

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

**ELECTRONIC APPLICATION OF)
KENTUCKY RURAL WATER)
ASSOCIATION AND STOLL KEENON) CASE NO. 2022-00320
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: cameron.myers@skofirm.com.

6. The Joint Applicants propose to sponsor and conduct a water management training program on October 26, 2022 at Holiday Inn University Plaza/Sloan Convention Center, 1021 Wilkinson Trace, Bowling Green, Kentucky. The program is entitled "Seventh 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 of the presenters may present virtually if the COVID-19 pandemic worsens. 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 the following topics:

a. **Recent Developments in Utility Regulation.** 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. **Sexual Harassment and Respectful Workplace.** 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. **What to Expect During a Rate Study.** 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. **Disaster Preparedness for Water Utilities.** A summary of the challenges faced by small, remote water utilities in responding to natural disasters such as the December 2021 Western Kentucky tornados and the July 2022 Eastern Kentucky flooding which impacted water systems in five (5) counties, including a discussion of (i) how KRWA and Kentucky WARN responded to these natural disasters with mutual aid resources from utilities, state agencies, and non-profit organizations, (ii) how participating utilities provided support for infrastructure assessment, repair and operations, (iii) how WaterStep worked with DOW and Kentucky Public Health to provide mobile water treatment to remote communities without access to potable water, and (iv) how lessons learned from these experiences will help utilities prepare for future natural disasters;

e. **Hot Water Topics.** A discussion on recent environmental law issues impacting water and wastewater utilities, including EPA's recent Lead and Copper

Rule Revisions guidance, the evolving PFAS landscape, the Biden Administration's proposed rule to once again change the definition of Waters of the U.S., developments in Clean Water Act point source liability for discharges via groundwater and 401 water quality certification, and the recently published proposed rule to change aspects of the Risk Management Program; and

f. **Everything You Wanted to Know About CPCN's and Debt Authorizations, But Were Afraid to Ask the PSC.** 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.

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.

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

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).

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.

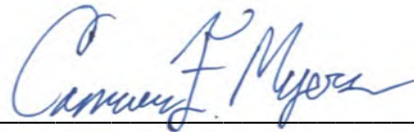
17. Joint Applicants will admit representatives of the Commission to the proposed training program at no charge to permit such representatives to assess the quality of the program's instruction, monitor the program's compliance with Commission directives, regulations or other requirements, or perform 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 “Seventh Annual Water Law Series” for six hours of annual water district management training.

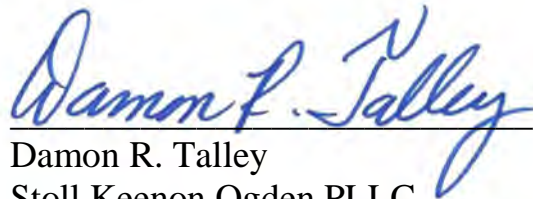
Dated: September 23, 2022

Respectfully submitted,



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

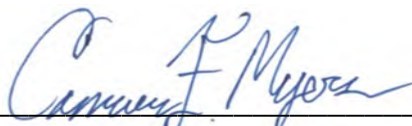


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*Counsel for Kentucky Rural Water
Association and Stoll Keenon Ogden PLLC*

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 23, 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

7th 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 26, 2022

7:45 - 8:25 Registration and Refreshments

8:25 - 8:30 Welcome and Program Overview – Scott Young

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 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.

9:30 - 9:45 BREAK

9:45 - 10:45 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.

10:45 - 11:00 BREAK

11:00 - 12:00 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.

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

AFTERNOON AGENDA

1:00 - 2:00 Disaster Preparedness for Water Utilities

Greg Heitzman and Joe Burns

Small water systems in Kentucky are often not prepared for a natural disaster like the December 2021 Western Kentucky tornados or the July 2022 Eastern Kentucky flooding impacting water systems in five (5) counties. This presentation will provide a summary of the challenges faced by small, remote water utilities, and how KRWA and Kentucky WARN responded with mutual aid resources from utilities, state agencies, and non-profit organizations. Participating utilities provided support for infrastructure assessment, repair and operations. WaterStep worked with DOW and Kentucky Public Health to provide mobile water treatment to remote communities without access to potable water. A summary of lessons learned from these experiences will help utilities prepare for future natural disasters.

2:00 - 2:15 BREAK

2:15 - 3:15 Hot Water Topics – Sarah Jarboe, Beth Spinks, and John West

This presentation focuses on bringing attendees up-to-date on environmental law issues that impact water and wastewater utilities. Topics that will be addressed include EPA's recent Lead and Copper Rule Revisions guidance, the evolving PFAS landscape, the Biden Administration's proposed rule to once again change the definition of Waters of the U.S., developments in Clean Water Act point source liability for discharges via groundwater and 401 water quality certification, and the recently published proposed rule to change aspects of the Risk Management Program.

3:15 - 3:25 BREAK

3:25 - 4:25 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.

4:25 - 4:30 Closing Remarks & Administrative Announcements – Scott Young

EXHIBIT 2



Biography
for
Joe Burns
Kentucky Rural Water Association

Joe Burns, Senior Program Coordinator, has been with Kentucky Rural Water Association (KRWA) since April 1994. His experiences at KRWA have included implementing the NRWA source water protection program and oversight of the NRWA wellhead program and the Division of Water wellhead protection assistance grant. Joe currently oversees the Utility Optimization Program and works with utilities in the program to provide technical, managerial, and financial support. Prior to joining the KRWA staff, Mr. Burns was a Senior Groundwater Hydrologist for the Kentucky Division of Water beginning in July, 1991, where he was responsible for formulating Kentucky's Wellhead Protection Strategy. He also has experience in drilling and environmental monitoring. Joe holds Bachelor of Science and Master of Science degrees in Geology from Eastern Kentucky University.



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.



625 Myrtle Street
Louisville, Kentucky
502-533-5073

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

This is an advertisement

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Sarah P. Jarboe

Partner;
Co-Chair, Environmental Law Practice Group

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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

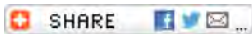
- Best Lawyers Ones to Watch, 2021
- SuperLawyers Rising Star, 2020-2021

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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Elizabeth S. Muyskens

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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.



Biography
for
Joye Beth Spinks
English, Lucas, Priest & Owsley, LLP

Joye Beth Spinks is an Associate at English, Lucas, Priest & Owsley, LLP in Bowling Green, Kentucky, concentrating in the areas of environmental law and civil litigation.

As an environmental lawyer, Joye Beth represents corporate clients who vary in size and industry including water treatment, aluminum processing, scrap metal recycling, and food production. Joye Beth advises clients on permitting, compliance, and enforcement issues under the Clean Water Act; Clean Air Act; Resource Conservation and Recovery Act; Comprehensive Environmental Response, Compensation, and Liability Act or Superfund; and Pesticide Registration Improvement Act; as well as state environmental programs. Joye Beth also advises clients about the impact of new state and federal environmental legislation.

As a litigator, Joye Beth works with plaintiffs and defendants, with experience in pre-suit investigations and negotiations, discovery, motion practice, and appeals. Joye Beth works with clients in both state and federal court on civil issues including breach of contract, torts, qualified immunity, civil rights and professional malpractice.

Joye Beth is a native of Bowling Green, Kentucky. Prior to law school, Joye Beth spent four years teaching biology and environmental science to high school students in Beaver Dam, Kentucky.



Damon R. Talley

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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.



Biography

for

John West

English, Lucas, Priest & Owsley, LLP

John West has joined ELPO Law as Senior Counsel. John is a seasoned trial attorney with three decades of litigation experience. Over the last twenty years he has focused on environmental law issues involving water, air, waste management and natural resources.

John is a nationally recognized labor arbitrator for over thirty years presiding over and resolving labor disputes in both the public and private sector. He has been listed with the Federal Mediation and Conciliation Service since 1993.

Prior to joining English, Lucas, Priest and Owsley, John worked for the Kentucky Energy and Environment Cabinet representing the Division of Water Quality, Division for Air Quality, Division of Waste Management, and the Division of Natural Resources.

John has deep knowledge and experience with water environmental issues under the Clean Water Act, and the Safe Drinking Water Act and the state laws implementing them. His knowledge and experience includes implementing Title V of the Clean Air Act, permit and dispute resolution for facilities subject to Prevention of Significant Deterioration and New Source Performance Standards, and National Emissions Standards for Hazardous Air Pollutants programs. Additionally, John has handled cases involving the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund), and the Resource Conservation and Recovery Act.

John is a seasoned litigator in the administrative, state, and federal courts throughout Kentucky. This includes matters concerning water discharges from agricultural sources such as animal feeding and dairy operations, stormwater runoff, public and private wastewater treatment plants, municipal sewers, contaminated drinking water, oil wells, natural gas wells, coal, floodplain construction, dam safety, stream construction, and wetlands. He has handled air issues concerning asbestos abatement, aluminum foundries, battery manufacturing plants, coal fired power plants, coal gasification plants, charcoal production, chemical manufacturing, limestone operations, and treated lumber. John has litigated and negotiated matters involving waste management and hazardous waste disposal issues, underground storage tanks, lighting products, and municipal waste sites. He has also worked in surface mining reclamation.

When not litigating for the Commonwealth of Kentucky, John continued to develop his extensive labor arbitration practice. He is published and cited as authority in the legal treatise ELKOURI & ELKOURI, HOW ARBITRATION WORKS (7th ed. 2012). John is a published author of labor

arbitration decisions in Labor Arbitration Reports, by the Bureau of National Affairs, Inc., and Labor Relations Reporter, published by CCH, Inc.

He has written decisions in the areas of absenteeism, arbitrability, bargaining unit work, conduct (off-duty/personal), disability, discipline (discharge and non-discharge), discrimination, drug/alcohol offenses, health/hospitalization, hiring practices, holiday pay, holidays, incentive pay, job classification and rates, job performance, job posting/bidding, layoffs/bumping/recall, leave, management rights, past practices, promotion, retirement, safety/health conditions, seniority, sexual harassment, subcontracting/contracting out, vacation, vacation pay, violence and threats, wages, work hours/schedules/assignments, and working conditions/work orders.

John has presided over arbitration cases in the following industries: agriculture, automotive, bakery, beverage, building products, cement, chemicals, coal, dairy, distillery, electrical equipment/appliances, foundry, health Care, hospital/nursing home, iron, lumber, machinery, meat packing, metal fabrication, mining, police and fire, prison guard, public sector grievance, pulp and paper, steel, transportation, trucking and storage, and utilities.

When he isn't working, John enjoys renovating historic homes, spending time outdoors, and spending quality time with his family.



Gerald E. Wuetcher

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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



7th ANNUAL WATER LAW SERIES

October 26, 2022



Sponsored by:



HOT LEGAL TOPICS

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

October 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

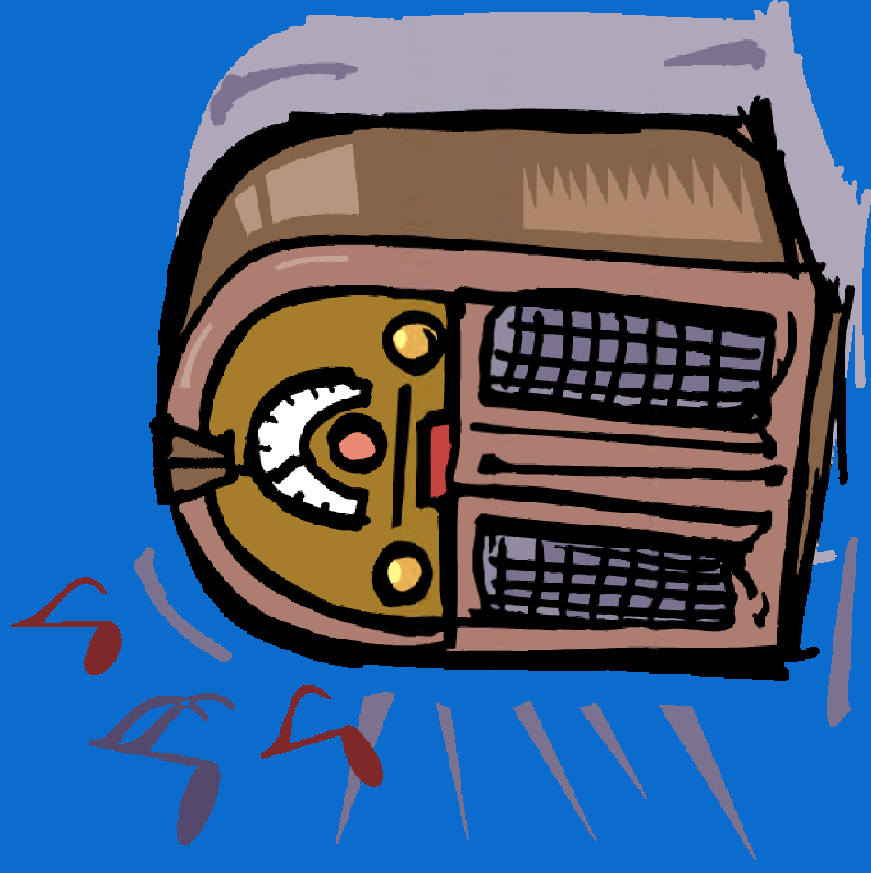
6. Notable PSC Orders
7. Borrowing Money
8. Surcharges
9. Recent PSC Orders
10. Cases to Watch



DISCLAIMER



PSA for PSC



Reporting Requirements

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



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





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. 2021 - 343

(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



“ . . . for allegedly failing to comply with the Commission’s March 10, 2020 Order in Case No. 2019-00458. The willful failure to comply presents prima facie evidence of incompetency, neglect of duty, gross immorality, or nonfeasance, misfeasance, or malfeasance in office sufficient to make [the District’s] officers and manager subject to the penalties of KRS 278.990 or removal pursuant to KRS 74.025. The Commission finds that a public hearing should be held on the merits of the allegations set forth in this Order.”



PSC Case No. 2022 - 215

(cont.)

Manager's Defense:

- I Told Board
- I Called PSC and
Got Another Extension



PSC Case No. 2022 - 215

(cont.)

Board's Defense:

- Manager Told US
- Knew We Got an Extension
- Thought Manager Was Taking Care of It
- Manager Assured Us That He Got Second Extension



PSC Case No. 2022 - 215

(cont.)

Status:

- Discovery Stage
 - Multiple Rounds
 - Pandora's Box Opened
 - Commissioners' Appointments
 - Prove Fiscal Court Has Approved Your Salary
 - ? ? ?



PSC Case No. 2022 - 228

Date: 08-22-2022

Type: Failure to Comply
with PSC Order

Issue: Did Not Timely File
Rate Application


Decided: Pending



PSC Case No. 2022 - 228

(cont.)

Facts:

- PWA Case 2 Penny 
- Must File Rate Case by 04-15-2022
(6 Months)
- Nothing Filed by 08-22-2022
- PSC Opened Case



PSC Case No. 2022 - 228

(cont.)

Manager's Defense:

- Honesty
- I Never Read the Order
- I Never Told the Board
- Fell on His Sword †



PSC Case No. 2022 - 228

(cont.)

Board's Defense:

- Ignorance is Bliss
- Manager Never Told Us
- Manager's Job to Tell Us
- Acknowledged Ultimate Responsibility



PSC Case No. 2022 - 228

(cont.)

Affirmative Steps to Mitigate:

- Adopt New Procedure
 - All PSC Orders Forwarded to Board Members
- Engaged Services of RCAP to File Rate Case



PSC Case No. 2022 - 228

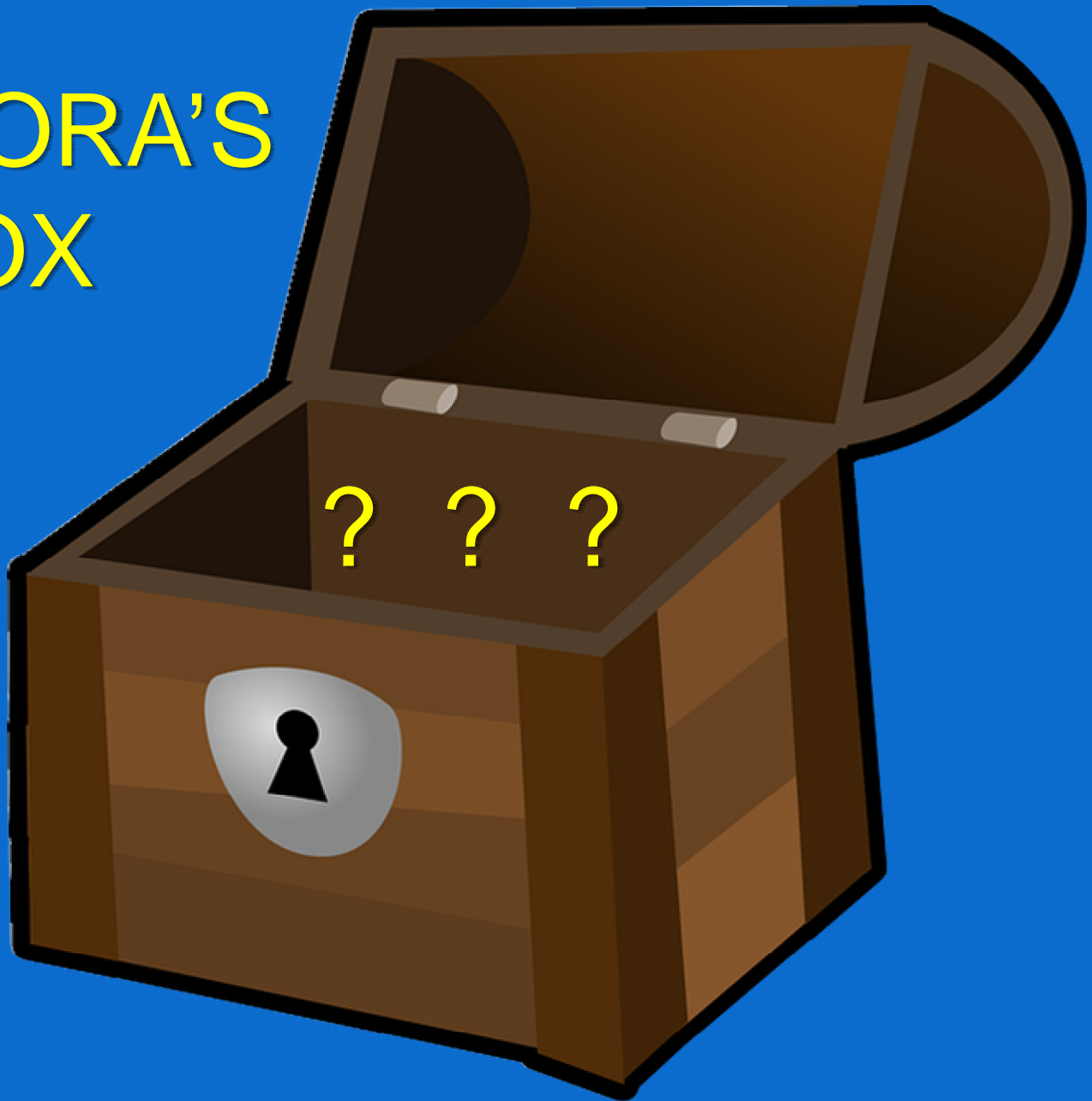
(cont.)

Status:

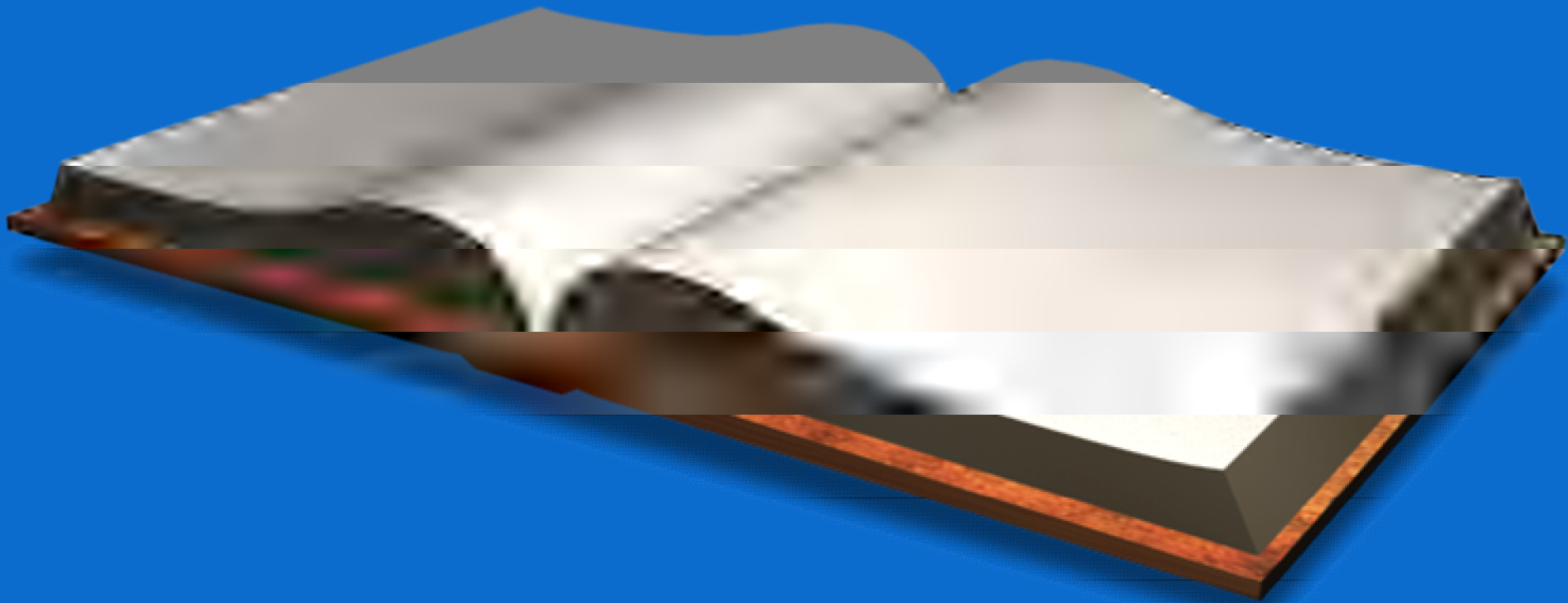
- Discovery Will Soon Begin
- District is Getting CJE to Re-appoint Commissioners



PANDORA'S BOX



MINUTES



What Are MINUTES?

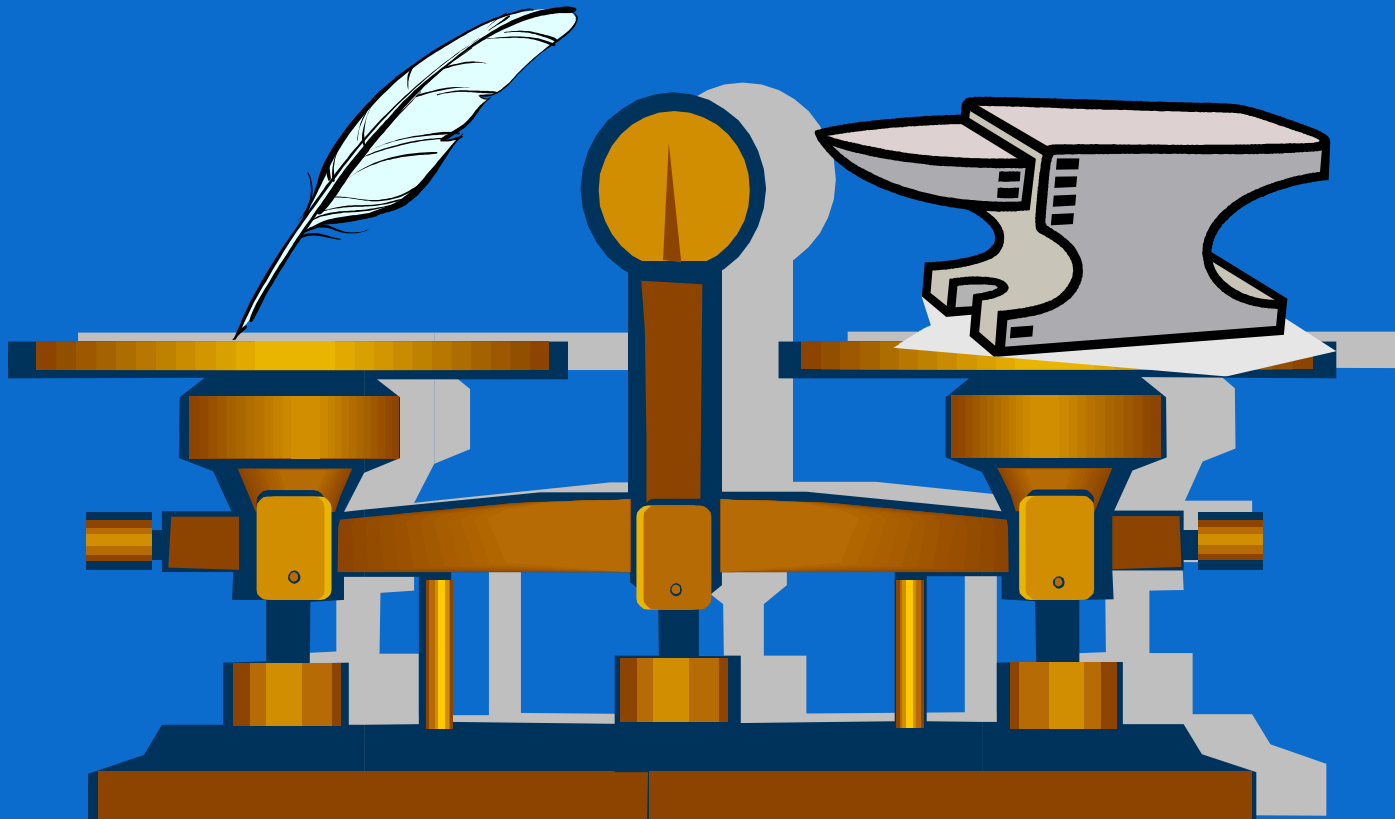
- Official Record
- Much, Much More . . .



**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



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

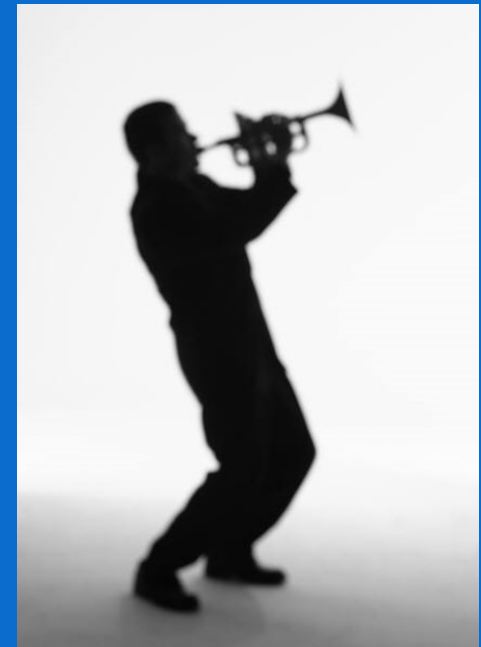
Cont.



Minutes

What **SHOULD** Be Included?

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



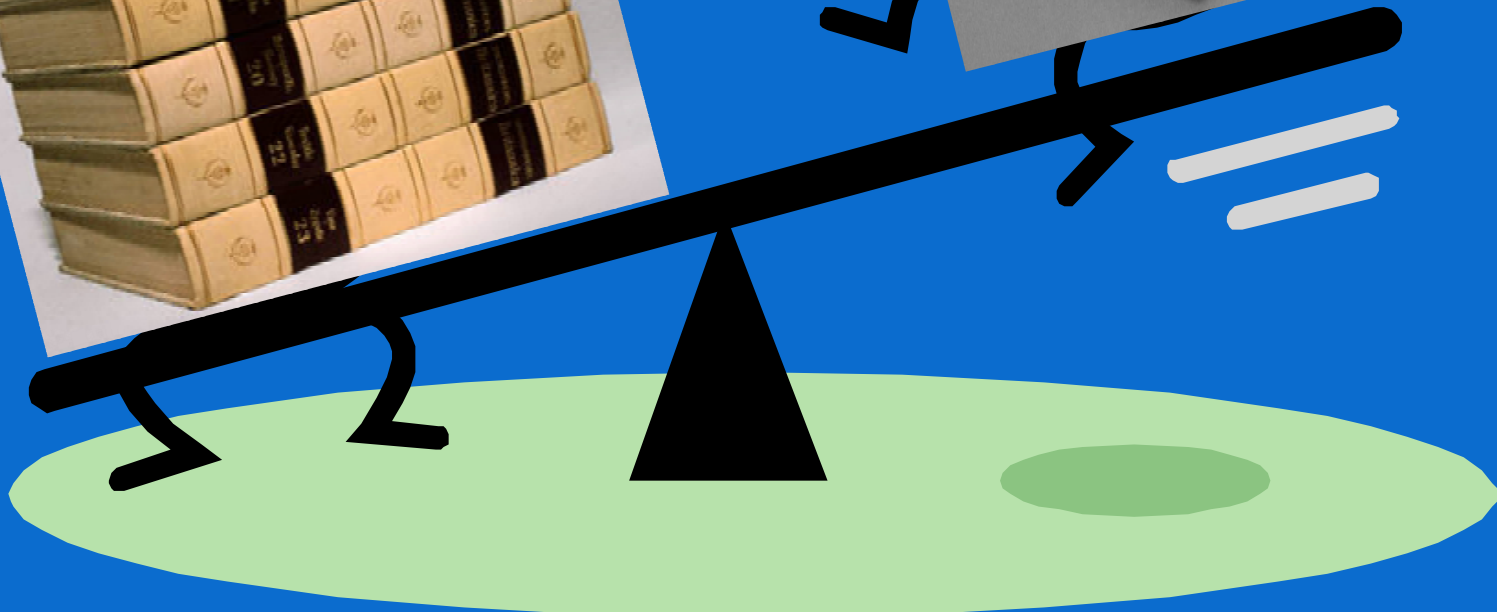
Minutes

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. Water Loss)
- Document Board's Oversight Role (e.g. Compliance with PSC Orders)
- 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. 2022 - 065

Filed: 3-29-2022

Utility: Southeastern Water Assoc.

Type: CPCN – New Office Bldg.

Issue: Reasonable Alternatives
Considered

Decided: 8-30-22



PSC Case No. 2022-065

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



PSC Case No. 2022-065

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



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



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



2022 Show Cause Cases Borrowing Money

First Case: 2022-061

Second Case: 2022-197



2022 Case # 1

Case No. 2022 - 061

Opened: 04 - 08 - 2022

Issue: KRS 278.300
(2 Violations)

Repeat Offender - 2013

Decided: Pending



2022 Case # 1

Facts: (1) Refinanced RD Loans
w/o PSC Approval
07-23-2021

Facts: (2) Bought Truck
w/o PSC Approval

- Bank Loan
- 75 Months

Discovered: PSC Staff – Rate Case



2022 Case # 1

Corrective Action:

- Filed Application for Retroactive Approval (Case No. 2021-465)
 - PSC Denied
 - No Retroactive Approval



2022 Case # 1

Defenses:

- Ignorance
- Lawyer Said No PSC Approval Needed
- Relied on Bank
- New Manager



2022 Case # 1

Case Status:

- Switched Lawyers
- Discovery Stage
 - 2 Rounds Thus Far
- Hearing Date: ???



2022 Case # 2

Case No. 2022 - 197

Opened: 08- 11 - 2022

Issues: Violated:

➤KRS 278.300

➤KRS 278.020

Decided: Pending



2022 Case # 2

Background Facts:

- 11-18-21: Purchased Office Bldg.
- 11-18-21: Financed Portion of Cost with a 7 year Loan
- 03-15-22: Applied for Retroactive Approval of Loan

... continued



2022 Case # 2

Background Facts (continued):

- 05-13-22: PSC Issues DR
- 05-??-22: Bank Loan PIF
- 05-27-22: PSC Application
Withdrawn by Utility

... continued



2022 Case # 2

Background Facts (continued):

- 06-20-22: PSC Dismisses Case & States Intent to File Show Cause Case
- 08-11-22: PSC Opens Show Cause Case



2022 Case # 2

Utility's Defenses:

- Loan Paid Off
- No CPCN Needed Since Building was Purchased & Not Constructed
- Relied Upon Advice of Counsel
- Good, Honest & Decent People



2022 Case # 2

Case Status:

- Discovery Stage
 - 1st DR Issued 09-07-22
- Hearing Date: ? ? ?



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 75 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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270-358-3187



Sexual Harassment and Respectful Workplace Training

Elizabeth S. Muyskens
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Stoll Keenon Ogden PLLC
October 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



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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 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.



STOLL
KEENON
OGDEN
PLLC

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?

Elizabeth S. Muyskens

(859) 231-3960

elizabeth.muyskens@skofirm.com

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

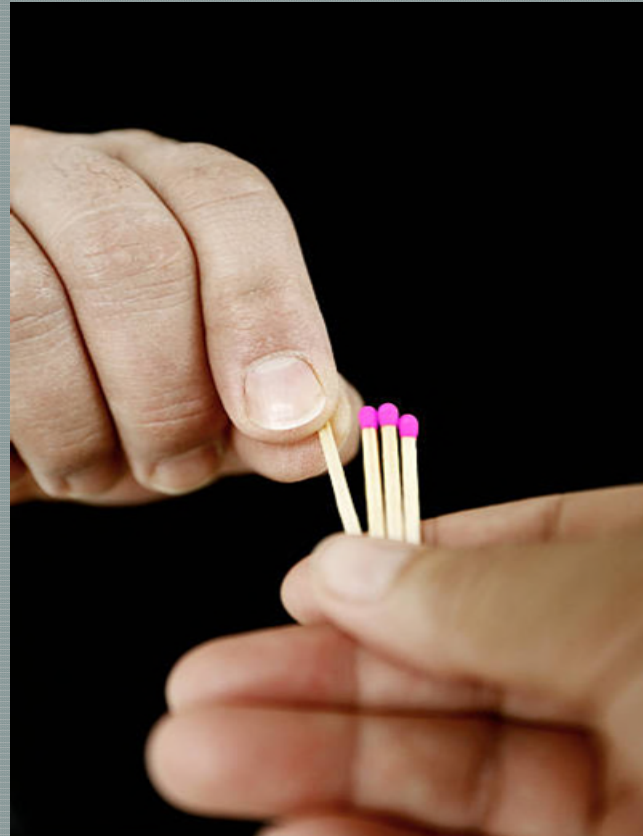
Board Chairman

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?

DISASTER PREPAREDNESS FOR WATER SYSTEMS LESSONS LEARNED FROM EASTERN KENTUCKY FLOODING.



**WATER LAW SEMINAR
SLOAN CONVENTION CENTER**

**BOWLING GREEN, KY
OCTOBER 26, 2022**

PRESENTERS:

**GREG HEITZMAN – BLUEWATER KY
JOE BURNS – KY RURAL WATER**



Disaster Preparedness for Water Systems - Lessons Learned from Eastern Kentucky Flooding.

By Greg Heitzman (BlueWater KY) and Joe Burns (KRWA)

Small water systems in Kentucky are often not prepared for a natural disaster like the December 2021 Western Kentucky tornados affecting Mayfield and Dawson Springs, or the August 2022 Eastern Kentucky flooding impacting water systems in Breathitt, Floyd, Knott, Letcher, and Perry Counties. This presentation will provide a summary of the challenges faced by small, remote water systems, and how Kentucky Rural Water Association and Kentucky WARN responded with mutual aid resources from utilities, state agencies and non-profit organizations. Participating utilities provided support for infrastructure assessment, repair and operations. WaterStep worked with Kentucky Division of Water and Kentucky Public Health to provide mobile water treatment to remote communities without access to potable water. A summary of lessons learned from this experience will help utilities prepare for future natural disasters.



Greg C. Heitzman | Contact: Gheitzman@bluewaterky.com

Greg Heitzman is President of BlueWater Kentucky, a management consulting firm serving the water industry. From 2011 to 2015, Greg 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. 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. He currently serves on the boards of Louisville Water Foundation, Kentucky Water Resources Research Institute, WaterStep, and the University of Kentucky Civil Engineering Advisory Board.



Joe Burns | Contact: j.burns@krwa.org

Joe Burns has been with Kentucky Rural Water Association since April 1994. In his present position as Program Coordinator, Joe is responsible for the oversight and implementation of the Small Water System Assistance program. This is program in partnership with KY Division of Water targets public water systems in non-compliance to provide the technical, financial, and managerial assistance needed to meet water quality goals and operational compliance. Joe also serves as the point of contact for Kentucky's water/wastewater Agency Response Network (KYWARN). Joe holds Bachelor of Science and Master of Science degrees in Geology from Eastern Kentucky University.

Presentation Outline

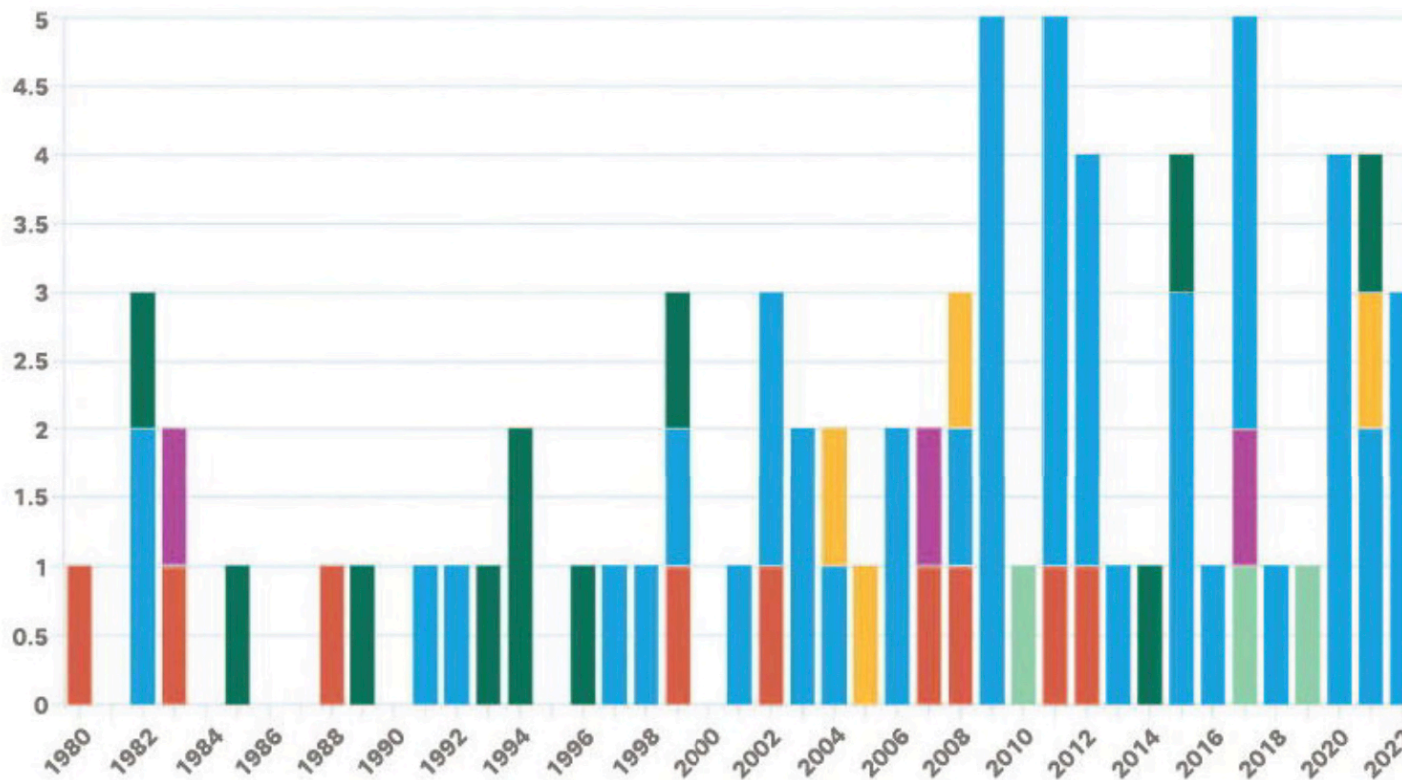
1. Introductions - Greg
2. The Challenge with Increasing Natural Disasters - Greg
3. Mutual Aid Program through Kentucky WARN – Joe
4. Mobile Water Treatment Systems - Greg
5. Regional Lily Pad of Resources – Greg
6. Lessons Learned – Greg and Joe
7. Credit to Partners

Kentucky's Natural Disasters

Kentucky billion-dollar disasters

*NOAA data up until July 11, before recent Eastern Kentucky flooding. All data adjusted for inflation.

■ Drought count
 ■ Flooding count
 ■ Freeze count
 ■ Severe storm count
 ■ Tropical cyclone count
■ Wildfire count
 ■ Winter storm count



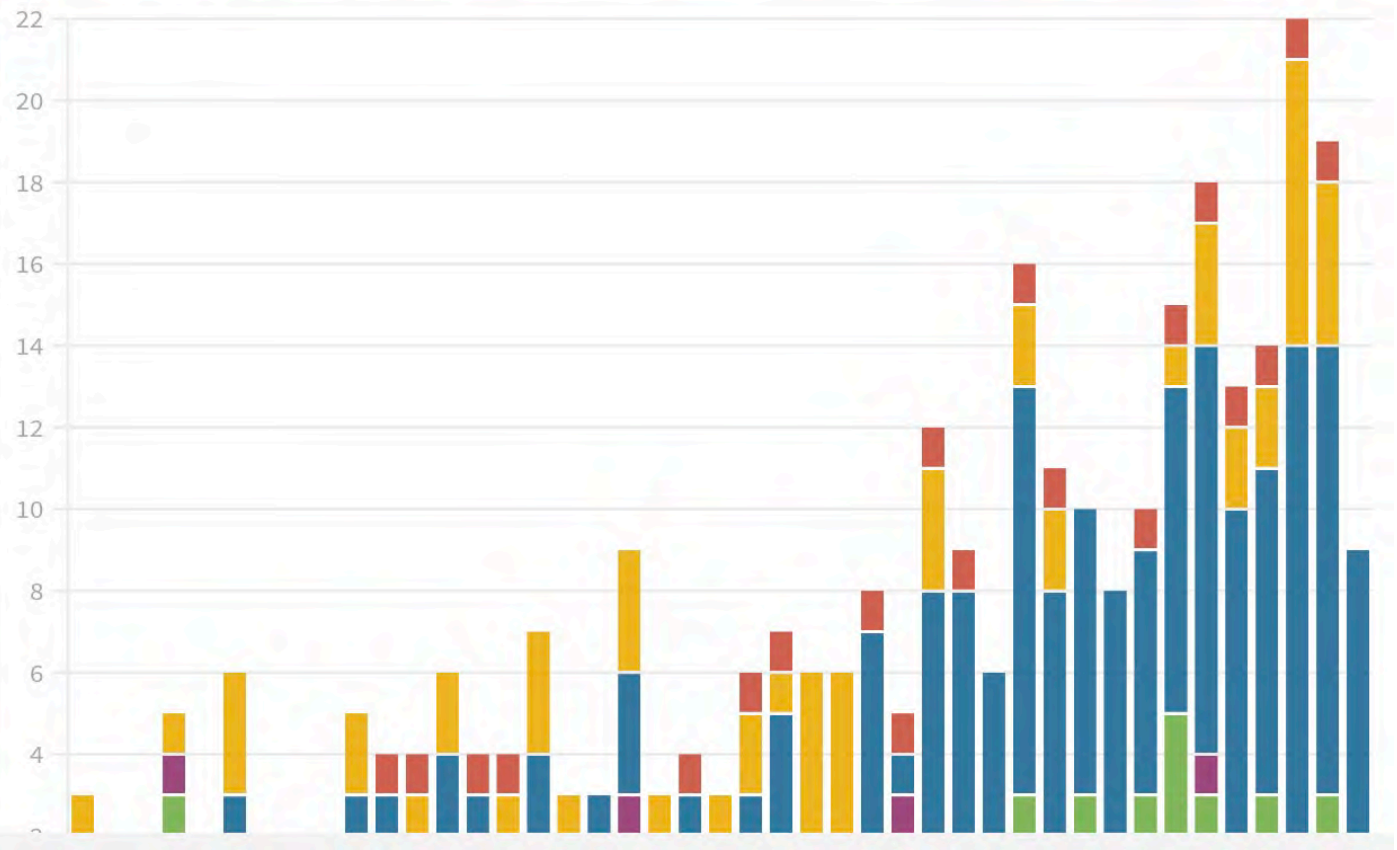
SOURCE National Oceanic and Atmospheric Administration; Connor Giffin/Courier Journal

US Natural Disasters

U.S. billion-dollar disasters

*NOAA data up until July 11, before recent Eastern Kentucky flooding. All data adjusted for inflation.

Legend: Drought count (orange), Flooding count (green), Freeze count (purple), Severe storm count (blue), Tropical cyclone count (yellow), Wildfire count (red), Winter storm count (light blue)



Western Kentucky Tornadoes – December 2021



National Weather Service Paducah, Kentucky
Graphic created 12/14/2021 11:16 PM C.T. Build



Eastern Kentucky Floods – August 2022



Mobile Water Treatment Pilot Program for Kentucky



Partnership between
WaterStep, KY Rural Water,
KY Public Health, US EPA



Division of Water

Greg Heitzman



What is the WOW Cart?

WOW Cart Mobile Water Treatment System: In 2018, WaterStep partnered with US EPA to assist in developing a mobile water treatment system to help communities following natural disasters or contamination of the public drinking water supply. The treatment unit has the following attributes:

- Must be portable (fit in a pickup truck and less than 750 pounds)
- Operate on 110 volt AC power or generator
- Multiple treatment methods (micro-filtration, carbon, UV, disinfection)
- Setup and deployment time within 1-3 hours
- Produce 10,000 to 80,000 gallons per day of safe water
- Treat any source water (river, lake, rainwater, groundwater, etc)

In 2016 WaterStep and EPA were recognized with the Teddy Roosevelt Government Leadership Award National Recognition for the WOW Cart.

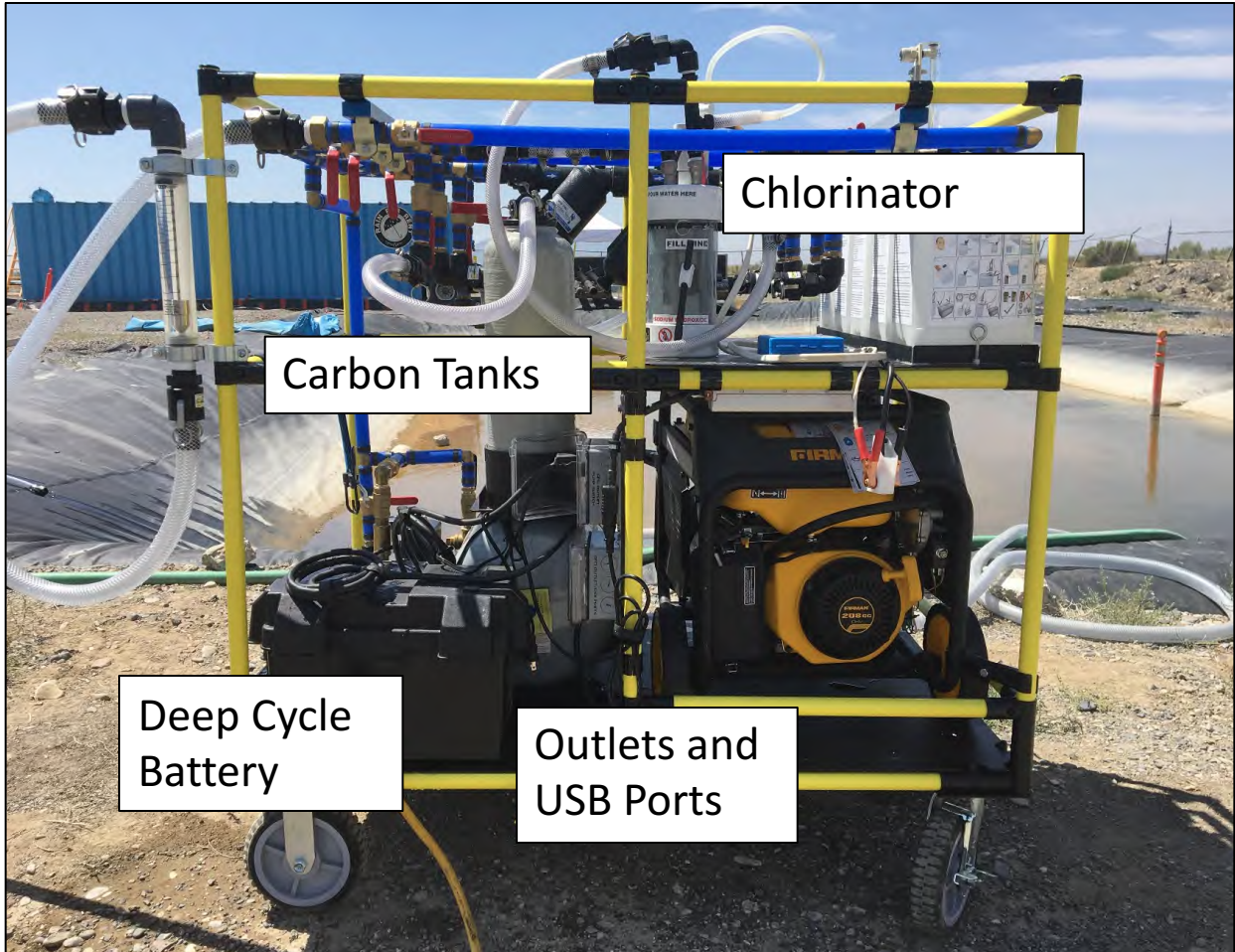
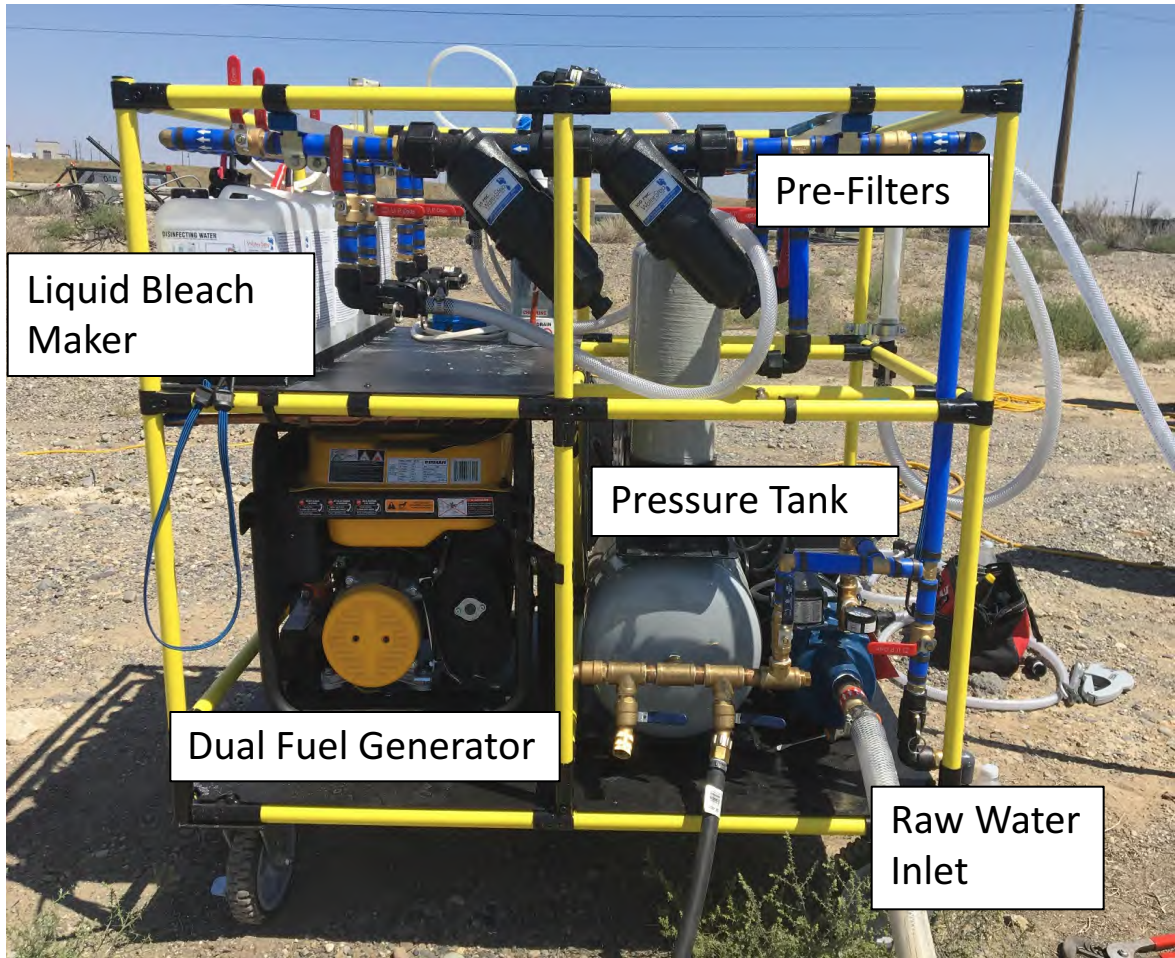


WOW = Water on Wheels

1. Mobile Water Treatment System developed by US EPA and WaterStep
2. Developed using EPA's Cooperative Research Program – CRADA
3. Four basic water treatment components:
 - ✓ Filtration
 - ✓ Carbon treatment
 - ✓ UV disinfection
 - ✓ Chlorine disinfection
4. Capacity 10,000 gallons a day
5. Runs on battery, solar, generator, or AC power



The WOW Cart





How can the WOW Cart be used?

By:

- Emergency Response Agencies
- State Water Agency Response Networks (WARN)
- Rural Water Associations
- Public Water Utilities
- NGOs
- Corporate Disaster Relief Teams

Where:

- Satellite Neighborhood Locations
- Community Centers
- Local fire/police stations
- Jails and Prisons
- Forest Firefighter Camps
- Hospitals, Clinics, and Nursing Homes
- Part of a comprehensive Lily pad Network



Development of the WOW Cart

Utilized a Cooperative Research and Development Agreement (CRADA) with WaterStep at the USEPA Test & Evaluation Facility in Cincinnati, Ohio



Bench-scale:

- Microbial disinfection challenges undertaken at the Test & Evaluation (T&E) Facility in Cincinnati, OH

Pilot-scale:

- Anthrax surrogate challenge at the Water Security Test Bed at Idaho National Lab
- Components deployed in Puerto Rico hurricane response

Full-scale:

- Secondary wastewater at the T&E Facility
- Microbial and diesel challenges at the Water Security Test Bed



- EPA ORD Conducted laboratory and short-term field evaluations
- Results indicated disinfection and removal of:
 - ✓ Difficult organisms like Anthrax,
 - ✓ *E. coli* in very dirty water
 - ✓ Diesel fuel
- Future Developments Underway
 - ✓ Pretreatment
 - ✓ Ozone
 - ✓ On line GPS and Remote Telemetry



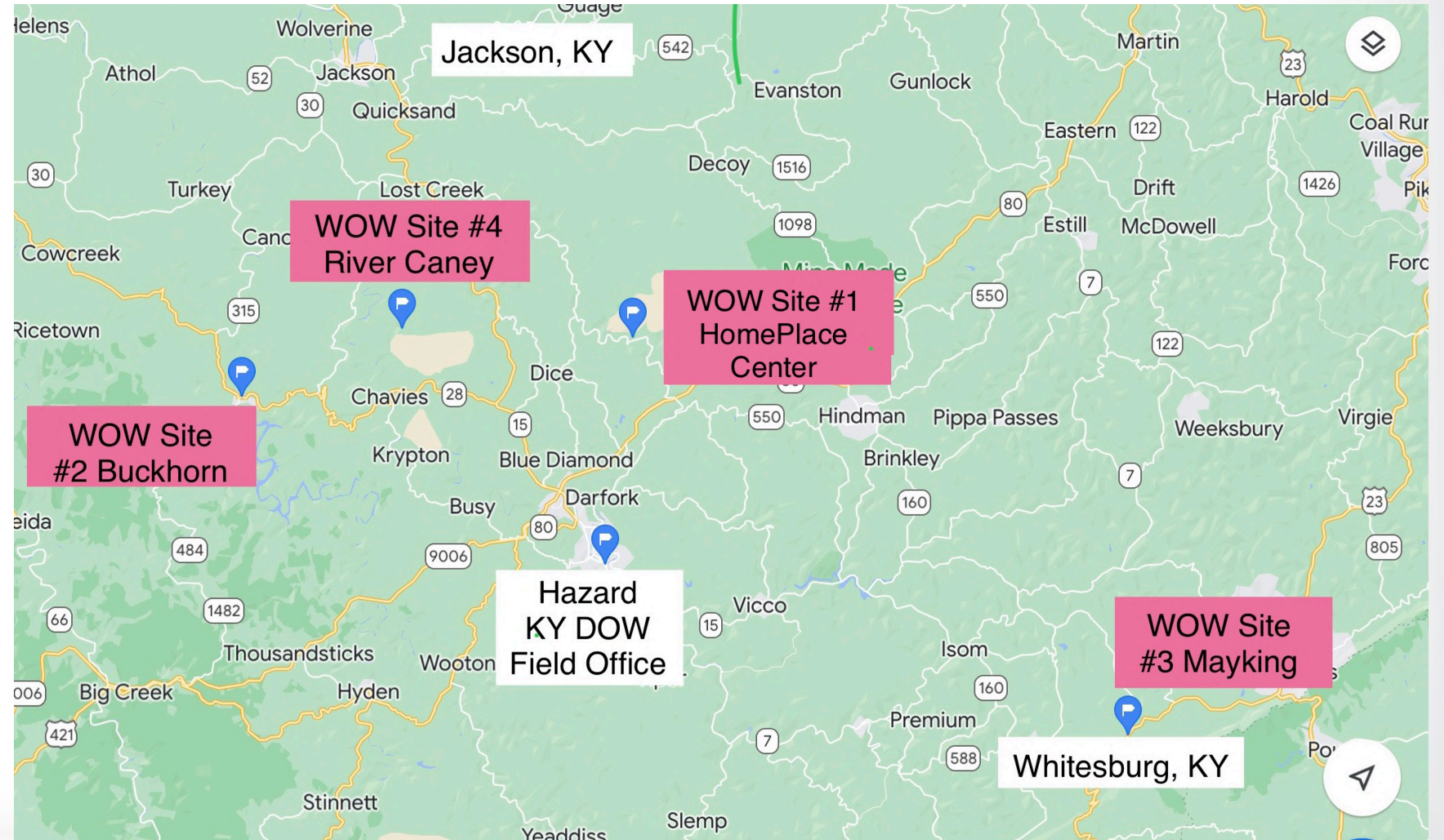
Deployment and Site Assessment Begins August 4, 2022





Eastern Kentucky Flooding – August 2022

**Four WOW Cart
Deployments in Breathitt,
Perry, Letcher Counties
August 4-20, 2022**



Site # 1 – HomePlace Community Center Perry County, Kentucky



WOW Cart Set up at Site #1 - HomePlace
Isabell Isenhart (WaterStep) and Volunteers



Tim Meyer, Louisville Water, Sets up WOW Cart on 8/8/22



WOW Cart Site #1
HomePlace Community Center
24 Victor Road
Off Hwy 478
NE Perry County



Site #1 - HomePlace Water Distribution Site



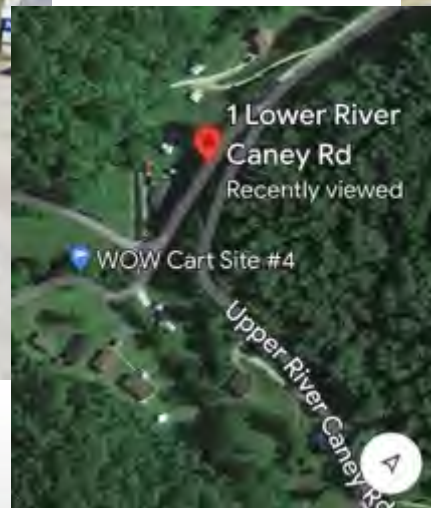
Site # 2 – Buckhorn Children’s Home Perry County, Kentucky



Site # 3 – Mayking Fire Department Letcher County, Kentucky



Site # 4 – River Caney Staging Area Breathitt County, Kentucky



The Kentucky Lily Pad Network

Proposed WOW Cart Deployment for Kentucky

Greg Heitzman – BlueWater Ky
Joe Burns – KY Rural Water Association



WHAT IS A LILY PAD NETWORK?

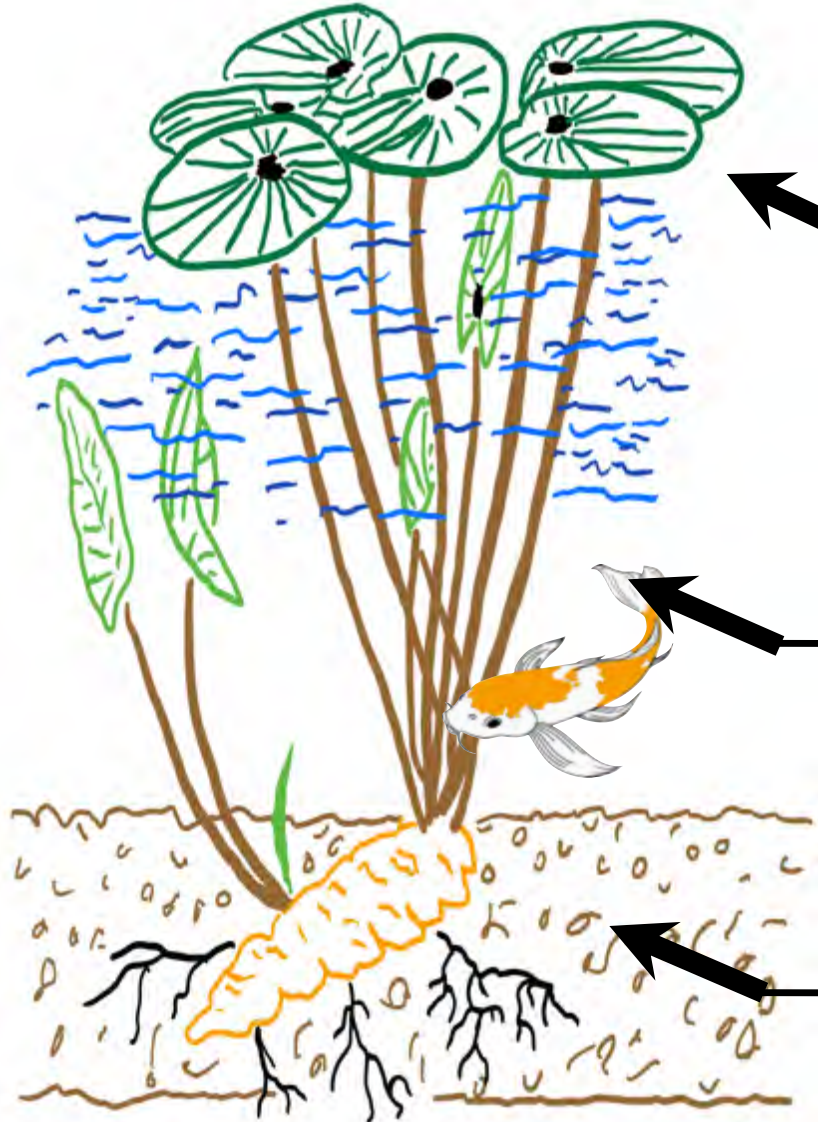


Lily pads are strong, resilient hubs for pond ecosystems.

This is a good analogy for a supported network of emergency responders and volunteers managing prepositioned water and disinfectant equipment.

The result is a resilient, expandable footprint that can support health and safety more

THE LILY PAD NETWORK

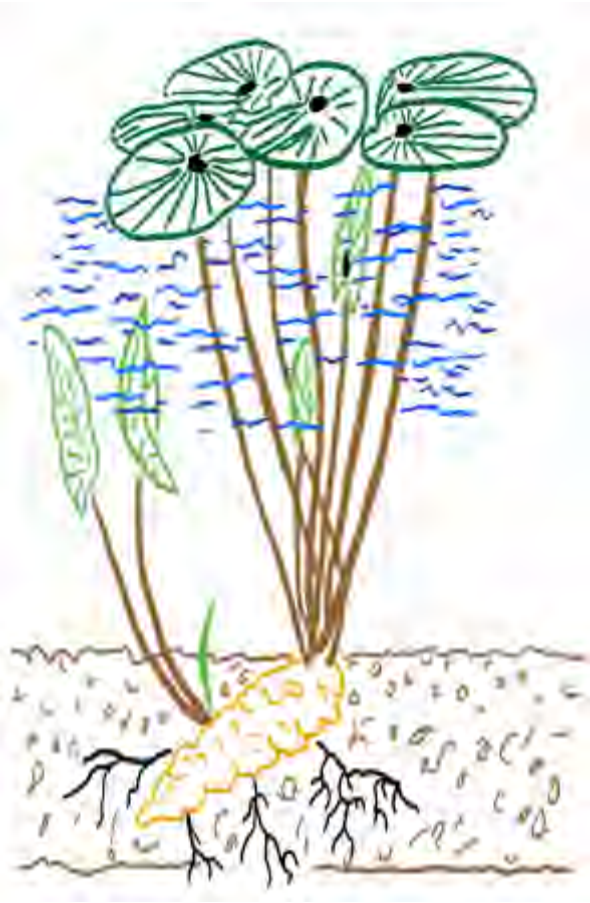


Emergency workers and equipment can respond independently or gather together to meet a larger need.

Public health departments, fire stations, churches, rural water associations, corporations and others all invest in leadership and develop strategies for locations to support the network.

Funding, regular trainings, growing more operators and expanding capacity create a foundation.

THE LILY PAD NETWORK



For any community, responding to a disaster, medical assistance, potable water and disinfectant are of the highest priority.

Historically, safe water and disinfectant are brought into disaster areas from outside sources.

However, these resources can be produced simply, effectively and in vast quantities on-site.

THE LILY PAD NETWORK

Following an natural disaster, a common source for potable water is bringing in pallets of bottled water.

Bottled water is heavy, difficult to distribute and not a practical resource for bathing, cooking or cleaning. Empty plastic bottles litter our streams, rivers and landfills. There has to be a better, more sustainable solution for potable water.



THE LILY PAD NETWORK

WaterStep WOW (Water On Wheels) Carts are essential tools for the Lily Pad Network for providing immediate access to water and disinfectant. They stay on-site or mobilized and sent place to place.



One WOW cart produces 10,000 gallons of potable water a day, equivalent to 80,000 bottles of water.

THE LILY PAD NETWORK

WaterStep Mobile Water Treatment System (WOW Cart)										
WOW Cart ID #:										
Sample Location:										
Sample Address/City/State/Zip:										
Water Source (public supply, river, well, lake, rooftop):										
HACH Equipment Model and ID #:										
WOW Cart ID # (located on chlorinator):										
Sample #	Date (M/D/YR)	Day (S,M,T,W,T,F,S)	Time (Hour-Min)	Sample By (Initials)	Source Water (WOW Input)		Treated Water (WOW Discharge, Tank, Bladder)		Distributed Water (Shower, Sink, Faucet, Hose Bib, etc.)	
					Free Chlorine (x.xx ppm)	Total Chlorine (x.xx ppm)	Free Chlorine (x.xx ppm)	Total Chlorine (x.xx ppm)	Free Chlorine (x.xx ppm)	Total Chlorine (x.xx ppm)
1	8-7-22	Monday	10:30 AM	A		2.1 PPm	2.1 PPm	2.1 PPm	2.1 PPm	2.1 PPm
2	8-7-22	Tuesday	11:30 AM	A		2.1 PPm	2.1 PPm	2.1 PPm	2.1 PPm	2.1 PPm
3	8-7-22	Tuesday	12:45 PM	AT		2.1 PPm	2.1 PPm	2.1 PPm	2.1 PPm	2.1 PPm
4	8-7-22	Tuesday	3:30 PM	A		2.1 PPm	2.1 PPm	2.1 PPm	2.1 PPm	2.1 PPm
5	8-7-22	Tuesday	7:30 AM	A		2.3 PPm	2.3 PPm	2.3 PPm	2.3 PPm	2.3 PPm
6	8-8-22	Wednesday	10:30 AM	A		2.3 PPm	2.3 PPm	2.3 PPm	2.3 PPm	2.3 PPm
7	8-8-22	Wednesday	11:30 AM	AT		2.3 PPm	2.3 PPm	2.3 PPm	2.3 PPm	2.3 PPm
8	8-8-22	Wednesday	12:45 PM	AT		2.3 PPm	2.3 PPm	2.3 PPm	2.3 PPm	2.3 PPm
9	8-8-22	Wednesday	2:00 PM	AT		2.3 PPm	2.3 PPm	2.3 PPm	2.3 PPm	2.3 PPm
10										
11										
12										
13										

- Trained operators set up and manage the WOW Cart to assure compliance with Kentucky drinking water regulations.
- Water is distributed through a temporary distribution piping network to supply food trucks, mobile showers, laundry and potable water fill stations.
- The result is a resilient, expandable footprint that can support health and safety more quickly throughout the community during a disaster.



PROPOSED KENTUCKY LILY PAD NETWORK

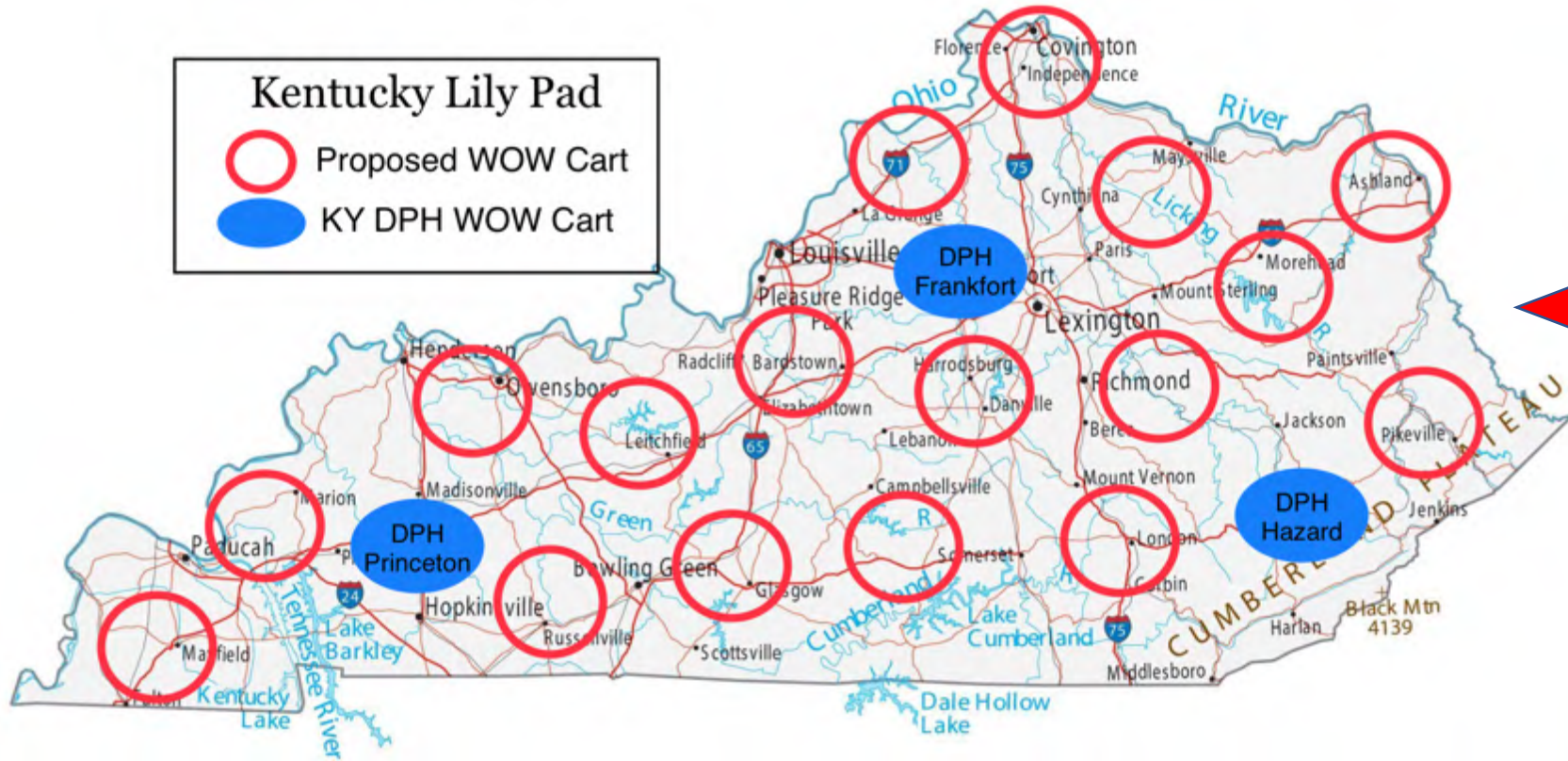
- Propose 20 WOW Carts:
 - ✓ 15 locations in Kentucky
 - ✓ 5 in reserve



- Partner with Cities/Water Utilities for locations
- Partner with Health Departments for locations
- Coordinate thru Kentucky WARN Program through KY Rural Water



PROPOSED KENTUCKY LILY PAD NETWORK



KENTUCKY LILY PAD NETWORK PLAN OF ACTION

- Deploy 20 WOW Carts across KY
- Obtain approval with State Agencies (KY DPH and DOW)
- Develop partnerships with key organizations
- Train certified/licensed operators thru Kentucky WARN/KRWA
- Recruit and train volunteer organizations for assistance with deployment
- Prepare Standard Operation Procedures/Guidelines
- Conduct annual training exercises
- Deploy program beginning Fall 2022-Spring 2023
- 14 Carts Funded through August 2022 (\$40,000 each)
 - ✓ 8 from W. KY Tornado Funding
 - ✓ 3 from KY Public Health
 - ✓ 3 from E. KY Flooding Funding



Proposed Kentucky Partners



Division of Water



American Water Works
Association

Kentucky/Tennessee
Section



Questions and Discussion



Thank You!



Join the Water Disaster Network
www.waterstepwowcart.com

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Environmental Law Hot Topics
Kentucky Rural Water Association October 2022 Seminar

Presenters: Sarah Jarboe
John West
Joye Beth Spinks
English Lucas Priest & Owsley, LLP

1. Lead & Copper Rule

- a. Executive Order 13990
 - i. EPA reviewed Lead and Copper Rule Revisions (LCRR) and announced next steps to strengthen regulatory framework for lead in drinking water – December 16, 2021
- b. LCRR went into effect December 16, 2021; Compliance date is October 16, 2024. Changes include:
 - i. Using science-based testing protocols to find more sources of lead in drinking water;
 - ii. Establishing a trigger level to jumpstart mitigation earlier and in more communities;
 - iii. Driving more and complete lead service line replacements;
 - iv. For the first time, requiring testing in schools and child care facilities; and
 - v. Requiring water systems to identify and make public the locations of lead service lines.
- c. EPA developed Guidance for Developing and Maintaining a Service Line Inventory to provide essential information to comply with LCRR requirement to maintain an inventory of service line materials– August 4, 2022. The guidance includes:
 - i. Best practices for inventory development and communication with public;
 - ii. Template for water systems to use or adapt to create inventory;
 - iii. Case studies on developing, reviewing, and communicating about inventory; and
 - iv. Highlights importance of prioritizing inventory development in disadvantaged communities and where children live and play.
- d. EPA is currently developing proposed National Primary Drinking Water Regulation: Lead and Copper Rule Improvements; goal is to finalize rule prior to October 16, 2024. Proposed rule will focus on:
 - i. Replacement of all lead service lines;
 - ii. Compliance tap sampling;
 - iii. Action and trigger levels; and
 - iv. Prioritizing historically underserved communities.
- e. EPA is also taking action to address lead in drinking water outside the regulatory framework, including:

- i. Additional infrastructure funding allocations;
- ii. Equity in the distribution of funds;
- iii. Federal collaboration to address lead in drinking water at schools and childcare facilities;
- iv. Targeted technical assistance to communities with high drinking water lead levels;
- v. Improvement of risk communication tools; and
- vi. Encouragement of full lead service line replacements as opposed to partial replacements.

2. PFAS

- a. What are PFAS
 - i. Manufacturers
 - ii. Physical and chemical properties
 - iii. PFOA and PFOS
- b. Fate and Transport
 - i. Atmospheric
 - ii. Downward leaching
 1. Surfactant properties
- c. Health advisories
 - i. Possible adverse health impacts
- d. Regulatory Update and EPA Pre-Public Notice
 - i. Proposed Hazardous Substance Designation
 1. CERLA (Superfund)
 2. Proposed regulated entities
 - ii. What does that mean for you
- e. State Energy and Environment Cabinet
 - i. Shamrock
- f. Legislative Update
 - i. PFAS Action Act 2021
- g. Litigation Update
 - i. Hardwick v. 3M
 1. Class of Plaintiffs
- h. Treatment Technologies

3. 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
 3. EPA requests recommendations for the next version of WOTUS Rule
 4. EPA halts implementation of NWPR due to Arizona District Court ruling
- b. Pre-2015 WOTUS Rule
- i. Return to *Rapanos* Rule: *Rapanos v. United States*, 547 U.S. 715 (2006) – Kennedy's "significant nexus" test
 1. Litigation to Re-visit the *Rapanos* Rule: *Sackett v. United States Environmental Protection Agency*, Petition for Writ of Certiorari in U.S. Supreme Court – Supreme Court will hear arguments in October 2022
- c. Biden Administration – New WOTUS Definition
- i. EPA and Army Corp announced signing of proposed rulemaking revising WOTUS definition – November 18, 2021; comment period closed, but final rule has not yet been published (Rulemaking 1 of 2 regarding WOTUS definition)
 1. Officially replaces NWPR while agencies develop new definition;
 2. Implements pre-2015 regulations regarding WOTUS with modifications for post-2015 Supreme Court rulings;
 3. Updates standard for "relatively permanent"; and
 4. Codifies Justice Kennedy's "significant nexus" test.
 - ii. EPA hosted stakeholder roundtables in different regions of the country to get input on new WOTUS definition – Summer 2022
 - iii. Expecting a second rulemaking in 2023 with the Biden Administration's proposal for a new WOTUS definition
- d. Legislative Push for statutory WOTUS definition?
- i. Inflation Reduction Act – passed with deal between Schumer and Manchin to pass legislation streamlining environmental reviews of energy projects
 1. Language could be included with government funding bill – needed to pass before October 1
 2. Senate GOP filed separate bill on September 12, 2022: Simplify Timelines and Assure Regulatory Transparency (START) Act– codify WOTUS definition in effect on January 1, 2021 into law (NWPR definition)
- e. Impact of WOTUS changes on Kentucky Permitting
- i. KRS 224.16-050(4)
 - ii. 401 KAR 5:055 § 2(1)

- iii. 401 KAR 5:055 § 4(4)
- 4. Clean Water Act Point Source Liability for Discharges via Groundwater
 - a. *County of Maui v. Hawaii Wildlife Fund*, 140 S. Ct. 1462, 1474, 206 L. Ed. 2d 640 (2020): Supreme Court holds that a discharge from a point source is regulated by the CWA if it reaches navigable waters directly or is the “functional equivalent” of a direct discharge.
 - i. Litigation Update
 - b. *County of Maui* Implications for Kentucky
 - i. 401 KAR 5:055 § 4(4): “An exclusion from the requirement to obtain a KPDES permit shall be: (4) A discharge that is not regulated by the U.S. EPA under the Clean Water Act Section 402, 33 U.S.C. 1342.”
 - ii. 33 U.S.C. § 1370: “[I]f an effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance is in effect under this chapter, such State or political subdivision or interstate agency may not adopt or enforce any effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance which is less stringent than the effluent limitation, or other limitation, effluent standard, prohibition, pretreatment standard, or standard of performance under this chapter;”
 - iii. Definition of “Waters of the Commonwealth” – KRS 224.1-010
 - 1. “Any and all rivers, streams, creeks, lakes, ponds, impounding reservoirs, springs, wells, marshes, and all other bodies of surface **or underground water**, natural or artificial, situated wholly or partly within or bordering upon the Commonwealth or within its jurisdiction.”
 - iv. Definition of “Groundwater” – 401 KAR 5:002(68)
 - 1. “the subsurface water occurring in the zone of saturation beneath the water table and perched water zones below the B soil horizon including water circulating through fractures, bedding planes, and solution conduits.”
 - c.
- 5. CWA 401 Water Quality Certification
 - a. What is Water Quality Certification
 - b. Clean Water Act Section 401 Certification Rule – Promulgated June 2020
 - i. October 21, 2021 Vacatur by the Northern District of California - *In re Clean Water Act Rulemaking*, 568 F. Supp.3d 1013 (N.D. Cal, 2021).
 - ii. Supreme Court stays the vacatur ruling - *N.D. Cal. Ruling. Louisiana v. American Rivers*, 142 S.Ct. 1347 (2022).
 - c. EPA Proposed New Regulations – June 9, 2022
- 6. Risk Management Program Update


- a. What is the Risk Management Program and to Whom Does it Apply
- b. RMP Safer Communities by Chemical Accident Prevention Proposed Rule
 - i. Proposed Rule Published August 18, 2022
 1. Open for public comment until October 31, 2022
 - ii. Would Revise the RMP Reconsideration final rule of December 2019
 - iii. Key Elements Include:
 1. Adds requirements to address natural hazards and power loss hazards,
 2. Increased employee participation,
 3. Community notification and information availability requirements, and
 4. Third-party compliance audit requirements.

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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
- Authorization for Debt Instruments


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WHO MUST OBTAIN A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY?

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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

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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


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WHO IS NOT A UTILITY?

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


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WHAT PROJECTS REQUIRE A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY?

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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.

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WHAT REQUIRES A CERTIFICATE?

- Construction of Any Plant/Facility
- Installing Equipment on Large Scale
- Repurposing of An Existing Facility
- Extensive Repairs of Existing Facility
- Acquisition of Facility???
- Pre-construction Contracting

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WHAT REQUIRES A CERTIFICATE?

- Construction of Office Building
- Purchase and Installation of Advance Metering Infrastructure (AMI)

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DOES NOT REQUIRE A CERTIFICATE


- Purchase of Building or Land
- Maintenance Projects
- Demolition/Destruction of Existing Facility
- Ordinary Extensions In the Usual Course of Business

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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)

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**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

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**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
- Thorough Review of **ALL ALTERNATIVES**
- **Any Duplication Requires Formal Review**

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**EXTENSIONS IN THE ORDINARY COURSE:
MATERIALLY AFFECT**

- Percentage of Existing Net Utility Plant
 - 10 Percent Rule (**Abandoned**)
 - 3 Percent Rule – Case No. 2019-00257
 - 1 Percent Rule – Case No. 2014-00171
- Issuing Debt is **NOT A DECISIVE FACTOR**
- Project Cost is **A FACTOR**
- Each Project is considered individually

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**EXTENSIONS IN THE ORDINARY COURSE:
MATERIALLY AFFECT**

- Projects Financed With Others' Funds
 - Case No. 2014-00368
 - Case No. 2018-00164
 - Case No. 2017-00195
 - Cases No. 2019-00067/No. 2020-00344
- **No Material Effect** if Customer financed
- **No Effect** on Utility's Financial Condition

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**EXTENSIONS IN THE ORDINARY COURSE:
MATERIALLY AFFECT**

- PSC Staff: No material effect on financial condition if project funded with government grants
- PSC Staff Opinion 2020-007: \$648K Tank Replacement Funded with ARC Grant has no impact on Water District's financial condition
- 2006 PSC Staff Opinion (PRIDE Grant)
- 2002 PSC Staff Opinion (KIA Grant)

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**EXTENSIONS IN THE ORDINARY COURSE:
MATERIALLY AFFECT**

- Implications for projects funded with American Recovery and Reinvestment Act/Bipartisan Infrastructure Law
- Totally Funded: **No Certificate Required**
- Partially Funded: Certificate **Possibly Not Required**

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“WATER DISTRICT EXCEPTION”

- KRS 278.020(1) amended in 2018
- Applies to **Class A & B** Water District & Assn
- Applies to **“water line extension or improvement project”**
- No Certificate required if:
 - Total Cost < \$500,000 **OR**
 - **NO** long-term debt AND **NO** rate increase
- Not applicable to Sewer Projects

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“WATER DISTRICT EXCEPTION”

- PSC Initially Limited Applicability To Construction of Water Mains
- Case No. 2016-00255: “[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 PSC Staff Opinion No. 2012-024

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“WATER DISTRICT EXCEPTION”

- 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

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“WATER DISTRICT EXCEPTION”

- PSC Case No. 2018-00355
- WD to construct booster station, 31,300 LF of 6” and 8” water line, & 2 ground storage tanks
- Tanks’ cost (\$544,000) = 28% of total project cost
- Project totally financed through AML money
- PSC: Project is “waterline extension or improvement project”
- Exception applies; No certificate required

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METHOD OF ANALYSIS

- Does Water District Exception Apply?
 - Water Main Extension or Improvement?
 - Costs no more than \$500,000?
 - No long-term debt issued or no rate increase required?
- Construction of Facility?
- Large Scale Installation of Equipment?
- Purchase of Goods or Property?
- Replacement/Maintenance?
- Percentage of Net Utility Plant
- Who is paying? Materially Effect on Utility Finances?

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WHEN IN DOUBT

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

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CONSTRUCTING WITHOUT CERTIFICATE: CONSEQUENCES

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

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PREPARING THE APPLICATION FOR A CERTIFICATE

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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

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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

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DEMONSTRATING NECESSITY

- 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)

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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

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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


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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


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SUGGESTED APPROACHES TO OBTAINING PSC APPROVAL

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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 Conference

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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


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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


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DEBT AUTHORIZATION

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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.**”

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WHAT IS AN EVIDENCE OF INDEBTEDNESS?

- Bonds
- Notes
- KIA Assistance Agreement
- Lease to Purchase Agreement
- Installment Contracts
- Letters of Credit

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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

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APPLICANT MUST SHOW

- Issuance is for lawful object/purpose
- Issuance is necessary & appropriate for performance of utility's service to public
- Issuance will not impair utility's ability to serve public
- Issuance is reasonably & appropriate to perform service to public
- **Utility can meet debt service requirements**

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CONSEQUENCE OF NON-COMPLIANCE

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

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QUESTIONS?



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