

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

**ELECTRONIC APPLICATION OF)
HARDIN COUNTY WATER DISTRICT)
NO. 2 FOR ACCREDITATION) CASE NO. 2022-00280
APPROVAL OF COMMISSIONER)
TRAINING)**

APPLICATION

Hardin County Water District No. 2 (“Hardin District No. 2”) and Stoll Keenon Ogden PLLC (“Joint Applicants”) apply for an Order from the Public Service Commission accrediting and approving a proposed water district commissioner training program for continuing education credit pursuant to KRS 74.020(6) and (7) and 807 KAR 5:070.

In support of its application, the Joint Applicants state:

1. The full name and post office address of Hardin District No. 2 is: Hardin County Water District No. 2, P.O. Box 970, 1951 West Park Road, Elizabethtown, Kentucky 42702-0970. Its electronic mail address is lsims@hcwd2.org.

2. Pursuant to 807 KAR 5:001, Section 4(8),¹ copies of all orders, pleadings, and other communications related to this proceeding should be directed to:

Cameron F. Myers
Stoll Keenon Ogden PLLC
500 West Jefferson Street, Suite 2000
Louisville, KY 40202
(502) 568-5410
Fax: (502) 333-6099
cameron.myers@skofirm.com

Damon R. Talley
Stoll Keenon Ogden PLLC
P.O. Box 150
Hodgenville, KY 42748-0150
(270) 358-3187
Fax: (270) 358-9560
damon.talley@skofirm.com

Lea Ona Sims
Hardin County Water District No. 2
P.O. Box 970
1951 West Park Road
Elizabethtown, KY 42702
(270) 737-1056
lsims@hcwd2.org

3. Hardin District No. 2 is not a corporation, limited liability company, or limited partnership. It has no articles of incorporation or partnership agreements.

¹ On August 17, 2022, Hardin District No. 2 gave notice pursuant to 807 KAR 5:001, Section 8, of its intent to file this application and of its use of electronic filing procedures.

4. Hardin District No. 2 is a water district organized pursuant to KRS Chapter 74.

5. Hardin District No. 2's territory includes all of Hardin County, Kentucky, except for the city of Radcliff and the northern portion of Hardin County, and portions of Larue and Hart Counties.

6. 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.

7. Stoll Keenon Ogden PLLC's mailing address is: 500 West Jefferson Street, Suite 2000, Louisville, Kentucky 40202. Its email address for purposes of this Application is: cameron.myers@skofirm.com.

8. Joint Applicants propose to sponsor and conduct a water management training program on September 26, 2022, at Hardin District No. 2's office in Elizabethtown, Kentucky. The program is entitled "Hardin County Water Commissioner Training Seminar." A copy of the proposed agenda is attached to this Application as **Exhibit 1**.

9. The presenters, all water district commissioners, and staff in attendance at Hardin District No. 2's office will abide by all COVID-19 safety protocols and social distancing measures.

10. As reflected in **Exhibit 1**, the proposed training program will include presentations on the following topics:

a. Recent developments in utility regulatory law, including an overview of recent Kentucky court opinions, Public Service Company decisions, and applicable laws enacted by the 2022 General Assembly, including the revisions to the sales tax laws concerning “residential” exemptions, the rules and regulations concerning borrowing money, compliance with PSC Orders, and keeping Minutes;

b. The legal duty of the water district board of commissioners to adopt, periodically review, and oversee the enforcement of policies relating to sexual harassment and maintaining a respectful workplace environment, including the role of the water district board of commissioners and management in developing and implementing best practices for maintaining a safe, respectful workplace that is free from unlawful discrimination, harassment, and retaliation for all employees, the importance of implementing and maintaining these policies in light of the close scrutiny being placed on water district boards of commissioners, as employers, to fulfill this legal duty owed to each of their employees, and the possible legal liability and other ramifications for failing to maintain such a workplace environment;

c. An explanation of the responsibilities of water district commissioners during a rate study, which will provide the commissioners with a straightforward definition of a rate study, describe the first steps of getting starting with a rate study,

help the commissioners understand what type of rate study may be necessary, identify alternatives for who could perform the rate study, describe three types of rate studies in some detail, help identify who might best serve as the point of contact for a utility during a rate study, describe the phases of an Alternative Rate Filing in some detail, provide lessons learned for water district commissioners to consider, and differentiate the water district board of commissioners' role from the Public Service Commission's role;

d. A review of all aspects of Certificates of Public Convenience and Necessity, including when a CPCN is needed, extensions in the ordinary course of business, preparing the CPCN Application, tips for obtaining an expedited review of the CPCN Application, and when a water district must obtain PSC approval before issuing any securities or evidence of indebtedness; and

e. A panel discussion on frequently recurring legal issues present in the operation and management of water and wastewater systems.

11. 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.**

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

13. The written materials to be provided to each attendee are attached at **Exhibit 3**. Should any presenter revise or amend his or her presentation prior to the presentation or provide additional written materials to the attendees, Joint Applicants will include a copy of the revised presentation with its sworn statement and report regarding the instruction.

14. In addition to Hardin District No. 2's management staff and commissioners, the management staff and members of the Boards of Commissioners of the following water districts have been invited to attend the proposed training: Grayson County Water District; Hardin County Water District No. 1; Larue County Water District No. 1; Meade County Water District, and North Nelson Water District.

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

16. Within 30 days of the proposed training program's completion, the Joint Applicants will file with the Public Service 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.

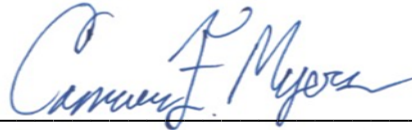
17. The Joint Applicants will include with the sworn statement documentary evidence of the program's certification by certifying authorities and a copy of any written material given to the attendees that has not been previously provided to the Public Service Commission.

18. The Joint Applicants will admit representatives of the Public Service 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 the Public Service Commission directives, regulations, or other requirements, or perform any other supervisory functions that the Public Service Commission deems necessary.

WHEREFORE, the Joint Applicants request that the Commission approve and accredit the proposed training program entitled "Hardin County Water Commissioner Training Seminar" for six hours of water district management training.

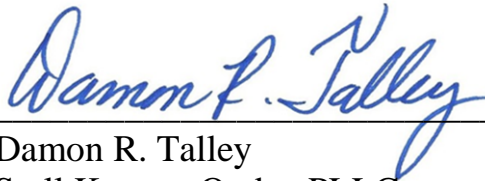
Dated: August 22, 2022

Respectfully submitted,



Cameron F. Myers
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500 West Jefferson Street, Suite 2000
Louisville, KY 40202
Telephone: (502) 568-5410
Fax: (502) 333-6099
cameron.myers@skofirm.com

*Counsel for Hardin County Water District
No. 2*

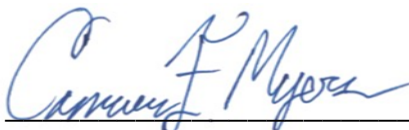


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damon.talley@skofirm.com

*Counsel for Hardin County Water District
No. 2*

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 August 22, 2022; and that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means.



Cameron F. Myers

EXHIBIT 1



Hardin County Water Commissioner Training Seminar

Presented by

Hardin County Water District No. 2 & Stoll Keenon Ogden PLLC
1951 West Park Road, Elizabethtown, Kentucky

September 26, 2022

Morning Agenda

- 8:00 - 8:25 **Registration and Refreshments**
- 8:25 - 8:30 **Program Overview and Welcome – Mike Bell**
- 8:30 - 9:30 **Recent Developments in Utility Regulation (Part I) – Damon Talley**
This presentation reviews recent developments in public utility law and regulation. Topics include unaccounted water loss, revisions to the Sales Tax laws concerning “Residential” exemptions, borrowing money, compliance with PSC Orders, keeping Minutes, and laws enacted by the 2022 General Assembly. The presenter will also examine and discuss recent court and PSC decisions.
- 9:40 - 10:40 **Sexual Harassment and Respectful Workplace – Elizabeth S. Muyskens**
Board members have a duty to adopt, periodically review, and oversee the enforcement of its policies. One such policy that is coming under close scrutiny is the duty of a utility to maintain a safe, respectful workplace that is free from unlawful discrimination, harassment, or retaliation for all employees. This presentation discusses the role of the Board and the role of Management in developing and implementing these best practices to foster a workplace environment that is the envy of other utilities.
- 10:50 - 11:50 **What to Expect During a Rate Study – Robert K. Miller**
This presentation is focused on the responsibilities of water district commissioners during a rate study. It defines a rate study; describes the first steps of getting started with a rate study; describes three types of rate studies in some detail; provides lessons learned for water district commissioners to consider; and differentiates the water district Board of Commissioners’ role from the PSC’s role.
- 11:50 - 12:30 **Lunch (provided on-site)**

Afternoon Agenda

- 12:30 - 1:30 **Everything You Wanted to Know About CPCN's and Debt Authorizations, But Were Afraid to Ask the PSC – Gerald Wuetcher**
This presentation reviews all aspects of Certificates of Public Convenience and Necessity, including when a CPCN is needed, extensions in the ordinary course of business, preparing the Application, and tips for obtaining an expedited review of the CPCN Application. It also discusses when a water district must obtain PSC approval before issuing any securities or evidence of indebtedness.
- 1:40 - 2:40 **Recent Developments in Utility Law – Part II
Damon Talley and Gerald Wuetcher**
Continuation of Earlier Presentation.
- 2:45 - 3:45 **Legal Issues in the Operation & Management of Water Systems
Panel Discussion – Damon Talley & Gerald Wuetcher**
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.
- 3:45 **Closing Remarks & Administrative Announcements**

EXHIBIT 2

QUALIFICATIONS

EDUCATION

Bachelors–Management and Finance, University of Louisville, 1979
Masters-Business Administration and Finance, Indiana University 1982

YEARS OF EXPERIENCE: 38

SPECIALIZATION

Senior Executive in Drinking Water, Wastewater, and Stormwater Industry

PROFESSIONAL AFFILIATIONS

American Water Works Association QualServe Peer Reviewer

AWWA Business Practices Standards Committee Member Vice-Chair (past)

AWWA Utility Management Standards Committee Member (past)

AWWA Finance, Accounting, and Management Controls Committee Chair (past)

AWWA Management Controls Sub-Committee Chair (past)

AWWA Research Foundation Project Participating Utility Member (past)

National Association of Clean Water Agencies, Utility and Resource Management Committee (past)

Professional Profile

Senior utility executive with 38 years of experience in the drinking water, wastewater, and stormwater industry, including: executive management, strategic planning, policy development, customer service, information technology, and program management. Advocate for sustainability of water infrastructure and affordability for low-income customers. Education includes a Bachelors and Masters degrees in business management and finance.

Qualifications and Experience

**StraightLine Kentucky, Louisville, KY
2021 – Present Consultant**

Advisor to drinking water, wastewater, and stormwater utility managers, regulatory officials, elected officials, and service providers.

**City of Jackson, Mississippi
2017 – 2020 Director of Public Works**

Executive management of Drinking Water, Wastewater, Stormwater, Solid Waste, Streets, Facilities, Fleet, and Warehouse operations and maintenance.

**Sewerage and Water Board of New Orleans, Louisiana
2009 – 2017 Deputy Director / Interim Executive Director**

Administrative management of Strategic Planning, Accounting, Budgeting, Purchasing, Customer Service, Human Resources, Information Technology, Risk Management, Fleet Maintenance, Warehouse, Internal Audit, and other operations support services.

**Municipal and Financial Services Group, Maryland
2008 – 2009 Senior Manager**

Management consultant to water and wastewater utilities focusing on enterprise risk management, internal control, financial analysis, and rate studies.

**Louisville Water Company, Kentucky
1991 – 2008 Vice President**

Administrative management of Finance, Information Technology, Risk Management, Business Planning, Human Resources, and Board Relations



Elizabeth S. Muyskens

859.231.3626 direct

859.259-3526 direct fax

elizabeth.muyskens@skofirm.com

University of Kentucky College of Law, J.D.

University of Kentucky, B.S.

Elizabeth is a Member in Stoll Keenon Ogden’s Lexington office and has been with the firm since 2008. She is part of the Labor, Employment & Employee Benefits practice and represents employers in Kentucky and surrounding states. She counsels clients on workplace law issues, represents employers in administrative proceedings and is prepared to litigate matters when conflicts arise. Elizabeth also serves on the board of directors for the firm.

For her many legal accomplishments, Elizabeth has been honored as a “Rising Star” by Kentucky Super Lawyers® and named a “Leading Lawyer for Business” in her field by Chambers USA. Given her strong reputation and substantial expertise in employment law, Elizabeth is a frequent speaker at professional seminars.

Prior to joining SKO, while pursuing her undergraduate degree, Elizabeth worked for the U.S. Attorney's Office for the Eastern District of Kentucky.

Labor, Employment & Employee Benefits: Elizabeth coordinates with in-house counsel, human resources professionals and company leaders on employment agreements, internal investigations, personnel issues and a range of other concerns. She also represents employers in administrative proceedings and effectively argues cases in Court.



Damon R. Talley

270.358.3187 direct
270.358.9560 direct fax
damon.talley@skofirm.com

University of Kentucky College of Law, J.D.
University of Kentucky, B.S.M.E

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.



Gerald E. Wuetcher

859.231.3017 direct
859.259.3517 direct fax
gerald.wuetcher@skofirm.com

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

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.

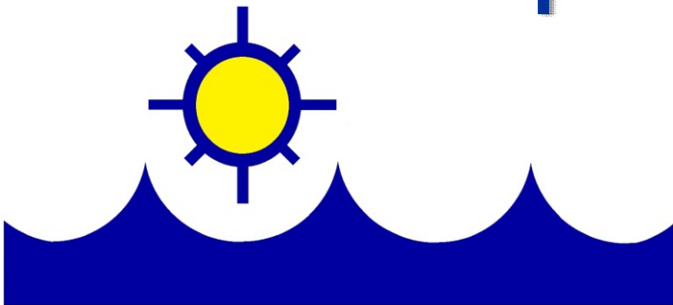
Utility & Energy: Jerry concentrates on public utility law in Kentucky, but also participates in general and commercial litigation, transactions, employment concerns, securities issues and mergers and acquisitions involving gas, electric and water companies. He handles all facets of regulatory matters,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

EXHIBIT 3



HARDIN COUNTY WATER COMMISSIONER TRAINING SEMINAR

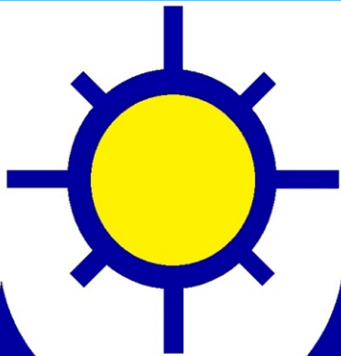
September 26, 2022



WELCOME

Michael L. Bell, Chairman

Hardin County Water District No. 2



STOLL
KEENON
OGDEN
PLLC

HOT LEGAL TOPICS

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



September 26, 2022



DISCUSSION TOPICS

1. PSC Filings
2. Comply with PSC Orders
3. Minutes
4. 2022 General Assembly
5. Open Meetings Act

Continued . . .



DISCUSSION TOPICS

6. Notable PSC Orders
7. Borrowing Money
8. Surcharges
9. Recent PSC Orders
10. Cases to Watch



DISCLAIMER



PSA for PSC



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





Talley's Tips

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





Talley's Tips

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



**Comply
With All
PSC
Orders**



PSC Case No. 2021 - 343

Filed: 12-14-2021

Type: Failure to Comply
with PSC Order

Issue: Did Not Timely File
Rate Application &
Failure to File PSC
Annual Report

Decided: 07-15-2022



PSC Case No. 2022 - 215

(cont.)

Result: WD Fined \$5,000

- WD Pay \$250
- Board Members & GM
Attend 12 Hours of PSC Training
- Balance of Fine Suspended
for 12 Months
- No More Violations



PSC Case No. 2022 - 215

Filed: 07-18-2022

Type: Failure to Comply
with PSC Order

Issue: Did Not Timely File
Rate Application

Decided: Pending



PSC Case No. 2022 - 215

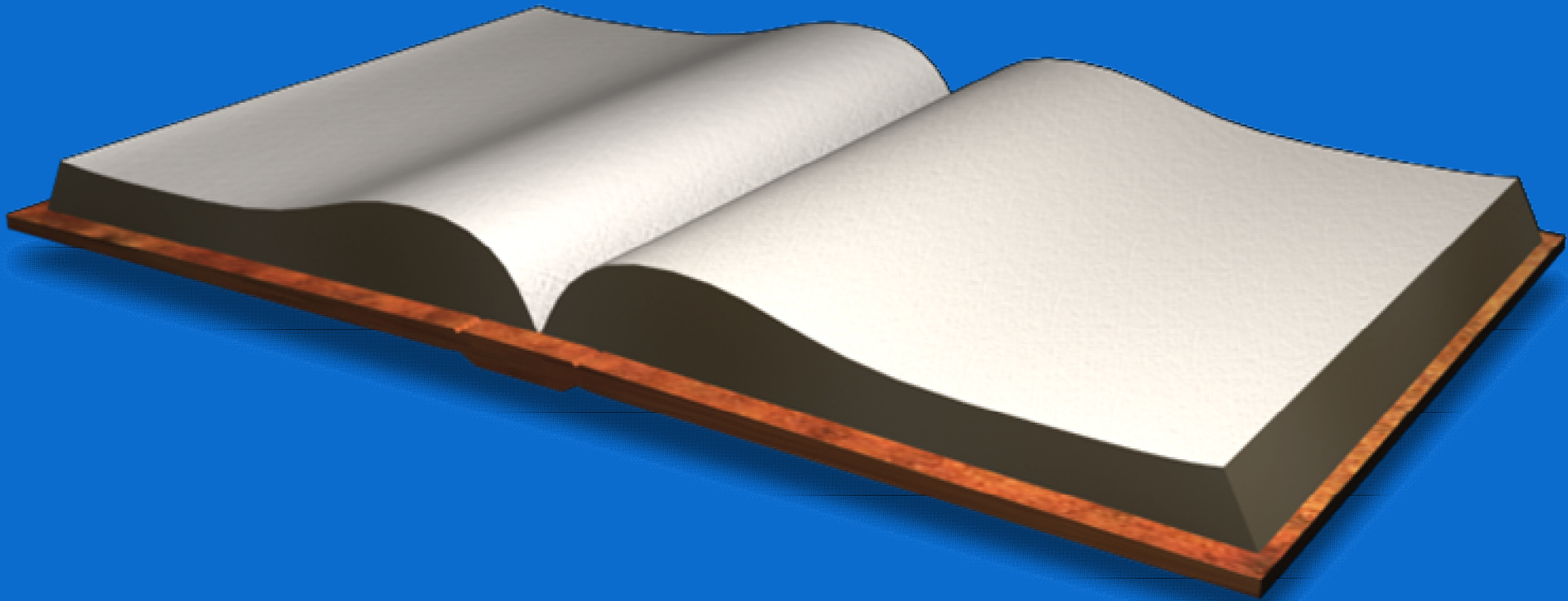
(cont.)

Facts:

- Must File Rate Case by 03-10-2021
- Got Extension Until 05-31-2022
- Nothing Filed by 07-18-2022
- PSC Opened Case



MINUTES



What Are MINUTES?

- Official Record
- Much, Much More . . .



Excerpt From Minutes

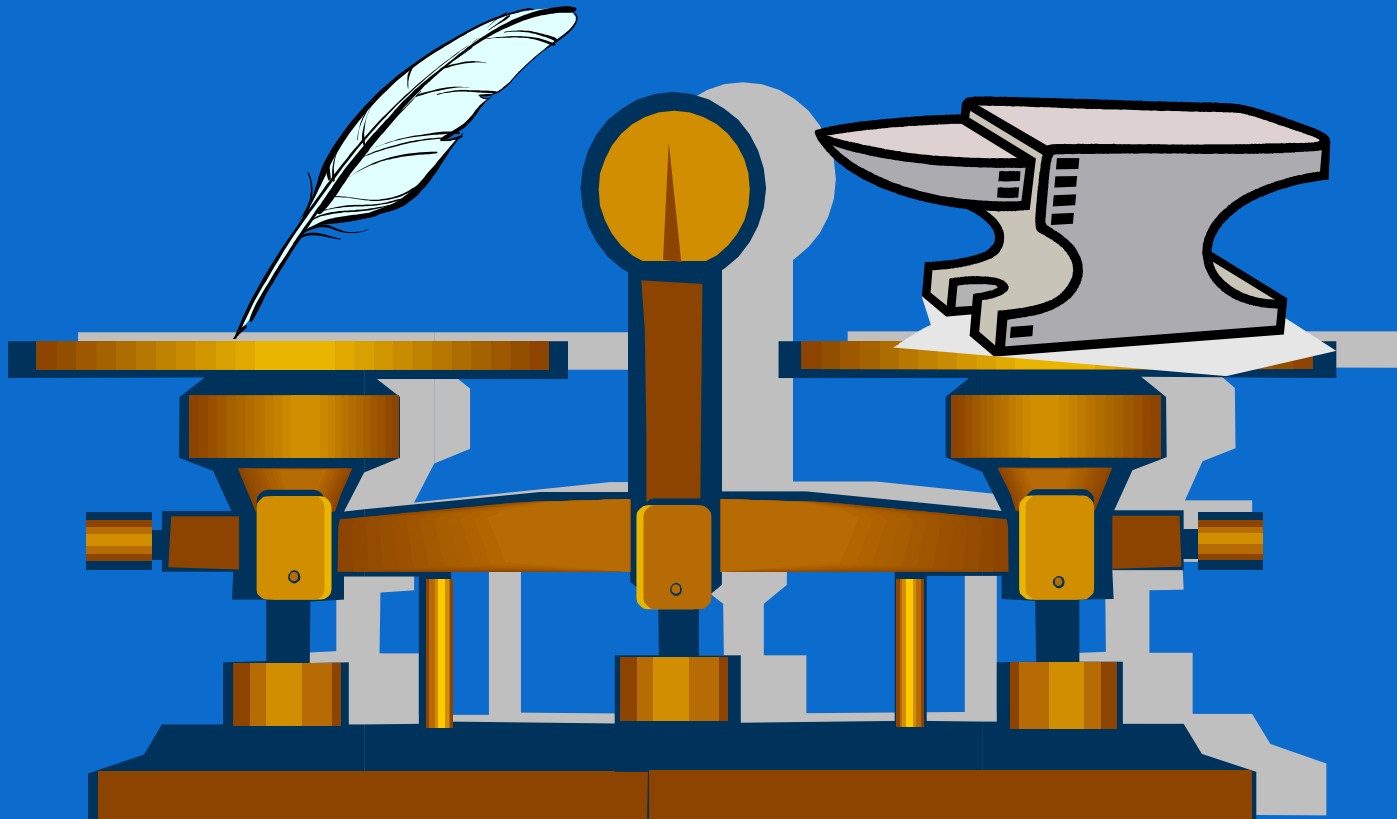
“Motion was made by Commissioner X and seconded by Commissioner Y to hire Commissioner Z to perform water line inspections on the Knob Hill Project at an hourly rate of \$20.”



**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

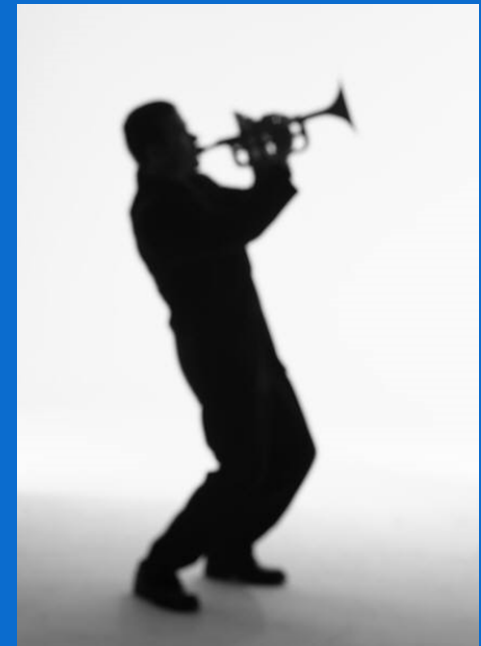
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Minutes

What **SHOULD** Be Included?

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



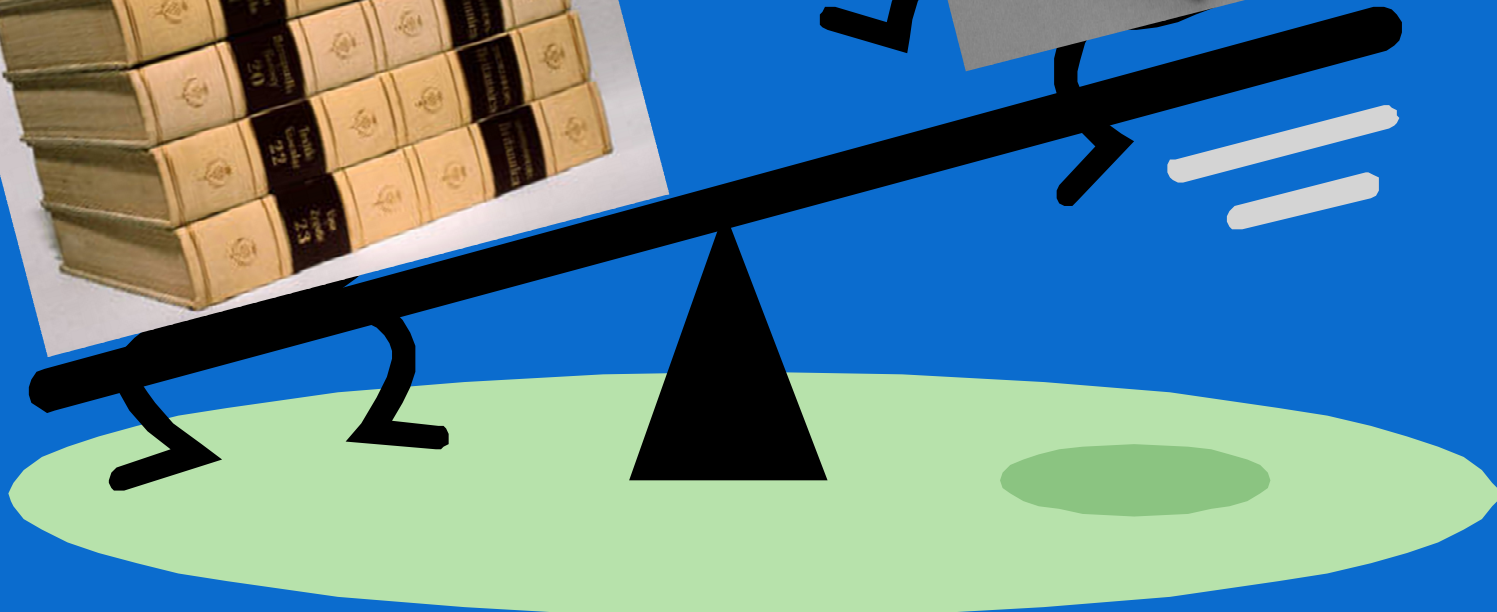
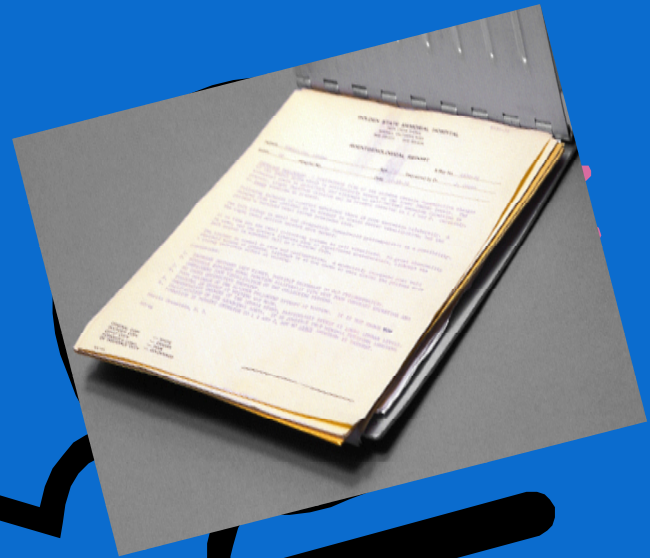
Minutes

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.



2022 General Assembly



Notable Bills

- HB 1 – ARPA Funds
\$250,000,000
- HB 8 – Residential Sales
Tax Exemption
for Utility Customers
Modified



Notable Bills (cont.)

- HB 758 – “Martin County Bill”
 - \$10,000,000 for Water & Wastewater Assistance Fund
 - Troubled Utilities
 - Water Associations Now Eligible to Obtain Funds from KIA
 - Borrow
 - Grant
 - ARPA



Notable Bills

2021 General Assembly

- HB 312 – Open Records Act
- HB 393 – Commissioner Training



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



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





Talley's Tips

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



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





**Talley's
Take Aways**

Damon

1. Seek PSC Approval

- **WD, WA or IOU Buying City Assets**
- **WD, WA or IOU Buying N-hood Assoc. Assets**

2. Talley Rescinds Prior Advice to the Contrary



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

- CPCN: 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



Borrowing

LOANS



Money

KRS 278.300(1)

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



Practical Effect

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





Violation

Show Cause Cases



Show Cause Case # 3

Case No. 2017 - 469

Opened: 01- 11 - 2018

Hearing: 02 - 27- 2018

Issue: KRS 278.300

Decision: 09 - 17 - 2018



Show Cause Case # 3

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

(Continued)

Show Cause Case # 3

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

(Continued)

Show Cause Case # 3

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

Show Cause Case # 3

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

Pages 7 and 8 of Order

Show Cause Case # 3

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



Show Cause Case # 3

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



Show Cause Case # 3

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



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





"Damocles, did I sit in the wrong chair?"

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



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







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 $\frac{1}{2}$ 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





Cases

to

Watch

PSC Case No. 2021 - 071

Filed: 2-4-2021

Utility: Hyden - Leslie Co. WD

Type: Tariff Review

Issue: Imputed Liability

Decided: Pending



PSC Case No. 2021 - 422

Filed: 11-22-2021
Utility: Southern Madison Utilities
Type: Investigation by PSC
Issue: Fiber Optic in Water Lines
Hearing: 08-24-2022
Decided: Pending





QUESTIONS?


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Sexual Harassment and Respectful Workplace Training

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September 26, 2022





Agenda

1. Unlawful Workplace Behavior
2. No Retaliation
3. Best Practices for Creating a Respectful Workplace



Duty to Provide Respectful Workplace

- Organizations of all sizes and in all industries have a duty to provide a safe, respectful workplace free from unlawful discrimination, harassment, or retaliation for all employees.
- A respectful workplace can be achieved by adopting and enforcing policies outlining these expectations.



Unlawful Discrimination

- Unlawful discrimination occurs when an employee is treated less favorably because of his or her protected class(es).
- Persons may be members of multiple protected classes.



Employment Protection Laws

❖ Title VII of the Civil Rights Act of 1964

- *Prohibits discrimination because of race, color, national origin, religion, or sex.*

❖ Pregnancy Discrimination Act (PDA)

- *Requires employers to treat pregnancy just like any other medical condition with regard to benefits and leave policies*



Employment Protection Laws

❖ Americans with Disabilities Act (ADA)

- *Prohibits discrimination in terms or conditions of employment against individuals with disabilities who, with or without reasonable accommodation, can perform the essential functions of the job.*

❖ Age Discrimination in Employment Act (ADEA)

- *Prohibits age discrimination in employment for employees age 40 and over.*

❖ Family and Medical Leave Act (FMLA)

- *Provides eligible employees with up to 12 weeks of job protected leave annually for certain family and medical reasons.*



Unlawful Discrimination

Reminders

- Do not allow members of one protected class to be treated different from members of another.
- Do not permit comments based on a person's protected class.
- Do not permit comments that might be offensive to a protected class.



Report Unlawful Discrimination

- Employees should be required to report all instances of unlawful discrimination.
- Anti-retaliation laws protect persons who make good faith complaints of discrimination, as well as persons who participate in an internal investigation of a discrimination complaint. All entities should have a non-retaliation policy.



What is Sexual Harassment?

- Form of sex discrimination that violates Title VII of the Civil Rights Act and the Kentucky Civil Rights Act.
- The victim, as well as the harasser, may be a man or a woman.
- The victim and the harasser do not have to be of the opposite sex.



What is Sexual Harassment?

- Unwelcome sexual advances,
- Requests for sexual favors, or
- Other verbal or physical conduct of a sexual nature.

And, the conduct must:

- Explicitly or implicitly affect a term or condition of an individual's employment;
- Unreasonably interfere with an individual's work; or
- Create an intimidating, hostile or offensive work environment.



Unwelcome Sexual Advances and Conduct

As a general rule, conduct is “unwelcomed” if the employee did not solicit or incite it, and the employee regarded the conduct as undesirable or offensive.

It can be difficult to distinguish between conduct that is:

- invited,
- uninvited but welcome,
- offensive but tolerated, and
- flatly rejected.



Does this Constitute an Unwelcome Sexual Advance or Conduct?

- Would the conduct take place if a spouse were present?
- Does the conduct exclude, ridicule or belittle a person because of his or her gender?
- Has the victim expressed his or her distaste for the conduct?
- Does the conduct involve intentional physical conduct of a suggestive/sexual nature?



Is It a Hostile Environment?

- Frequency of the conduct
- Severity of the conduct
- Whether it is physically threatening or humiliating
- Whether the conduct is “merely offensive”
- Whether the conduct unreasonably interferes with an employee’s work performance
- Whether the conduct was directed at the complaining party



Is It a Hostile Environment?

Often requires careful consideration of social context in which behavior occurs and/or circumstances surrounding behavior.



Is It Quid Pro Quo Sexual Harassment?

- Quid Pro Quo is Latin for “this for that”
- Generally it involves a person in power pressuring a subordinate employee for sexual favors in exchange for advancement in the workplace or under the threat of adverse employment action.
- May be specific or implied threat or promise regarding the victim’s job

What do I do?

Ensure your organization has adopted equal employment opportunity, anti-discrimination, anti-harassment, and anti-retaliation policies. More importantly, review whether those policies are being enforced consistently.





Guiding Principles of the Harassment-Free Workplace

- Think before you speak.
- Respect the workplace. (If you wouldn't do or say it in front of a loved one, you probably shouldn't do or say it at work.)
- Keep your hands to yourself.
- Speak up if you have a complaint.

If you see something, say something.

This is the message we want to send employees. Both your policies and practices should strongly encourage or require employees to report issues to management.



Retaliation



Federal and state law prohibit any type of retaliation against any person for making a good faith, legitimate complaint of sexual harassment or for participating in the investigation of a complaint.



Which of the following could be retaliation if an employer acts because of the employee's activity?

- A. Reprimand the employee or give a performance evaluation that is lower than it should be
- B. Treat a family member negatively (ex. cancelling a contract with the employee's spouse)
- C. Threaten to make, or actually make reports to authorities (ex. reporting immigration status or contacting the police")
- D. Spread false rumors
- E. All of the above



Which of the following could be retaliation if an employer acts because of the employee's activity?

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- D. Spread false rumors
- E. **All of the above**



Benefits of a Respectful Workplace

- Respect Contributes to Job Satisfaction
- Respect Increases Employee Engagement
- Respect Creates a Fair Environment
- Respect Improves Knowledge Sharing
- Respect Improves the Bottom Line



Respectful Workplace

75% of people are **hired** for their **technical skills**.

75% of people are **let go** because of their **people skills**.



Demographics Exercise

- First, we are going to give you a description of an individual.
- Next, we will give you 10 seconds to write down as many demographics about the individual as you can based on your mental picture of them. Try to list their age, race, sex, religion, and anything else your mental picture includes.



Individual One

Individual One's parents divorced when they were a child. Individual One dropped out of college to do administrative work in a law firm. They also worked as a waitress, house painter, bartender, comedian, and went on to win the Presidential Medal of Freedom. Individual One got married at fifty years old. Individual One is dedicated to animal rights and is a vegetarian.

Individual One is ...



Ellen DeGeneres



Individual Two

Individual Two's father worked for the US Department of Labor and their mother worked for the Illinois Attorney General. Individual Two is a Christian musician. Individual Two has volunteered on various political campaigns at the state and national level. Individual Two recently made a one million dollar donation to a local school system.

Individual Two is ...



Chance the Rapper



Individual Three

Individual Three was born in Israel to a homemaker and a Doctor. Individual Three attended Harvard University and spoke to its 2015 graduating class. Individual Three is part-owner of a professional sports team. Individual Three has two published research papers and speaks six languages.

Individual Three is ...



Natalie Portman



Scenario

A father and son were involved in a car accident in which the father was killed and the son was seriously injured. The father was pronounced dead at the scene of the accident and his body was taken to a local morgue. The son was taken by ambulance to a nearby hospital and was immediately wheeled into an emergency operating room. A surgeon was called. Upon arrival and seeing the patient, the attending surgeon exclaimed “Oh my God, it’s my son!”

Explain what happened.

Scenario

A father and son were involved in a car accident in which the father was killed and the son was seriously injured. The father was pronounced dead at the scene of the accident and his body was taken to a local morgue. The son was taken by ambulance to a nearby hospital and was immediately wheeled into an emergency operating room. A surgeon was called. Upon arrival and seeing the patient, the attending surgeon exclaimed “Oh my God, it’s my son!”

Explain what happened.

ANSWER: The doctor is the child’s mother.



Unconscious / Implicit Bias

- Implicit bias occurs because, over time, our brains create associations between things. This forms actual pathways in our brain, which are unconsciously strengthened every time the association is confirmed.
- Implicit biases come from media, family, friends, school, experiences, work, and more.
- The exercise we just did demonstrated some of our own implicit biases.



How to Address Implicit Bias in the Workplace?

- Recognize we all have biases.
- Stop & think. Don't always trust your first impression.
- Be curious about people's differences.
- Don't try to suppress your biases.
- Don't be too hard on yourself.
- Keep processes simple.
- Schedule demanding work separate from "people decisions".
- Make sure you keep yourself well rested and well fueled.
- Challenge negative stereotypes and assumptions.



Implicit Bias in the Workplace

- It is important that employees are aware of their own implicit biases and recognize when they impact our actions.
- We want all employees to treat everyone in the workplace, including co-workers and customers, with respect.
- Encourage employees to listen to the people around them.



Disrespectful and Offensive Behaviors

- Examples:
 - Consistently getting someone's name wrong
 - Passive aggressive comments
 - “You are acting like a girl”
 - Failing to acknowledge someone's presence



Keep Certain Discussions Out of the Workplace

- There is no constitutional right to free speech in a private workplace.
- Certain speech may violate anti-harassment and discrimination laws
- Certain speech may violate company policies
- Certain speech may violate best practices and exhibit poor judgment

End Result

- If employees Respect others and
- take Responsibility for their behavior
- then they will be more Relaxed at work
- and Rest at night.

R & R

QUESTIONS?

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Stoll Keenon Ogden PLLC

September 26, 2022



What to Expect During a Rate Study

Robert K. Miller

Straightline Kentucky LLC

$a \longrightarrow b$

What is a Rate Study?

- ✓ A calculation of a utility's revenues and expenses...
- ✓ Using methods acceptable to the Kentucky Public Service Commission...
- ✓ To support an application to change the utility's tariff...
- ✓ To ensure water service in compliance with state regulations and customer expectations.

Reasons to Have a Rate Study

Ordered by Kentucky
Public Service Commission



- ✓ Certificate of Public Convenience and Necessity
- ✓ Purchased Water Adjustment
- ✓ Newly issued or refinanced debt
- ✓ Other reasons determined by Commission

Determined by Board of
Directors



- ✓ Financial necessity
- ✓ Other reasons determined by Board of Directors

Getting Started

- ✓ Identify targeted application date and board meeting prior to that date.
- ✓ Notify Staff, Customers, Auditor, Engineer, and Attorney.
- ✓ Determine what type of rate study should be prepared.
- ✓ Determine who will perform rate study.
- ✓ Identify the point of contact for the utility.



What Type of Rate Study is Needed?

- ? Are you merging two or more systems?
- ? Have you added or lost a large commercial or industrial customer?
- ? Are you preparing to adopt a large multi-year capital program?
- ? Do you simply need to update your rates to reflect changes in costs?



Who Should Perform Rate Study?



- ✓ Staff?
- ✓ Engineer?
- ✓ Auditor?
- ✓ Consultant?
- or
- ✓ **Kentucky Rural Water Association**

About Kentucky Rural Water Association



Districts / Associations *may be* eligible for funding from:

- ✓ Kentucky Division of Water grant
- ✓ Appalachian Regional Commission grant

Types of Rate Studies

General Rate Case

- *Requires an attorney and a cost-of-service study.*
- *Most detailed and fair to all customers.*
- *Most time-consuming and most expensive.*
- *Can be difficult to explain.*
- *Appropriate for system mergers, major changes in customer bases, and to support large capital investments.*
- *Yields different rate increases for different customers.*

Types of Rate Studies

Alternative Rate Filing with Cost-of-Service Study

- *Does not require an attorney.*
- *Detailed and fair to all customers.*
- *Can be difficult to explain.*
- *Less expensive than General Rate Case.*
- *Appropriate when several years since previous Cost-of-Service Study.*
- *Yields different rate increases for different customers.*

Types of Rate Studies

Alternative Rate Filing without Cost-of-Service Study

- *Least detailed, least time-consuming, and least expensive.*
- *Still fair to all customer classes when system has not significantly changed.*
- *More straightforward to explain.*
- *Appropriate for routine update to reflect changes in costs.*
- *Yields equal across-the-board increase.*

Selecting a Point of Contact for Utility

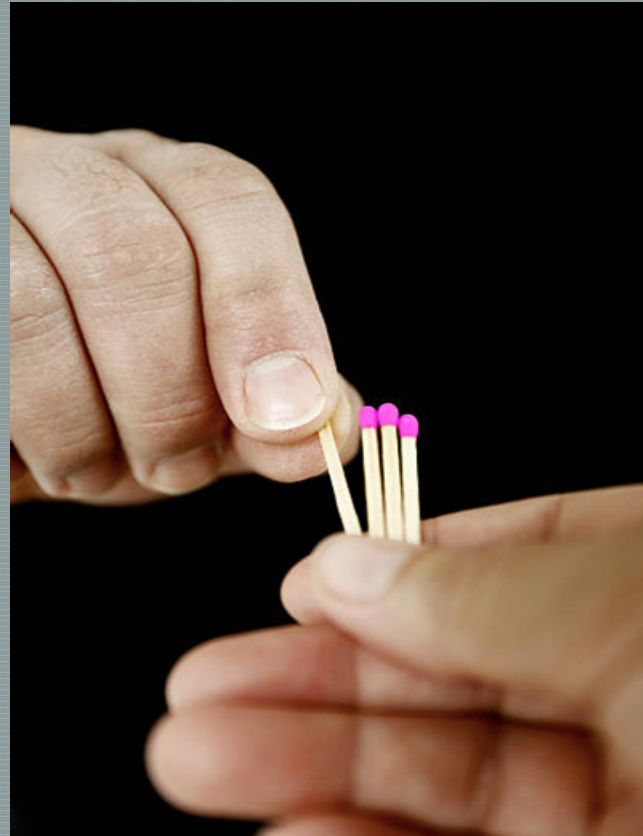
Board Chairman

Board Secretary

Utility Manager

Office Manager

Office Clerk



Alternative Rate Filing Process

- This application is governed by 807 KAR 5:076 Alternative Rate Adjustment Procedure for Small Utilities.
- Available to utilities with gross annual revenue less than \$5,000,000 who maintain separate financial records and have filed an annual report with PSC for the immediate past year and the prior two years.

ARF Rate Study Phases

1. Rate Study Phase – 8 to 12 weeks

Adjust for known and measurable changes since most recent annual report filed with KY PSC:

- Adjust reported metered sales to match existing billing records of customers, consumption, and rates.
- Adjust wages and staffing to reflect current employees.
- Adjust for limit to employer-funded portion of medical and dental premiums.
- Adjust depreciation to reflect limits on asset life ranges.
- Compute revenue requirement using Debt Service Coverage Method and Operating Ratio Method.

2. Board Review / Approval Phase – 2 weeks

- Review rate study report findings and recommendations.
- Determine which method for computing Revenue Requirements should be used: Debt Service Coverage method or Operating Ratio method.
- If applicable, determine whether to request a temporary Water Loss Reduction Surcharge.
- Determine whether to request that tariff changes to be implemented immediately or over two or more years.
- Adopt resolution for recommended rates and application.

3. Application Phase – 2 weeks

- Sign Resolution.
- Sign Statement of Disclosure of Related Party Transactions.
- Advertise Customer Notice 3 times.
- File application electronically on PSC website with email copy to the AG office.
- Receive PSC procedural order with schedule.



3. Request for Information Phase – 14 weeks



- Most time-consuming information discovery phase.
- Typically two or more iterations of detailed requests from PSC.

4. Wrap-Up Phase – 8 weeks

- PSC Staff releases Report to PSC Commission.
- Utility files response:
 - ✓ *Utility can agree with all Staff conclusions and request rates be approved.*
 - ✓ *Utility can agree with portions of Staff Report, but make exceptions.*
 - ✓ *Utility can ask for a hearing or informal conference.*
- PSC issues Final Order.
- Utility files revised tariff.
- Utility updates billing system with revised rates.



Lessons Learned



- ✓ Problems with Annual Report.
- ✓ Unable to provide records.
- ✓ Debt issued without authorization.
- ✓ Commissioners paid more than authorized amounts.
- ✓ Conflicts of interests.
- ✓ Failure to meet deadlines.
- ✓ Waiting too long between rate studies.

Remember:

PSC bats last!



Questions?



EVERYTHING YOU WANTED TO KNOW ABOUT CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND DEBT AUTHORIZATIONS*

*BUT WERE AFRAID TO ASK THE PSC

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ORDER OF PRESENTATION

- Who Must Obtain A CPCN?
- What Projects Require A CPCN?
- Preparing the Application for CPCN
- Approaches For Obtaining CPCN
- What Debt Instruments Require PSC Authorization?



WHO MUST OBTAIN A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY?



PUBLIC SERVICE COMMISSION

- Regulates **Utilities** & Enforces KRS Chapter 278
- Has Exclusive Jurisdiction Over **Utility** Rates & Service
- Investigates the Methods & Practices of **Utilities** To Require Conformance With KRS Chapter 278



WHO IS A UTILITY?

- Investor-Owned Water & Sewer Service Providers KRS 278.010(3)
- Water Districts KRS 278.015
- Water Associations KRS 278.012
- WD/WA Sewer Operations



WHO IS **NOT** A UTILITY?

- Municipal Utilities
- Metropolitan Sewer Districts
- Joint Sewer Agencies
- Sanitation Districts
- Water Commissions



WHAT PROJECTS REQUIRE A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY?



KRS 278.020(1)

No person, partnership, public or private corporation, or combination thereof shall . . . begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010, except . . . ordinary extensions of existing systems in the usual course of business, until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.



WHAT REQUIRES A CERTIFICATE?

- Construction of Any Plant or Facility
- Installation of Equipment on Large Scale (e.g., metering equipment)
- Repurposing of An Existing Facility
- Pre-Construction Contracting
- **Acquisition of Facility???**



DOES NOT REQUIRE A CERTIFICATE

- Purchase of Building or Land
- Maintenance/Replacement Projects
- Demolition/Destruction of Existing Facility
- Acquisition of Non-Jurisdictional Facilities
- Extensions In the Ordinary Course



EXTENSIONS IN THE ORDINARY COURSE

“A certificate of public convenience and necessity shall not be required for extensions that do not create wasteful duplication of plant, equipment, property or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general or contiguous area in which the utility renders service, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers.”

807 KAR 5:001, §13(3)



EXTENSIONS IN THE ORDINARY COURSE: THE FACTORS

- No **Wasteful** Duplication of Plant or Facilities
- No Conflict With Existing Certificates or Service of Other Utilities
- Capital Outlay Is Insufficient to **Materially Affect** Existing Financial Condition of Utility
- Will Not Result In **Increased Charges** to Customers



EXTENSIONS IN THE ORDINARY COURSE: WASTEFUL DUPLICATION

- “Excess of Capacity Over Need”
- “Excessive Investment In Relation To Productivity” – Investment’s Cost-effectiveness
- Unnecessary Multiplicity of Physical Properties
- Premature Replacement
- **Any Duplication Requires Formal Review**



EXTENSIONS IN THE ORDINARY COURSE: MATERIALLY AFFECT

- Percentage of Net Utility Plant
 - Ordinary if less than 10% (**Abandoned**)
 - 2 Percent Rule (Staff Opinions)
 - 1 Percent Rule — Case No. 2014-00171
- Issuance of Debt is **NOT A FACTOR**
- Each Project is considered individually unless related



EXTENSIONS IN THE ORDINARY COURSE: MATERIALLY AFFECT

- Projects Financed With Others' Funds
 - Not Material if Customer finances total amt
 - Deemed Not to Affect Utility's Financial condition
- Government Grants equivalent of customer financing? No material effect? **(Unclear)?**
- Implications for projects funded by ARRA

CERTIFICATE OF PUBLIC CONVENIENCE & NECESSITY CONTINUUM

CERTIFICATE NOT REQUIRED

- Percentage of Net Plant
- Presence/Lack of Rate Impact
- Debt Issued to Finance Project
- Other Factors

10% Rule

Project is 2.1% of net plant (12-269)

Project is 3.2% of net plant (99-310)

Project is 1.5% of net plant (92-028)

Project is 5.0% of net plant (07-424)

Project is 1.0% of plant (07-058)

Project is 0.4% of plant (14-171)

Project is 92% of net plant – no rate increase (16-065)

Project is 55% of net plant – revenues offset expenses (14-368)

45%

30%

15%

5%

1%

CERTIFICATE REQUIRED

Project is 42.4% of net plant (371 S.W.2d 20)

Project is 14.7% of net plant (09-010)

Project is 13.24% of net plant (04-292)

Project is 16.4% of net plant (09-010)

Project is 16.3% of net plant (15-089)

Project is 4.7% of net plant – outside financing (07-014)

Project is 5.56% of net plant (10-244)

Project is 0.8% of net plant (15-108)

Project is .65% of plant – possible rate increase (13-365)

Project is 0.75% of net plant (16-181) – possible wasteful duplication

Projects are 0.11% - 1.37% of net plant – Utility must request declaratory ruling (02-352) (02-474) (05-164) (06-033) (07-509) (14-292) (15-284)



“WATER DISTRICT EXCEPTION

- KRS 278.020(1) amended in 2019
- No Certificate of Public Convenience & Necessity if:
 - Total Cost < \$500,000 **OR**
 - Project does not involve issuance of debt requiring PSC approval **AND** no rate increase will result
- Applicable only to **Class A & B** Water Districts & Associations
- Expires at end of Biennium Unless Reauthorized
- Applies to “**water line extension or improvement project**”



“WATER DISTRICT EXCEPTION”

- PSC Has Limited Applicability To Water Mains
- Case No. 2016-00255 – Installation Of An Automated Meter System (08/03/2016)
- Held: “[T]he proposed installation of the new metering system is not a ‘waterline extension or improvement project,’ as it **does not extend or improve an existing waterline**”
- Adopts reasoning of PSC Staff Opinion No. 2012-024 (12/19/2012)



“WATER DISTRICT EXCEPTION”

Is a “water main improvement project” limited to construction of water mains only?

- PSC Staff Opinion No. 2017-002
- Water Association proposes to construct water booster station, including 300 feet of 2” water line, & install pressure reducing valve
- PSC Staff: “[T]he project improves existing water lines and qualifies as a ‘water line extension or improvement project.’”
- Project involving non-mains may qualify if beneficial effect on existing water mains



METHOD OF ANALYSIS

- Water District Exception Applicable?
 - Water Main Extension or Improvement?
 - \$500,000 or less?
 - No debt issued & no rate increase required?
- Construction of Facility OR Large Scale Installation of Equipment?
- Purchase?
- Replacement/Maintenance?
- Directly Debt Financed?
- Percentage of Net Utility Plant



WHEN IN DOUBT

- Request Declaratory Order
- CYA: Private Attorney Opinion Letter
 - Rigorous/Thorough Analysis Essential
- Avoid Requests for Staff Opinion
- DO **NOT** Request A Deviation - Not Permitted Under Statute
- Apply for a Certificate



CONSTRUCTING WITHOUT CERTIFICATE: CONSEQUENCES

- Assessment of \$2,500 Penalty To:
 - Utility
 - Utility Management
 - Engineering Firm/Contractors
- Injunctive Relief
- Does Not Affect Rate Recovery



PREPARING THE APPLICATION FOR A CERTIFICATE



CONTENTS OF APPLICATION

- Facts to Show Public Convenience & Necessity Require Project
- Franchises/Permits
- Full Description of Proposed Location/Route of Facilities
- Description of Manner of Construction
- Maps/Drawings/Specifications
- Method For Financing the Proposed Project

807 KAR 5:001, § 15



DEMONSTRATING NECESSITY

- Condition of Existing Facilities
- Ability to Meet Existing Demand/Future Demand
 - Adequate Service: Sufficient Capacity to meet the maximum estimated requirements during the year
- Availability of Other Sources
- Technical Feasibility
- Economic Feasibility
 - Least Cost vs. Most Reasonable
 - Duplication of Facilities Not Necessarily Fatal



DEMONSTRATING NECESSITY: PART II

- Full and Complete Narrative in Application
- Preliminary/Final Engineering Reports
- Written Testimony
 - Historical Background
 - Opportunity to Address Critical Issues
 - Explain Engineering Aspects of Application
 - Best Opportunity to Present Case for Certificate
- Other Studies (e.g. hydraulic studies)



PERMITS

- List /Provide Evidence of Required Permits
 - Division of Water Approval of Plans & Specifications
 - Discharge Permits
 - Army Corp of Engineer Permits
 - Highway Encroachment Permits
 - Historical/Preservation Permits
- Note Status of Obtaining Easements
- PSC is **Last Stop**: Request Deviation from Filing Requirements if Any Permits Not Yet Obtained



PROCEDURE

- Application
- Discovery
- Interested Parties May Intervene, But Generally No Intervenors
- Hearing on Application Seldom Held
- Final Order: 90 – 120 Days from filing of Application



TIMING

- Obtain PSC Approval Prior to Executing Construction/Materials Contract
- File Application after selecting winning bid if possible
- Alert PSC to Timing Requirements for Final Decision (Remind Frequently)
- If Selecting Contract Prior to Final PSC Order, Make Contract Contingent on Grant of Certificate



SUGGESTED APPROACHES TO OBTAINING PSC APPROVAL



EXPEDITING PSC REVIEW

- Pre-Filing Conference with PSC Staff
- Confer with AG re: Application
- Advise PSC of Critical Dates
- Advise PSC Staff of Willingness to Accept Informal Discovery Procedures
- Post-Filing Informal Conference



EXPEDITING PSC REVIEW

- Use Filing Checklists
- Include Written Testimony with Application
- Ensure Any Document Prepared By Professional Engineer Are Stamped/Signed
- Periodic Inquiries to PSC Staff/Executive Director



RURAL DEVELOPMENT FUNDING: AVOIDING PSC REVIEW

- KRS 278.023 requires expedited review of RD-funded Projects
- Legislature Assumes RD has adequately reviewed project – Two reviews unnecessary
- Project must be part of Financing Agreement between RD or HUD and WD or WA
- Utility Files Limited Documentation



DEBT AUTHORIZATION



KRS 278.300

“No utility shall issue any securities or evidences of indebtedness, or assume any obligation or liability in respect to the securities or evidences of indebtedness of any other person **until it has been authorized so to do by order of the commission.**”



WHAT IS AN EVIDENCE OF INDEBTEDNESS?

- Bonds
- Notes
- KIA Assistance Agreement
- Lease to Purchase Agreement
- Installment Contracts



EXCEPTIONS TO REQUIREMENT

- Notes that are not payable for periods of more than two years
- Limit: Note may not be renewed for an aggregate period to exceed six year



MUST SHOW THAT ISSUANCE

- Is for lawful object/purpose
- Is necessary & appropriate for the utility's performance of its service to public
- Will not impair its ability to perform service to public
- Is reasonably and appropriate to perform service to public



CONSEQUENCE OF NON-COMPLIANCE

- Assessment of \$2,500 Penalty To:
 - Utility
 - Utility Management
 - Board Members
 - Legal Counsel
- Questions re: legality of debt



QUESTIONS?

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