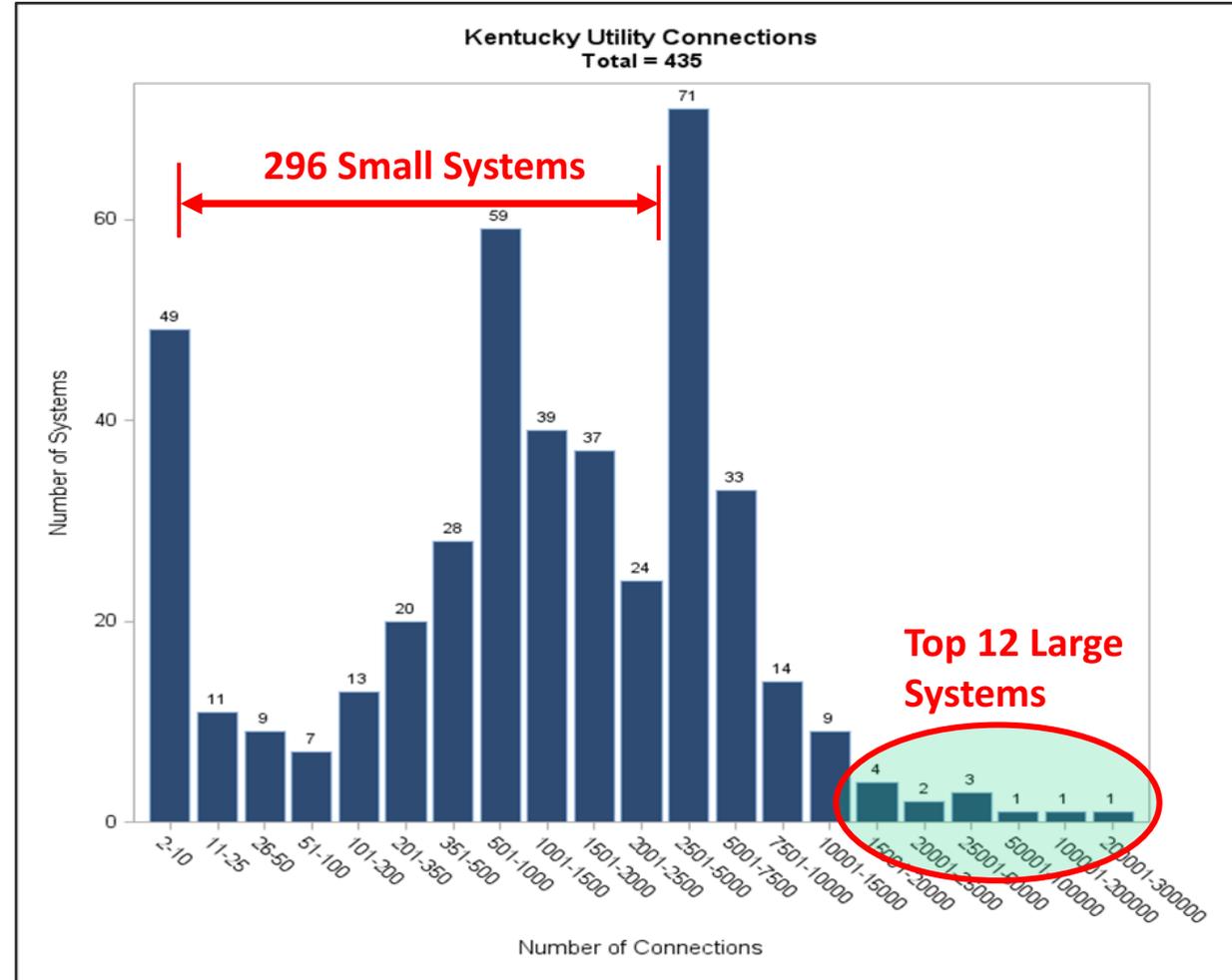
Kentucky Water System Profile

Top 12 Systems Serve:

✓ 37 % of KY Population

✓ 54% of Water Produced

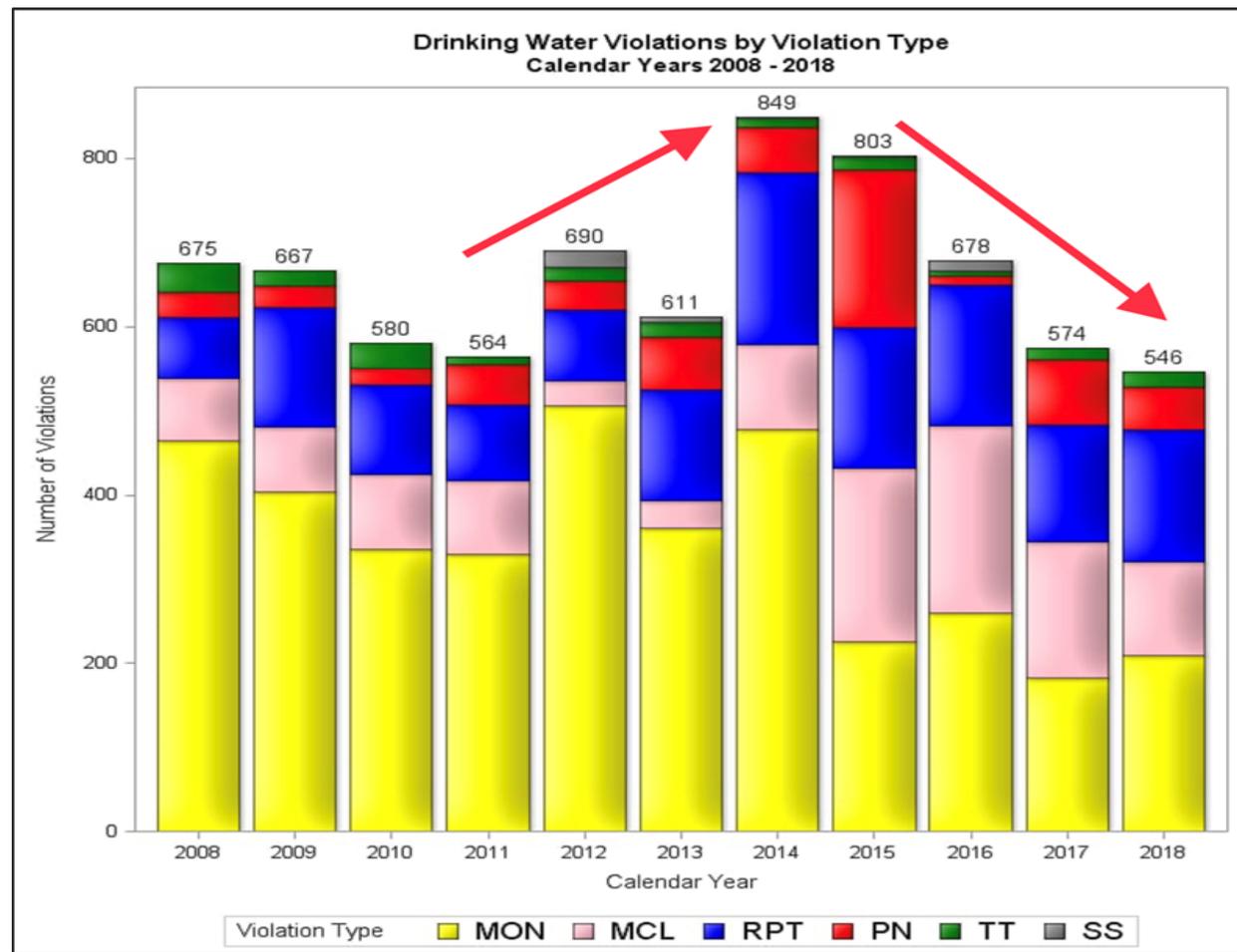
1. Louisville Water Company
2. Kentucky-American Water Co
3. Northern Kentucky Water District
4. Bowling Green Municipal Utilities
5. Owensboro Municipal Utilities
6. Ashland Water Works
7. Paducah Water Works
8. Frankfort Plant Board
9. Somerset Water Service
10. Logan-Todd Regional Commission
11. Glasgow Water Company
12. Hardin County Water District No. 2



Source: KY Division of Water

KY Drinking Water Regulations

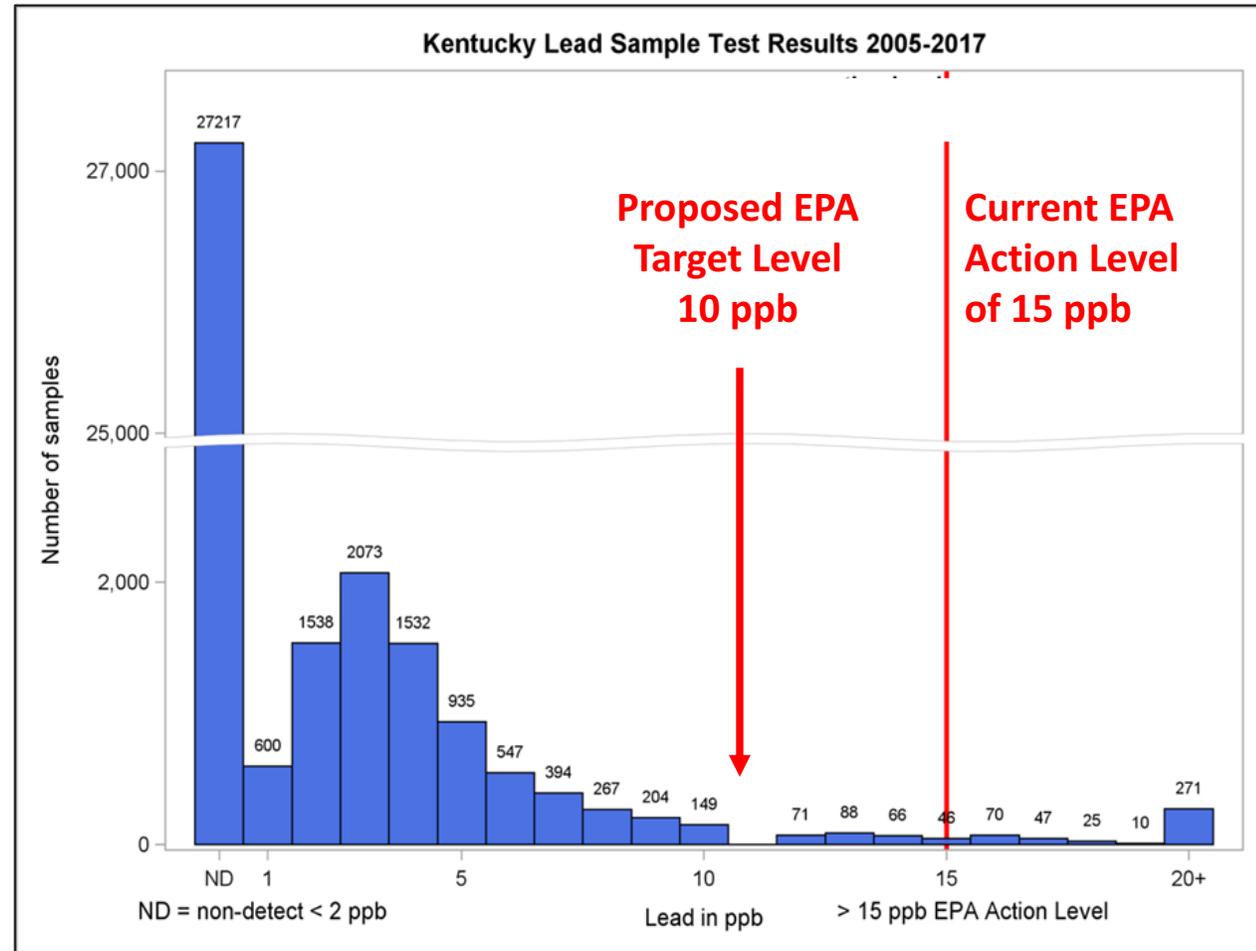
- ✓ Decline in Violations last 5 years from 849 in 2014 to 546 in 2018
- ✓ Increase in 2014 for Disinfection By-Product Violations
- ✓ DBPs have declined through 2018 with technical assistance from KY DOW and KY Rural Water
- ✓ Expect improvement again in 2019



Source: KY Division of Water

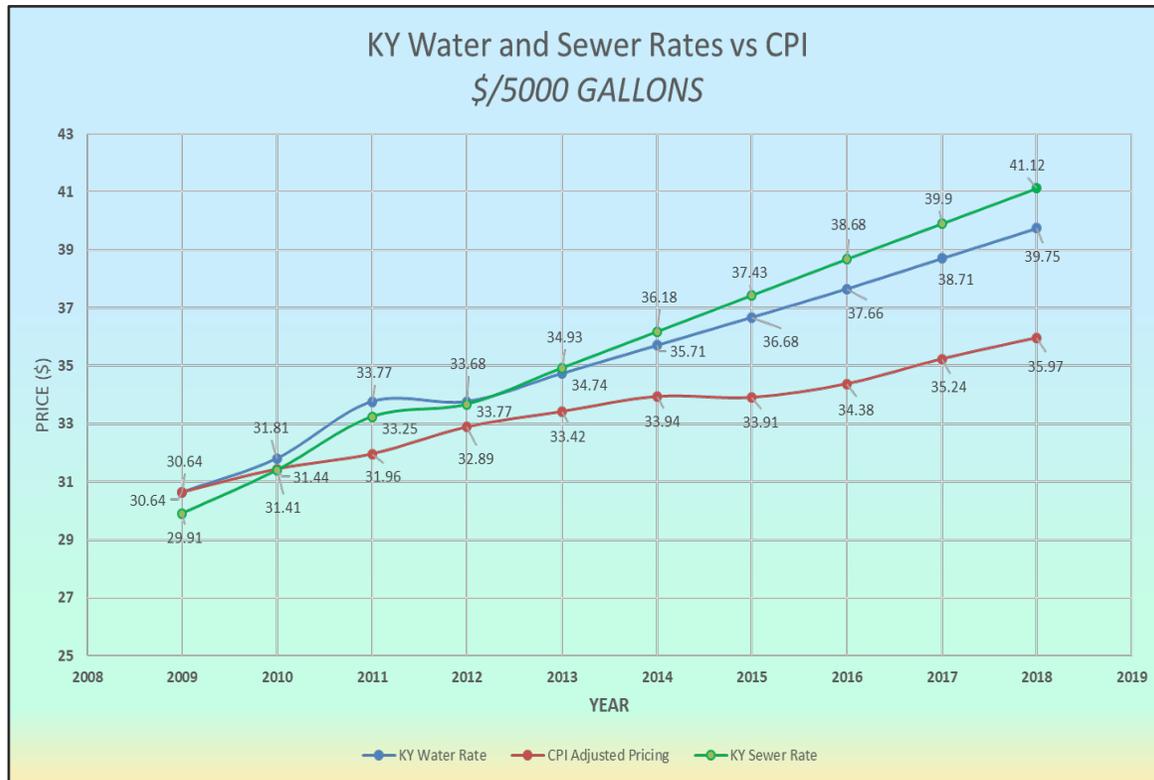
Lead Compliance Record

- ✓ All 435 Public Water Systems are compliant with EPA Lead and Copper Rule
- ✓ Kentucky is generally in good shape if EPA sets “Target” Level at 10 parts per billion (ppb)
- ✓ EPA estimates KY has 53,000 Lead Service Lines
- ✓ KY estimate is less than 25,000 Lead Service Lines, since Louisville has reduced lead service line inventory from 70,000 in 1940 to less than 500 in 2019
- ✓ Need State-wide Lead Inventory



Source: KY Division of Water

KY WATER AND WASTEWATER RATES



Source: KY Rural Water/Cannon & Cannon Rate Survey

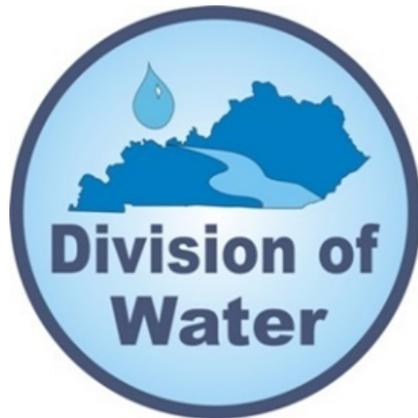
- **Average KY Water Bill for 5,000 gallons/month**
 - 2012 - \$33.77
 - 2018 - \$39.75
 - 2.75% average annual increase (CPI about 2%)

- **Average KY Wastewater Bill for 5,000 gallons/month**
 - 2012 - \$33.68
 - 2018 - \$41.12
 - 3.0% average annual increase (CPI about 2%)

- **Total W/WW Bill Averages \$80.87/month or \$970/Year**
 - Some KY communities exceed \$100 per month or \$1,200/Year

- **Averages 2% of KY Median Household Income of \$48,375**
 - Some KY communities at 2.5% of KY MHI

TOP CHALLENGES FOR KY WATER SYSTEMS



#1 COMPLIANCE WITH REGULATIONS

Especially Impacting Small Systems

- Disinfection By-Products (DBP) in drinking water
- Lead and Copper → Focus IS now on Lead In Schools
- America's Water Infrastructure Act of 2018 (AWIA)
- Algal Toxins and PFAS (perfluoroalkyl) substances
- Pesticides and Herbicides

TOP CHALLENGES FOR KY WATER SYSTEMS

2 AGING INFRASTRUCTURE

- Water - Aging treatment, storage, pumping, distribution
- Wastewater – Aging collections, storage, treatment, pumping, flood protection
- Growing deferred maintenance
- Slow adoption of Asset Management and Life Cycle Analysis
- Lack of capital planning (5,10,20 years)
- Funding and Procurement Cycle



48" Water Main Break



Flood Protection Pumps and Levees



2" galvanized line



¾" lead service line



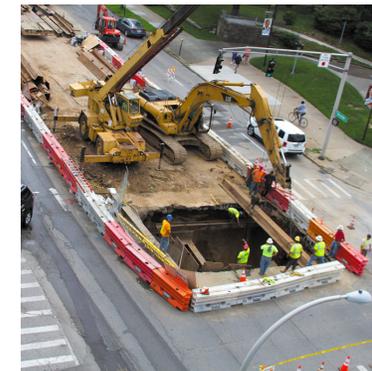
Failed Treatment Clarifier



6" unlined cast iron pipe



6" main break



Sewer Collapse

TOP CHALLENGES FOR KY WATER SYSTEMS

- **\$8.2 Billion Funding Gap for KY Drinking Water (\$1,800/person) over next 20 years**
- **\$6.2 Billion Funding Gap for KY Wastewater (\$1,400/person)**

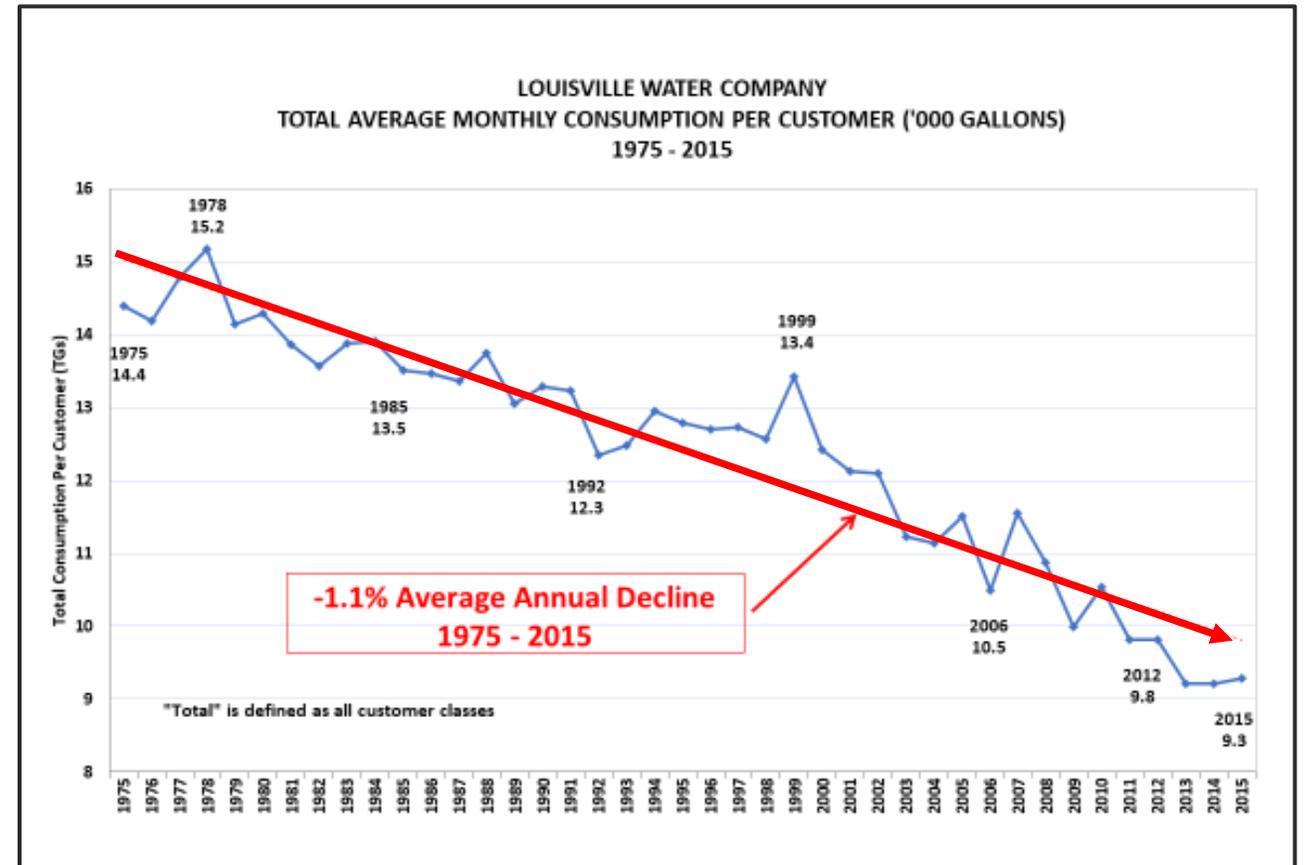
#3 INFRASTRUCTURE FUNDING

- Current customer rate base is not adequate to fund infrastructure needs
- Funding focus has been on new infrastructure and not on repair, maintenance and replacement
- Loans are replacing grants (systems waiting on grants)
- Limited funds available for soft costs (planning, new technology, best practice, life cycle analysis)

TOP CHALLENGES FOR KY WATER SYSTEMS

#4 CONSUMPTION & RATES

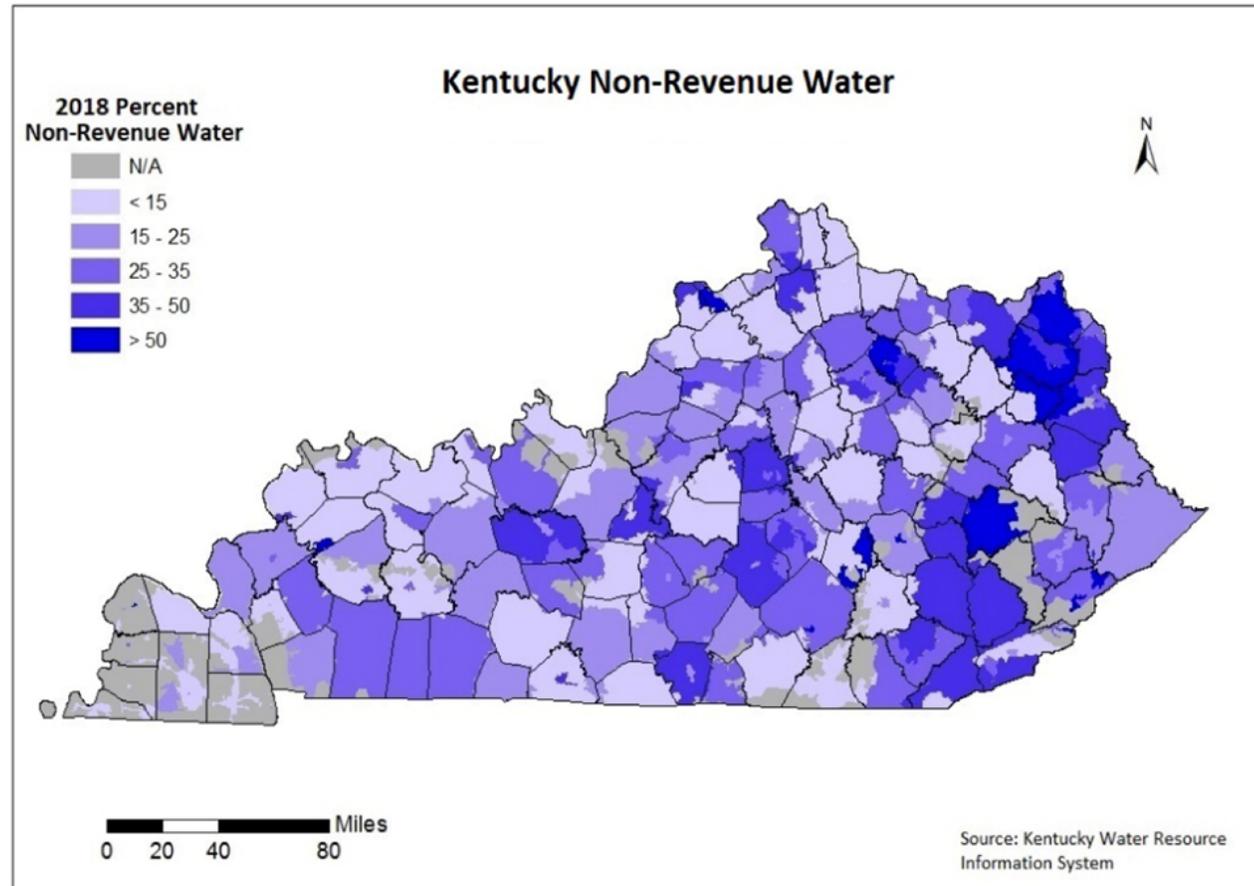
- Kentucky is generally a slow or no-growth economy
- Water consumption is declining:
 - transition to service economy
 - recycling/reuse
 - low-flow plumbing fixtures
 - therefore fixed costs are spread over fewer gallons sold
- Different rate approval methods (PSC -regulated vs Municipal)
- Reluctance by elected officials and appointees to raise rates due to public pressure
- Affordability of water becomes a concern in some communities when full-cost pricing is implemented



TOP CHALLENGES FOR KY WATER SYSTEMS

#5 Water Loss

- KY Water Loss averages over 30 percent
- Inconsistent methods of measuring water loss
- No statewide standard practice
- PSC method vs municipal methods
- Extensive use of estimates
- Percent water loss not industry best practice
- Need economic approach to water loss (\$ value of water)



TOP CHALLENGES FOR KY WATER SYSTEMS



#6 WORKFORCE

- Retiring Boomer workforce
- Projected gap in licensed operators and technical staff
- Non-competitive salary and benefits in robust economy
- State pension crisis impact on workforce and balance sheet
- Agency staff shortage (DOW, KIA, PSC)
- Changing expectations of millennial workforce
 - Teamwork
 - Mobility
 - Technology

TOP CHALLENGES FOR KY WATER SYSTEMS

#7 Planning & Best Practices

- Lack of Business/Strategic Planning
- Lack of Asset Management & Capital Planning
- Best Practices slow to adopt
- Slow to adopt new technology (IoT)
- Outdated procurement regulations (slow/inefficient)
- Life cycle costing rarely evaluated



RECOMMENDATIONS FOR KENTUCKY WATER SYSTEMS

- 1. Continue to enhance water planning in Kentucky required under SB 409:**
 - Improve accuracy and consistency of WRIS data
 - Engage local Water Management Planning Councils
 - Fully fund staff and technology resources
- 2. Leverage federal funds with state/local funding**
 - SRF Loans through KIA
 - ARPA Grants to Cities/Counties
 - KY Senate Bill 36 - \$250 million
 - Biden's Infrastructure Proposal

RECOMMENDATIONS BY BLUEWATER KENTUCKY

- 3. Establish Kentucky Water Infrastructure Fund:**
 - Provide annual funding of \$25 million
 - To assist water/wastewater/stormwater systems in planning, engineering, design and construction
 - Revolving loan program with up to 50% annually for grants

RECOMMENDATIONS BY BLUEWATER KENTUCKY

4. Develop Kentucky uniform performance criteria and rating system for water utilities:

- Include technical, managerial and financial criteria
- Collaborate with industry to develop rating system and key performance metrics
- Develop peer review process to improve performance
- Recognize and award and top-rated systems
- Publish water system ratings
- Take corrective action on failing water systems

5. Create financial incentives (principal forgiveness) for assessing capacity and achieving performance levels in areas of:

- Technical - regulatory compliance/operations
- Finance - financial capacity, cost of service rates, audits
- Managerial – asset management, planning, water loss, customer service, system reliability, consolidation, interconnects, risk management plans

**RECOMMENDATIONS
BY
BLUEWATER
KENTUCKY**

- 6. Adopt full cost pricing of water using industry standards (AWWA M1):**
 - Adopt rate indexing to W/WW based CPI
 - Use infrastructure surcharges to address funding gaps
 - Use system development charges to fund growth infrastructure

- 7. Develop standard practice for Customer Assistance/Water Affordability Programs**

- 8. Adopt industry standard for water audits and loss control programs (AWWA M36)**

RECOMMENDATIONS BY BLUEWATER KENTUCKY

9. Establish “Centers for Excellence in Water” through partnerships with utilities, water industry associations and academic institutions:

- Water quality/operations
- Infrastructure/asset management
- Water loss
- Finance
- Customer service
- Innovation/Best Practices in water

10. Conduct state-wide studies on the following:

- Water loss
- Lead service/plumbing inventory
- System interconnections for reliability and drought relief
- Affordability of water/wastewater for low/fixed income households

RECOMMENDATIONS BY BLUEWATER KENTUCKY

11. Revise administrative regulations to:

- Define technical, managerial and financial roles for KY PSC, DOW and KIA to eliminate duplication and streamline processes
- Provide authority to DOW/KIA/PSC to address failing water systems (technical, managerial financial) and ability to intervene and take corrective action
- Establish water and wastewater rate indexing allowing annual rate adjustments. (CPI or equivalent)

12. Require water systems to prepare Capital Improvement Plans for Asset Management and Infrastructure Renewal.

- 5-Year CIP for Small Systems serving <10,000 pop
- 10-Year CIP for Medium Systems 10,000 to 50,000
- 20-Year CIP for Large Systems > 50,000

SOURCES AND REFERENCES

- **ASCE Infrastructure Report Card – Drinking Water 2019**
- **ASCE Infrastructure Report Card – Wastewater 2019**
- **2018 KY Rural Water/Cannon & Cannon Rate Survey**
- **Kentucky Division of Water**
- **Kentucky Infrastructure Authority/WRIS**
- **Kentucky Rural Water Association**
- **KY-TN AWWA**
- **Louisville Water Company**

**DISCUSSION
AND
QUESTIONS**

Greg C. Heitzman, PE, MBA

502-533-5073



BlueWater
Kentucky

Robert K. Miller, MBA

502-500-1458

StraightLine Kentucky



Hot Water Law Topics 2021

Presenters: LaJuana S. Wilcher and Sarah P. Jarboe
English Lucas Priest & Owsley, LLP

1. Infrastructure Funding for Water and Wastewater Utilities

- a. 2021 has been an extraordinary year for Congressional consideration of new funding for environmental concerns, from climate change to water and wastewater funding. Whether those bills will pass both houses of Congress is yet to be determined, but water and wastewater industry leaders remain optimistic that additional funding will be authorized to help relieve unfunded needs. This presentation will describe the provisions and status of the relevant bills (which may be law by the date of the presentation!), and the effects of those provisions and potential opportunities for rural water.
 - i. On August 10, 2021 the Senate passed the \$1 trillion Infrastructure Investment and Jobs Act, which includes multiple provisions addressing drinking water and wastewater requirements and fundings.
 1. The House of Representatives is scheduled to vote on the bill on September 27, 2021, three days from today.
 - ii. The Biden Administration and Democratic members of the House and Senate are also pursuing \$3.5 trillion “budget reconciliation” legislation that would authorize funding for multiple new social programs.
 - iii. In mid-September the House Committee of Transportation and Infrastructure approved \$3.7 billion in wastewater funding.
 - iv. The House Committee on Energy marked up a bill that would direct \$30 billion for lead service line replacements, plus an additional \$2.5 trillion of additional drinking water funding.
- b. The extent to which these bills are coupled in the House and the Senate, and how related issues such as appropriations and the budget deficit influence the ultimate passage of water infrastructure legislation, will be explained in the presentation as well.

2. WOTUS Update

- a. Navigable Waters Protection Rule (NWPR)
 - i. Status of Litigation
 1. *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 vacated NWPR
 - ii. Regulatory status
 1. Executive Order 13990
 2. EPA and Army Corps of Engineer’s intent to revise the WOTUS Rule – June 9, 2021



**UTILITY FINANCIAL
HEALTH CHECKUP**

Mary Ellen Wimberly
Stoll Keenon Ogden PLLC
maryellen.wimberly@skofirm.com
(859) 231-3047



ORDER OF PRESENTATION

- Audit Reports Filed with PSC
- Different Types of Audit Opinions
- Reading Financial Statements
- Distorting/Misleading Items and Adjustments



ORDER OF PRESENTATION

- Comparison of Audit Report to Annual Report
- Recent PSC Orders Regarding Financial Health

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Physical Health




- <https://www.selfhaven.com/physical-wellbeing/2017/02/physical-health-benefits-of-yoga>
- <https://www.physicstopractice.com/new/finding-health-during-pandemic>

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Mental Health




FOR THOSE OF US FIGHTING FOR MENTAL HEALTH, SIMONE REMINDS THAT WE ARE WORTH CHOOSING OVER OBLIGATION, ROLE, EXPECTATION, WHATEVER. SHE TELLS US WE ARE BEYOND. SHE IS SAYING NO TO THE DANGEROUS MYTH OF TIGHTENING IT OUT, AND YES TO THE WISDOM OF ASKING FOR HELP.

UNIQUE PRESSURES
TENNIS ADMINS PLEDGE TO ADDRESS MENTAL HEALTH

- <https://crlpeth.org/health-information/mental-health/>
- <https://twitter.com/pshepaolwitz/status/14203807146339424>
- <https://people.com/sports/golf-and-tennis-players-address-problem-mental-health-concerns-expert-walks-through-when-to-ask/>

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Financial Health




- <https://medium.com/@wendalapps/how-to-overdraft-your-bank-account-on-purpose-60466c13706>
- <https://www.fool.com/investing/2019/07/11/5-ways-to-avoid-overdraft-fees/>



AUDIT REPORTS



Audit Reports

- 807 KAR 5:006 (General Rules)
 - Section 4 subpart (3):
 - “shall file with the commission on or before September 30 each year, a copy of the audit report of the Kentucky regulated entity, from the audit performed the previous year, or a statement that no audit was performed of the Kentucky regulated entity the previous year. For good cause shown, the executive director of the commission shall, upon application in writing, allow an appropriate extension of time for the filing.”



Who Gets a Copy of Audit Report

Water Districts

- Commissioners
- PSC
- DLG (SPGE)
- RD
- KIA
- Bondholders



Who Gets a Copy of Audit Report

Water Associations

- Directors
- PSC
- RD
- Other Creditors



Who Gets a Copy of Audit Report

Cities

- Board Members
- DLG (SPGE)
- RD
- KIA
- Bondholders



Audit Reports

- Management’s Discussion and Analysis (MD&A) provides an overall review of the utility’s financial activities for the year.
 - “The intent of this discussion and analysis is to review the District’s financial performance **as a whole**. Readers should also review the basic financial statements and notes to the basic financial statements to enhance their understanding of the District’s financial performance.”



AUDIT OPINIONS



Audit Opinions

- **Unqualified or Unmodified**
 - Clean opinion
- **Qualified or Modified**
 - Material misstatements exist
- **Adverse**
 - High level of material misstatements
 - Red Flag!!
- **Disclaimer of Opinion**
 - No opinion provided



Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of Oklahoma County Water District, as of December 31, 2020 and 2019, and the respective changes in financial position and cash flows, thereof for the years then ended in conformity with accounting principles generally accepted in the United States of America.

Emphasis of a Matter

As discussed in Note 1 to the financial statements, during the year ended December 31, 2020, the District adopted Governmental Accounting Standards Board Statement 85, Responsibilities of the Effective Dates of Certain Authoritative Guidance. Our opinion is not modified with respect to this matter.

Other Matters

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis on pages 2 to 4, schedule of proportional share of the net pension and OPEB liabilities on pages 32 and 33 and schedule of contributions on pages 34 and 35 be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Other Reporting Required by Government Auditing Standards

In accordance with Government Auditing Standards, we have also issued our report dated March 19, 2021, on our consideration of Oklahoma County Water District's internal control over financial reporting and our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of our audit performed in accordance with Government Auditing Standards in considering Oklahoma County Water District's internal control over financial reporting and compliance.

Heather E. McNeil, CPA

Heather E. McNeil, CPA
 Heaton/Keenan, Kentucky
 March 19, 2021



READING FINANCIAL STATEMENTS



The 3 Basic Financial Statements

- Statements of Revenue, Expenses, and Changes in Net Fund Position
- Statements of Net Position
- Statements of Cash Flows

"Income Statement"

STATEMENT OF REVENUE, EXPENSES, AND CHANGES IN FUND NET POSITION
FOR THE YEARS ENDED DECEMBER 31, 2020 AND 2019

	DECEMBER 31,	
	2020	2019
OPERATING REVENUES		
NETIRED SALES		
Residential	\$ 2,713,179	\$ 2,716,547
Commercial	486,930	479,799
Agriculture	89,100	76,480
Rents	177,085	139,433
TOTAL NETIRED SALES	3,466,294	3,452,259
FORGOTTEN DIVIDENDS	89,034	93,761
SOCIAL SECURITY SERVICE REVENUE	25,625	25,254
TOTAL OPERATING REVENUES	3,641,352	3,571,484
OPERATING EXPENSES		
PERFORMANCE PAID		
402,176	403,006	
SUPPLY AND PURCHASING EXPENSE		
Professional services	11,096	23,932
Materials and supplies	3,612	3,819
Insurance	13,448	14,363
Transportation	7,046	8,034
Manufactures	784	46
Payroll and contractual services	188,125	206,966
TOTAL SUPPLY AND PURCHASING EXPENSE	304,111	357,110
WATER TREATMENT EXPENSE		
Professional services	198,575	110,090
Materials and supplies	119,496	118,118
Insurance	13,448	14,363
Transportation	4,244	5,792
Manufactures	4,494	5,343
Payroll and contractual services	286,173	282,481
Professional services	13,028	23,895
TOTAL WATER TREATMENT EXPENSE	543,533	564,072
GENERAL DISTRIBUTION EXPENSE		
Professional services	1,117	1,541
Legal and consultants	8	4,280
Materials and supplies	6,730	11,410
Insurance	13,448	14,400
Transportation	12,093	11,463
Manufactures	14,028	5,243
Payroll and contractual services	189,856	186,286
TOTAL GENERAL DISTRIBUTION EXPENSE	257,287	237,923
MAINTENANCE EXPENSE		
Transportation	2,792	6,014
Payroll and contractual services	173,135	182,280
Debt finance	8,032	3,411
Utilities	14,620	14,240
TOTAL MAINTENANCE EXPENSE	198,579	206,045

(AMOUNTS IN DOLLARS)



Notes to Basic Financial Statements

- Schedule of Debts
 - Short Term
 - Long Term



Audit Report vs. Annual Report

- Annual Report is usually prepared by CPA
- Consistency between two reports is important
- Utility's responsibility to ensure information contained in Annual Report is correct
 - Signed under oath



Recent PSC Orders re Financial Health

- Todd Co. WD 8/30/2021 Order (Case No. 2021-00310)
- North Marshall WD 9/17/2021 Order (Case No. 2021-00333)
- Christian County WD 9/22/201 Order (Case No. 2021-00322)



Todd Co. WD

Source	Year	2016	2017	2018	2019	2020
Net Income		\$ (302,127)	\$ (254,448)	\$ (5,554)	\$ 195,781	\$ 263,598
Add: Depreciation Expense		515,894	512,233	511,153	505,084	503,295
Cash Basis Income		\$ 213,767	\$ 257,785	\$ 505,599	\$ 700,845	\$ 766,893

Audit Report	Year	2016	2017	2018	2019	2020
Cash and Cash Equivalents		\$ 288,962	\$ 310,178	\$ 369,496	\$ 284,951	\$ 210,660
Restricted Cash		443,434	579,703	647,950	721,483	972,592
Sum: End-of-Year Balance		732,396	889,881	1,017,446	986,434	1,183,252
Net Increase (Decrease) in Cash		(56,295)	157,485	127,565	(31,032)	196,838



North Marshall WD

Year	2016	2017	2018	2019	2020
Net Income before Contributions	\$ 49,991	\$ (274,164)	\$ (254,254)	\$ (367,447)	\$ (551,960)
Less: Principal Payments			(58,900)	(60,000)	(62,000)
Add: Depreciation Expense	332,592	393,191	407,876	441,708	425,741
Cash Basis Income	\$ 382,583	\$ 119,027	\$ 95,122	\$ 14,259	\$ (188,119)

Year	2016	2017	2018	2019	2020
Cash and Cash Equivalents	\$ 948,608	\$ 1,191,111	\$ 1,340,169	\$ 1,161,667	\$ 781,808
Restricted Funds - Sinking, Depreciation	53,417	62,214	57,557	57,628	60,621
Net Increase (Decrease) in Cash	265,635	251,300	145,301	(179,331)	(376,868)



Christian Co. WD

Year	2016	2017	2018	2019	2020
Net Income	\$ (182,613)	\$ 22,140	\$ (100,007)	\$ (76,874)	\$ (156,950)
Add: Depreciation Expense	582,860	581,555	580,969	586,575	589,269
Cash Basis Income	\$ 400,247	\$ 603,695	\$ 480,962	\$ 509,701	\$ 432,319

Year	2016	2017	2018	2019	2020
Cash and Cash Equivalents	\$ 435,681	\$ 623,218	\$ 652,350	\$ 626,704	\$ 683,388
Restricted Cash	2,032,415	2,126,626	2,310,098	2,287,812	2,388,336
Sum: End-of-Year Balance	2,468,096	2,749,844	2,962,448	2,914,516	3,371,724
Net Increase (Decrease) in Cash	65,437	281,748	212,604	(48,132)	457,408



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P.C.

QUESTIONS?



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OGDEN**
PLLC

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

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**STOLL
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OGDEN**
PLLC

Order of Presentation

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

2



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PLLC

HISTORICAL OVERVIEW

3



Public Service Commission Act of 1934

- ❖ Created Public Service Commission
- ❖ Provided that PSC’s jurisdiction extended to rates and service of all “utilities”
- ❖ Defined PSC’s powers and duties in terms of “utilities”
- ❖ Set forth a utility’s obligations and duties to the public

4



Public Service Commission Act

Utility defined as:
 persons and **corporations** or their lessees, trustees or receivers that now or may hereafter own, control, operate or manage ... any facility used or to be used for or in connection with the diverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation

5



Public Service Commission Act

“The term **‘Corporation’** when used in this Act includes private, **quasi public and public** corporations, an association, a joint stock association, or a business trust”

Result: Cities are public corporations and thus are subject to PSC regulation

6



Public Service Commission Act

- ◆ Municipal Utilities Strongly Opposed PSC Act
 - Viewed PSC as threat to home rule/local control
 - Cities could regulate IOUs more effectively
 - No need to regulate government utilities
 - Concern PSC would become captive of IOUs
 - Fear that PSC would prevent the creation and development of municipal utilities
- ◆ Efforts to exempt Municipal Utilities failed

7



1936 Amendment

Definition of **“Utility”** amended :

“Provided, however, that for the purposes of this act the term ‘utility’ or ‘utilities’ **shall not mean or include any city or town** or water districts . . . owning, controlling, operating or managing any facility or facilities enumerated in this paragraph.”

8



Effect of 1936 Amendment

Cities excluded from definition of **“Utility”** and are no longer subject to PSC Regulation

9



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)



PSC Regulation Resurrected:
Simpson County Water Dist. v. City of Franklin

- ◆ 1963 Contract (\$0.21/1,000 gallons rate) (changes applied to retail & wholesale alike)
- ◆ 1986 Contract Guarantees \$0.8478/1,000 gallons rate for 5 years
- ◆ 1990: Franklin raises rate to \$1.3478/1,000 gallons
- ◆ 1991: Franklin raises rate to \$1.67/1,000 gallons

11



PSC Regulation Resurrected:
Simpson County Water Dist. v. City of Franklin

- ◆ Simpson County refuses to pay any amount in excess of \$0.845/1,000 gallons
- ◆ Franklin brings action to collect unpaid portion of bills in Simpson Circuit Court & to declare contract void
- ◆ Simpson District argues that Court lacks jurisdiction & only PSC can hear case – emphasizes **KRS 278.200**

12



PSC Regulation Resurrected:
Simpson County Water Dist. 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

13



PSC Regulation Resurrected:
Simpson County Water Dist. v. City of Franklin

Majority Opinion:

- ❖ KRS 278.040 – A “Rates and Service” Exception exists to the exemption for cities & political subdivisions
- ❖ KRS 278.200 – Applies to Agreements between cities and utilities where the city is the seller of utility service
- ❖ While cities exempted from PSC regulation because they are not “utilities”, cities forfeit exemption when they contract to provide utility service to a utility
- ❖ Contract will **always** exist when city sells to public utility

14



PSC Regulation Resurrected:
Simpson County Water Dist. v. City of Franklin

KRS 278.040(2):

The jurisdiction of the commission shall extend to all utilities in this state. **The commission shall have exclusive jurisdiction over the regulation of rates and service of utilities, but with that exception nothing in this chapter is intended to limit or restrict the police jurisdiction, contract rights or powers of cities or political subdivisions.**

15



PSC Regulation Resurrected:
Simpson County Water Dist. v. City of Franklin

Minority Opinion:

- ❖ PSC has jurisdiction only over a **public utility's** rates and service
- ❖ KRS 278.200 – Applies to agreements between cities and utilities only if **the seller is a public utility**
- ❖ KRS 278.200 designed to supersede any contrary provisions in franchise agreements between city & public utility

16



PSC Regulation Resurrected:
Simpson County Water Dist. v. City of Franklin

Unanswered Questions

- ❖ How should PSC regulate cities?
 - Strictly regulated as a public utility
 - Arbitrator: Intervene only if a dispute
- ❖ What provisions of KRS Chapter 278 apply?
- ❖ What procedures for changing rates?

17



BASIC RULES

18



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 (Eliminates any reason to publish notice)

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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*
- ❖ No cost-of-service study required (But Helpful)
- ❖ Intervening Parties not required to present testimony or participate

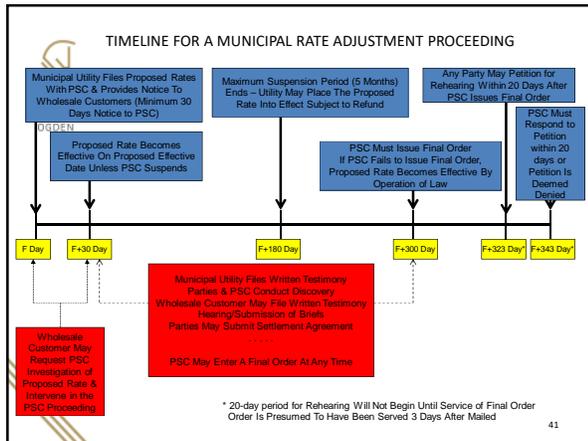
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Procedure: Part 3

- ◆ 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

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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 preparation & negotiations
- ❖ Begin tracking rate case expenses

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Time To Prepare Cost-of-service Study

“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 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
- ❖ Ask PSC to require Customer to identify basis for objections to proposed rate
- ❖ 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

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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
- ◆ Consistent use of NARUC Guide mid-point since 2016 in all cases – jurisdictional & municipal utilities

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Useful Lives: Municipal Takeaway

- ◆ Compare currently used useful lives to NARUC Guide mid-point
- ◆ If significant difference, determine if any support to justify continued use of current useful lives
- ◆ Retain engineer to assist in analysis & to prepare evidentiary support for 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 Guide mid-points – note variances
- ❖ 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



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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