

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF)
NORTHERN KENTUCKY WATER DISTRICT)
AND STOLL KEENON OGDEN PLLC AND)
FOR ACCREDITATION AND APPROVAL OF) CASE NO. 2022-00338
A PROPOSED WATER DISTRICT)
MANAGEMENT TRAINING PROGRAM)
)

NOTICE OF FILING

Northern Kentucky Water District and Stoll Keenon Ogden PLLC give notice of the filing of the following documents concerning the water district management training program that is the subject of their application in this proceeding:

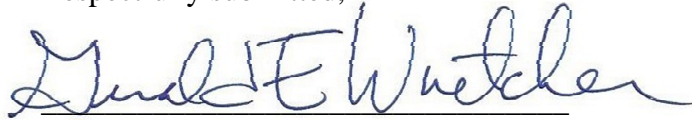
1. A sworn statement attesting that the proposed course of instruction entitled “Northern Kentucky Water Training 2022” was conducted on November 9, 2022 and that the materials found at Tab 4 of this Notice were provided to each attendee (**Tab 1**);
2. A description of all changes in the presenters and the proposed curriculum that occurred after the submission of the application for accreditation (**Tab 2**);
3. The name of each attending water district commissioner, his or her water district, and the number of hours that he or she attended (**Tab 3**);
4. The affidavit of attendance of each water district commissioner who attended the program (**Tab 4**);
5. Approval of the program for continuing legal education accreditation by the Kentucky Bar Association (**Tab 5**);

6. Approval of the program for accreditation by the Kentucky Board of Certification of Water Treatment and Distribution System operators (**Tab 6**); and

7. Approval of the program for accreditation by the Department of Local Government (**Tab 7**).

Dated: November 11, 2022

Respectfully submitted,



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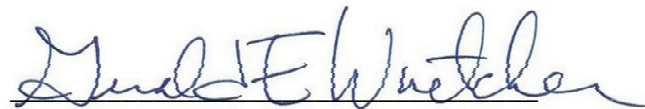
Counsel for Stoll Keenon Ogden PLLC

Tom Edge
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Counsel for Northern Kentucky Water District

CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, and the Public Service Commission's Order of July 22, 2021 in Case No. 2020-00085, I certify that this document was transmitted to the Public Service Commission on November 11, 2022 and that there are currently no parties that the Public Service Commission has excused from participation by electronic means in this proceeding.



Gerald E. Wuetcher

TAB 1

TAB 2

DESCRIPTION OF PROGRAM CHANGES

Ms. Hannah B. Kembel was the presenter for the presentation “Sexual Harassment and Respectful Workplace Training” instead of Ms. Elizabeth S. Muyskens. Mr. Tom Edge also served as a panelist on the panel discussion “Legal Issues in the Operation and Management of Water Systems.” Biographical materials on Ms. Kembel and Mr. Edge are attached.

All presentations listed in the application were made. However, the presenters for the following topics revised or updated their presentations:

Sexual Harassment and Respectful Workplace Training

Recent Developments in Utility Regulation

Litigation Involving Water Utilities

Kentucky Water Workforce Survey Results

Everything You Wanted to Know About Certificates of Public Convenience and Necessity and Debt Authorizations But Were Afraid to Ask

The revised presentations are found at Tab 4 of this Notice.

TOM EDGE

TOM EDGE is General Counsel and Manager of Legal, Compliance, and Regulatory Affairs at the Northern Kentucky Water District. As General Counsel, Tom provides legal counsel and guidance to the District's Board of Commissioners and its Management Team on all legal matters including personnel law, real estate, contracts, tax, insurance, public monies and purchasing. He has been with Northern Kentucky Water District since January 2021. He previously served in the Campbell County Attorney's Office and maintained a private practice that included several municipalities. Tom has an Associate Degree in Information Systems Technology from the Community College of the Air Force, a Bachelor's Degree in Information Technology from American Military University, a Master's in Business Administration from American Public University, and a Juris Doctorate from Northern Kentucky University.



Hannah B. Kembel

Hannah joined Stoll Keenon Ogden as an Associate in 2019, after serving as a Summer Associate at the firm in 2017. She is part of the Labor, Employment & Employee Benefits practice group.

Prior to assuming her full-time role at SKO, Hannah served as a law clerk for the Honorable Danny C. Reeves, Chief District Judge of the U.S. District Court for the Eastern District Kentucky. During this time, she gained valuable experience drafting opinions and memoranda. While observing the dynamics of the courtroom, she developed a passion for advocating on behalf of clients.

Hannah is a summa cum laude graduate of the University of Kentucky and earned her J.D. from Vanderbilt University Law School. While in law school, she was president of the Cork & Tap Society and explored the myriad legal issues of the alcoholic beverage industry.

Labor, Employment & Employee Benefits: Hannah assists employers throughout Kentucky on matters ranging from wage and hour planning to compliance with state and federal laws, such as the Family Medical Leave Act. She coordinates with in-house counsel, human resources professionals and/or company leaders to ensure objectives and strategies are aligned with broader business goals.

Hannah B. Kembel

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BAR & COURT ADMISSIONS

Kentucky

Pennsylvania

U.S. District Court, Eastern District
Of Kentucky

EDUCATION

Vanderbilt University Law School
2018, J.D.

University of Kentucky
2015, B.A., summa cum laude

RECOGNITION

Franklin J. Matchette Award,
University of Kentucky, 2014

Chellgren Student Fellow,
University of Kentucky, 2012-2015

TAB 3

**WATER DISTRICT COMMISSIONERS ATTENDING
NORTHERN KENTUCKY WATER TRAINING PROGRAM 2022**

LAST NAME	FIRST NAME	WATER DISTRICT	HRS
ALEXANDER	TIM	BOONE COUNTY WATER DISTRICT	6.0
ANDREW	DENNIS	NORTH MERCER WATER DISTRICT	6.0
CUNNINGHAM	CLYDE	NORTHERN KENTUCKY WATER DISTRICT	6.0
DAUGHERTY	JAMES	BOONE COUNTY WATER DISTRICT	6.0
GOSNEY	DOUG	PENDLETON COUNTY WATER DISTRICT	6.0
HARGADON	PAT	U.S. 60 WATER DISTRICT	6.0
KOESTER	JOE	NORTHERN KENTUCKY WATER DISTRICT	6.0
LANGE	JODY	NORTHERN KENTUCKY WATER DISTRICT	6.0
MACKE	FRED	NORTHERN KENTUCKY WATER DISTRICT	6.0
WAGNER	DOUG	NORTHERN KENTUCKY WATER DISTRICT	6.0
WINNIKE	NICK	NORTHERN KENTUCKY WATER DISTRICT	6.0

TAB 4

MORNING AGENDA

7:45 – 8:30 Registration and Refreshments

8:30 – 8:35 Program Overview and Welcome

8:35 – 9:35 Sexual Harassment and Respectful Workplace – Hannah Kembel

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.

9:35 – 9:45 Break

9:45 – 10:45 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.

10:45 – 10:55 Break

10:55 – 11:55 Litigation Involving Water Utilities – Todd Osterloh

Just like any other type of business, water utilities frequently face litigation. Waterline breaks, contracts, property disputes, employment actions, and termination of service can all give rise to an aggrieved party filing a complaint in Court. This session is designed to inform water-utility managers about various types of litigation involving government-owned water utilities and ideas that can lead to prevention or a successful defense.

11:55 – 12:30 Lunch (Provided on site)

AFTERNOON AGENDA

12:30 – 1:30 Kentucky Water Workforce Survey Results – Donna McNeil and Valerie Lucas

As the water utility industry workforce continues to age, there is a national concern about the problem of recruiting and retaining workers. The UK Kentucky Water Resources Research Institute conducted two online surveys to assess Kentucky's water utility workforce. One survey collected feedback directly from operators while the second survey asked managers and decision makers to provide feedback from the perspective of the utility. The surveys were designed to identify the challenges and barriers that utilities face in recruiting and retaining drinking water and clean water operators. The presentation will summarize the results of each survey.

1:30 – 1:40 Break

1:40 – 2:40 Everything You Wanted to Know About Certificates of Public Convenience and Necessity and Debt Authorizations But Were Afraid to Ask – Gerald Wuetcher

This presentation reviews the requirements that water and wastewater utilities must meet when constructing new facilities and issuing the debt necessary to finance such construction. The presenter examines the method of analysis that the Public Service Commission has historically used to determine whether a proposed project requires a certificate of public convenience and necessity and exceptions to those requirements. The forms of project financing that require PSC approval and the evidence that must be presented to obtain such approval also be reviewed.

2:40 – 2:45 Break

2:45 – 3:45 Legal Issues in the Operation & Management of Water Systems – Panel Discussion – Panelists: Tom Edge, Damon Talley, Gerald Wuetcher

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

3:45 Closing Remarks/Administrative Announcements

ABOUT THE SPEAKERS

2022 Northern Kentucky Water Training
2835 Crescent Springs Road Erlanger, Ky 41018
WEDNESDAY, NOVEMBER 9, 2022
8:30 AM - 3:45 PM

TOM EDGE

is General Counsel and Manager of Legal, Compliance, and Regulatory Affairs at the Northern Kentucky Water District. As General Counsel, Tom provides legal counsel and guidance to the District's Board of Commissioners and its Management Team on all legal matters including personnel law, real estate, contracts, tax, insurance, public monies and purchasing. He has been with Northern Kentucky Water District since January 2021. He previously served in the Campbell County Attorney's Office and maintained a private practice that included several municipalities. Tom has an Associate Degree in Information Systems Technology from the Community College of the Air Force, a Bachelor's Degree in Information Technology from American Military University, a Master's in Business Administration from American Public University, and a Juris Doctorate from Northern Kentucky University.

HANNAH B. KEMBEL

is an attorney with the Labor, Employment & Employee Benefits practice at Stoll Keenon Ogden. She assists employers throughout Kentucky on matters ranging from wage and hour planning to compliance with state and federal laws, such as the Family Medical Leave Act. She coordinates with in-house counsel, human resources professionals and/or company leaders to ensure objectives and strategies are aligned with broader business goals. She is a summa cum laude graduate of the University of Kentucky and earned her law degree from Vanderbilt University Law School. Prior to joining Stoll Keenon Ogden, she served as a law clerk for the Honorable Danny C. Reeves, Chief District Judge of the U.S. District Court for the Eastern District Kentucky.

VALERIE LUCAS

is the Executive Director of Clean Water Professionals of Kentucky and Tennessee (CWP-KT). Prior to serving as CWP-KT Executive Director, Valerie spent over a decade in the water sector as a consulting engineer. She is a licensed professional engineer in the state of Kentucky and holds a Bachelor and Master of Science in Civil Engineering from the University of Kentucky.

DONNA MCNEIL

is a Research Engineer with the UK Kentucky Water Resources Research Institute (KWRI). Prior to joining KWRI, Donna was the Executive Director of the Kentucky Infrastructure Authority, during which she served on two Legislative Task Forces focused on Public Water and Wastewater Infrastructure and the Private Wastewater Systems. Her experience includes working as a compliance specialist with the Kentucky Rural Water Association and managing the Kentucky drinking water program at the Kentucky Division of Water. Donna has over 30 years of service helping drinking water and wastewater utilities staff, decision-makers, and consultants. Donna received a Bachelor of Science Degree in Civil Engineering from the University of Kentucky and has an Engineer-In-Training Certification in Kentucky.

TODD OSTERLOH

is an attorney with Sturgill, Turner, Barker, and Moloney where he primarily focuses on utility regulation and municipal law. He has more than 15 years of experience working with utilities, as he started in this industry as a Staff Attorney at the Public Service Commission. Since entering private practice in 2011, Todd has advised more than three dozen water utilities in Kentucky on litigation, transactional, and regulatory matters. Todd holds a Bachelor of Arts degree from Western Kentucky University and a law degree from the University of Kentucky. While attending the University of Kentucky Law School, he served as editor-in-chief of the Kentucky Law Journal.

DAMON TALLEY

is an attorney in the Utility & Energy practice at Stoll Keenon Ogden, focusing on water and wastewater utility law. He represents water districts, water associations, water commissions, municipalities, privately owned utilities and numerous other clients. He aided in the development of the Kentucky Rural Water Association (KRWA) and has served as its general counsel since 1979. From 2000-2015, he served as KRWA's representative on the Kentucky Infrastructure Authority Board. Damon is a frequent speaker at training sessions sponsored by organizations throughout the state of Kentucky, including the KRWA, Public Service Commission, Division of Water, Utility Leadership Institute, Utility Management Institute and other industry groups.

GERALD WUETCHER

is an attorney in Stoll Keenon Ogden's Utility & Energy practice group. Prior to joining SKO, he spent more than 26 years at the Kentucky Public Service Commission (PSC), serving as staff attorney, deputy general counsel and executive advisor. He has experience in all areas of utility operations, particularly water and wastewater matters. He developed PSC's training program for water utility officials. He also served as one of its principal instructors during his tenure at the organization. Gerald is a regular presenter at seminars on utility law and regulation.

Sexual Harassment and Respectful Workplace Training

Hannah B. Kembel
hannah.kembel@skofirm.com
Stoll Keenon Ogden PLLC
November 9, 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.




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Handout Scenarios 1-3

- 1) The Coworker Who Wants to Go On a Date
- 2) The Boss Who Won't Use Your Name
- 3) Consideration of Unrelated Life Events


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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.

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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



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**.



Respectful Workplace Scenario 1

- **Scenario One:** Mario works for a financial advisor as a client service advisor. Mario recently moved into a large shared office with Jamal and Kara, two other client service advisors. Jamal, Kara, and Mario are all good at their job and work well together when it comes to providing clients with quick and accurate results. However, Mario likes to work with classical music in the background, whereas Jamal and Kara prefer to work while it is quiet.
-
- Jamal is very particular about the organization of the office supplies. Every morning when he arrives (a few minutes before Mario and Kara), Jamal straightens up the corner of the shared office where they keep the extra office supplies. After Mario and Kara leave for the day and Jamal realizes the supplies are no longer organized, he writes a passive aggressive note on the whiteboard in the shared office requesting Mario and Kara do their part in maintaining the office.
-
- A few days later, as they sit down to start their work, Mario and Jamal start to smell something gross. As the day goes on, they realize it is Kara's new perfume, which she says she just bought at on a trip to Paris.
-
- *How can Mario, Jamal, and Kara work together to maintain a respectful relationship while working from the shared office?*


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Respectful Workplace Scenario 2


- **Scenario Two:** Mo and Jerry work as tellers at the local branch of Chase Bank. They typically have sporadic groups of customers throughout the day which allows them to spend time talking to each other and to the other employees at the branch when there aren't any customers around.
- Last week, Mo commented on the "Trump 2024" sticker he had seen on the back of Jerry's car. Mo asked how Jerry could support a liar and a cheat like Donald Trump. Jerry, getting defensive, asked Mo how he could support someone like Joe Biden, whose own son had a drug problem and was the beneficiary of nepotism. Mo responded that, at least, Joe Biden has a full head of hair and didn't start a riot at the Capitol. Jerry, getting defensive, made fun of Joe Biden's stutter. Mo stormed into the break room and didn't speak to Jerry for the rest of the work day.
- *What can Mo and Jerry do to avoid situations like this in the future? What can the local branch or Chase bank as a whole do to avoid situations like this in the future and create a respectful workplace?*

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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.

 **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.



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 **R**espect others and
- take **R**esponsibility for their behavior
- then they will be more **R**elaxed at work
- and **R**est at night.

R & R

QUESTIONS?

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November 9, 2022





Scenario 1: The Coworker Who Wants to Go On a Date

Sally works as an accountant at a manufacturing facility. The facility houses employees from various departments including accounting, customer service, and maintenance. Each department has offices in a different area of the facility. Each department has its own management structure.

The manufacturing facility's anti-harassment and equal employment opportunity policies require employees to promptly report any incident of harassment or discrimination to their immediate supervisor or the Human Resources Manager.

The accounting department has two employees other than Sally. One of the other employees is Joey. Sally and Joey have both been working at the manufacturing facility for two years. When they started working, Joey asked Sally to go bowling with him. Sally agreed, and Sally and Joey went to a nearby bowling alley one night after work. Joey had a great time and wants to go on more dates with Sally. Sally enjoyed going bowling with Joey but is not interested in going on any more dates with Joey. However, Joey continues to ask Sally to go to the movies with him each time a new movie premieres at the local movie theater. Sally declines each of Joey's requests to go to the movies.

One day after turning down Joey's request to see the new Batman movie, Sally is walking through the facility to the kitchen and spots her friend Gina, who works in the maintenance department at the manufacturing facility. Sally stops to chat with Gina before she grabs her lunch from the kitchen.

Sally: My coworker, Joey, keeps asking me out on dates every time a new movie comes out. I know we went bowling once, but I am not interested on going on any more dates with Joey. Even when I tell him I don't want to go to the movies with him, he keeps asking. Don't tell anyone else though, I don't want Joey to get in trouble or anything.

Gina: Don't worry, I won't tell anyone. I can't believe he won't take a hint and leave you alone.

Gina complied with Sally's request and didn't talk to anyone about Joey's behavior, even though she felt bad for Sally.

Discussion Questions:

- What should Gina have done after her conversation with Sally?
- Is Joey harassing Sally?
- What steps could Sally take to stop Joey from asking her to the movies?

Scenario 2: The Boss Who Won't Use Your Name

Dr. Smith, a female in her mid-30s, and Dr. Jones, a male in his early 40s, are family practitioners and co-owners of a doctor's office. In addition to the two doctors, the office employs a male physician's assistant, a female nurse, and two female receptionists.

Alexandria, a five-year-old patient, and Alexandria's father, Eric, arrive at the doctor's office for an appointment to check on Alexandria's asthma. When they arrive, they check in with one of the receptionists. After waiting just a few minutes, the nurse calls Alexandria back and Eric and Alexandria follow her out of the waiting room. The nurse gets Alexandria's weight, temperature, and blood pressure. She also gathers information about Alexandria's medical history and current experience with asthma. Eventually, Dr. Jones comes into the examination room to see Alexandria and Eric.

Dr. Jones (to the Nurse): Thanks for taking care of the preliminary questions honey.

Dr. Jones (to Alexandria): Hi Allie, how are we doing today? Have you been having trouble breathing in gym class? What about at gymnastics or during your swim lessons?

Alexandria: My name is Alexandria. I am doing good, but I want to be able to play with my friends without getting tired and coughing.

Dr. Jones examined Alexandria and talked with Alexandria and Eric about the options available to help with Alexandria's asthma. They agreed Alexandria would start using an inhaler before she engaged in physical activity like gym class, gymnastics, or a swim lesson. However, Dr. Jones wanted to have a follow up appointment in six months to see if the inhaler was helping Alexandria's asthma.

Dr. Jones: We're done for today, make sure to talk to my girls about scheduling Allie's next appointment for about six months from now! I think the inhaler will help a lot, but we want to make sure we're doing all we can so Allie can play with her friends and participate in sports without getting tired and coughing.

Alexandria was confused why Dr. Jones kept calling her Allie when her name was Alexandria. She figured it was an adult thing she didn't understand. Eric and Alexandria stopped by the receptionist's desk on the way out of the office to book Alexandria's next appointment.

Discussion Questions:

- Was it wrong that Dr. Jones called Alexandria Allie when he first entered the examination room?
- What about after Alexandria told Dr. Jones her full name?
- Is it okay that Dr. Jones referred to the nurse as honey and the receptionists as his girls?
- What steps could Eric have taken to improve the situation?

Scenario 3: Consideration of Unrelated Life Events

Maria and Jeff Perez work at a marketing agency. Maria is a junior account executive and Jeff is junior accountant. Maria and Jeff are married and Maria recently returned from maternity leave after having their first child.

During Maria's maternity leave, a vice president of accounting position opened in their office. Juan, the Senior Vice President of Accounting, and Samantha, the Human Resources Director, had a meeting to determine who to hire in the Vice President of Accounting position.

Samantha: Juan, we have to fill the Vice President role in the next two weeks. Who do you think are the most qualified internal candidates?

Juan: Well, we have three junior accountants—Monica, Bobby, and Jeff—in this office. Monica has only been here for two years, so I don't think she is ready for a VP-level position. But, Bobby and Jeff have worked here for five years and have performed well.

Samantha: Between Bobby and Jeff who is better qualified for the position?

Juan: Bobby has a great relationship with the account executives he works for, but his family lives three states over. He mentioned once that he would have to live close to his parents to take care of them when they get older because he doesn't have any siblings. Jeff is a great performer and consistently has great annual reviews. Even more, Jeff's wife just had a baby. I bet they'll stick around because he has to pay for the extra expenses the baby creates. Let's go with Jeff.

In the next few weeks, Juan and Samantha helped Jeff through the internal promotion process, which resulted in a pay raise and an increase in responsibilities.

Three years later, Samantha was trying to find one of the company's account executives to take on an extra project, which, of course, came with a pay raise. She thought about Maria and her years of successful management before and after she had her child. Samantha scheduled a meeting with Laura, the senior account executive, to discuss the options for who to give the extra project.

Samantha: Thanks for meeting with me, Laura. It looks like we have lots of good options for who can take on this extra project. I was thinking we should consider Maria because of her tenure and successful account management over the years.

Laura: Maria has been great and has been working really hard in the last few years, but I don't want to add to her plate. She has enough going on with her regular workload and taking care of her son. I think we should ask Margaret if she is interested in taking on this project.

Discussion Questions:

- How did Maria and Jeff's child impact their career paths?
- What should Juan have done differently?
- What should Laura have done differently:
- What should Samantha have done differently in her conversation with Juan? What about in her conversation with Laura?

HOT LEGAL TOPICS

November 9, 2022

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

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DISCUSSION TOPICS

1. PSC Filings
2. Comply with PSC Orders
3. 2022 General Assembly
4. Borrowing Money
5. Cases to Watch





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





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

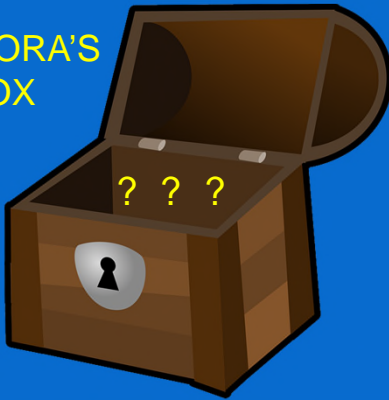
(cont.)

Status:

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



PANDORA'S
BOX



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



HB 8

- Modifies Residential Sales Tax
Exemption for Utility Customers
 - Water
 - Sewer
 - Electric
 - Natural Gas
- Codified in KRS 139.470(7)



HB 8

BEFORE

- Water Dist. & Water Assoc.
 - PSC Tariff Controlled
- Cities
 - Ordinance Controlled



HB 8

AFTER 1-1-2023: KRS Controls

- Must be a Ky. Resident
- Only One (1) Meter Exempt per Customer
- “New” Customers Must Sign Declaration of Domicile (D of D)



HB 8 (1-23)
Government of Kentucky
Department of Revenue

DECLARATION OF DOMICILE FOR
PURCHASE OF RESIDENTIAL UTILITIES

KENTUCKY

In accordance with the provisions of KRS 139.470(7) this declaration may only be executed for the purchase of sewer services, water, and fuel by Kentucky residents for use in heating, water heating, cooking, lighting and other residential uses. "Fuel" shall include but not be limited to natural gas, electricity, fuel oil, bottled gas, coal, coke, and wood.

I, _____, declare that
Name _____
Service Address _____

is my place of domicile and the purchase of residential utility use at this address meets the qualifications for exemption from Kentucky sales and use tax under KRS 139.470(7). Accordingly, I request the account associated with the above listed service to be classified as exempt from sales and use tax as of the date of this declaration in connection with the purchase of any residential utilities detailed in KRS 139.470(7).

Under penalty of perjury, I swear or affirm that my information on this certificate is true and correct as to every material matter.

Signature _____
Date _____

Pursuant to KRS 139.007(1)(b)(2), "place of domicile" is defined as "the place where an individual has his or her legal, true, fixed and permanent home and principal establishment, and to which, whenever the individual is absent, the individual has the intention of returning."

HB 8

“Grandfather” Protection

- Existing “Residential” Customers Will Remain Tax Exempt UNTIL a “Trigger” Event Occurs After 1-1-2023
- What is the “Trigger Event?”



HB 8

Trigger Event

- Move
- Change Account Name
- Move – In
- New Construction
- Customer Has 2 Meters
 - Check Records



Declaration of Domicile (D of D)

- If “Trigger” event Occurs
 - Customer Must Sign D of D
 - Keep D of D on File
 - Do Not Send to Dept. of Revenue (DOR)
- All Utilities Use Same Form (Write Water & Sewer on D of D)



What Happens if Utility Does Not Comply?

- DOR Audit
 - Utility is Responsible for Paying Sales Tax
 - Unless Customer
 - “Grandfathered” or
 - D of D on File



Stay Tuned . . .

- D of D Template Still in Draft Form
- KRWA Will Notify When D of D is in Final Form
- DOR FAQs on Website




Any QUESTIONS



About **HB 8** ?

**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





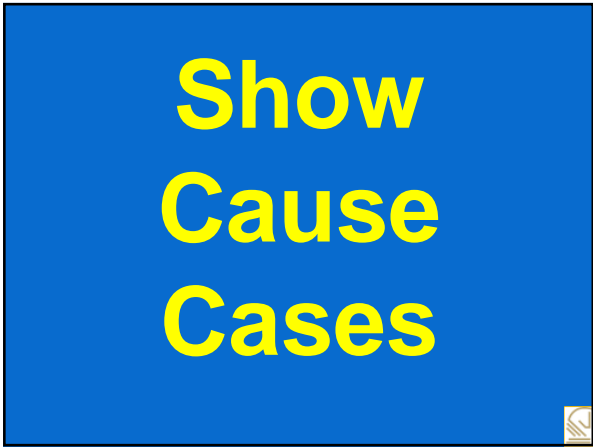
KRS 278.300(1)

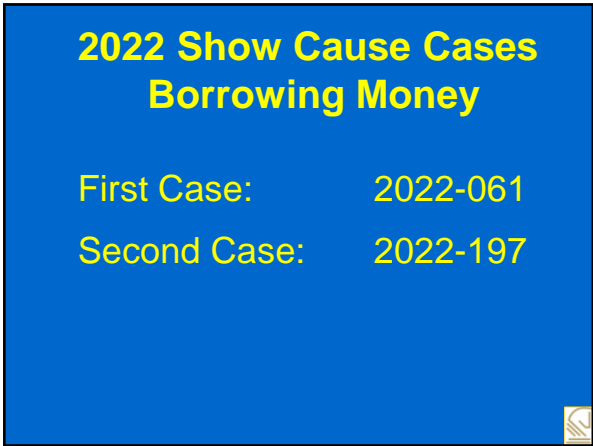
No utility shall issue any securities or evidences of indebtedness . . . until it has been authorized to do so by order of the Commission.

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)







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: ? ? ?





**Cases
to
Watch**

PSC Case No. 2021 - 422

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





QUESTIONS?

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



**DECLARATION OF DOMICILE FOR
PURCHASE OF RESIDENTIAL UTILITIES**



**(LANDLORDS OR OTHER ACCOUNTHOLDERS OF MULTI-UNIT DWELLINGS SERVED BY A SINGLE METER
(MASTER METER) USE THE MULTI-UNIT DECLARATION OF DOMICILE)**

In accordance with the provisions of KRS 139.470(7) this declaration may only be executed for the purchase of sewer services, water, and fuel by Kentucky residents for use in heating, water heating, cooking, lighting, and other residential uses. "Fuel" shall include but not be limited to natural gas, electricity, fuel oil, bottled gas, coal, coke, and wood.

_____ is the accountholder for _____
Name of Accountholder *Service Address*

I, _____, am the resident or
Name of Individual Signing the Declaration (cannot be landlord)

Relationship of the undersigned to the resident

I declare that the address listed is my place of domicile* or the place of domicile* of _____
Name of Resident

and the purchase of residential utilities for use at this address meets the qualifications for exemption from Kentucky sales and use tax under KRS 139.470(7).

Accordingly, I request the account associated with the above listed service address be classified as exempt from sales and use tax. I understand the exemption will begin on the date of the first full billing cycle after the date of receipt of this declaration by the utility provider or rural electric cooperative.

Under penalties of perjury, I swear or affirm that the information on this declaration is true and correct as to every material matter.

Signature of resident or representative

Date

* KRS 139.470(7) describes a place of domicile as "the place where an individual has his or her legal, true, fixed and permanent home and principal establishment, and to which, whenever the individual is absent, the individual has the intention of returning."

Instructions

- Submit the Declaration of Domicile to each applicable utility provider or rural electric cooperative, not to the Department of Revenue.
- Each resident may have only one place of domicile but may be listed as a responsible party for other service addresses.
- The change in taxability for accounts will be effective on the first day of the first full billing cycle after the date of receipt of this declaration by the utility provider or rural electric cooperative.

Department of Revenue Contact Information:

Phone: 502-564-5170

Email: DOR.Webresponsesalestax@ky.gov

**MULTI-UNIT DECLARATION OF DOMICILE
FOR LANDLORDS OR OTHER ACCOUNTHOLDERS
OF MULTI-UNIT DWELLINGS SERVED BY A SINGLE METER (MASTER METER)**



Under penalties of perjury, I swear or affirm that the _____ declarations I am submitting with this form include
Specific Number

100% of the dwelling units at the service address below.

Service Address *Number of Dwelling Units*

Account Name (*printed*) _____

Authorized Signature _____

Date _____

Instructions

- This Multi-Unit Declaration of Domicile is for landlords or other persons holding a single account with a utility provider or rural electric cooperative which serves multiple dwelling units.
- Submit the Multi-Unit Declaration of Domicile along with individual declarations for all dwelling units to each applicable utility provider or rural electric cooperative, not to the Department of Revenue.
- Landlords or other accountholders should submit a Multi-Unit Declaration of Domicile for each meter that serves multiple units; however, every unit served by the meter must have a fully-completed Declaration of Domicile for the account to qualify as residential. **Landlords or other accountholders may not complete the Declaration of Domicile on behalf of their residents.**
- Accounts for meters that exclusively serve common areas or that serve common areas and multiple dwelling units are not eligible for residential treatment. No declaration shall be submitted for these accounts.
- The change in taxability for accounts will be effective on the first day of the first full billing cycle after the date of receipt of this Multi-Unit Declaration of Domicile by the utility provider or rural electric cooperative.

Department of Revenue Contact Information:

Phone: 502-564-5170

Email: DOR.Webresponsesalestax@ky.gov

TODD OSTERLOH



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Lexington, Kentucky 40507
(859) 255-8581 - www.sturgillturner.com

**COMMON WATER
UTILITY LAWSUITS**

*Methods of Prevention,
and
Tips to Defend Them*

Common Utility Litigation

- Negligence
- Breach of Contract
- Employment Matters
- Open Records and Open Meetings
- Wrongful Termination of Service
- Invasion of Service Territory

Common Public Entity Defenses

- Governmental Immunity
- Claims Against Local Government Act
- Qualified Official Immunity

DEFENSES

An ounce of prevention is worth a pound of cure!

Negligence	Proactive versus Reactive
Contract (and tariff)	Review & comply (revise if necessary)
Employment	Proper policies and supervision

GOVERNMENTAL IMMUNITY

Governmental Immunity

A state or county agency is protected from tort liability if it performs a governmental, as opposed to a proprietary, function.

Yanero v. Davis, 65 S.W.3d 510 (Ky., 2001)

S. Woodford Water Dist. v. Byrd,
352 S.W.3d 340, 343 (Ky. Ct. App. 2011)



S. Woodford Water Dist. v. Byrd,

- Property owner requests disconnection of rental property
- On April 1, 2008, owner found the property flooded
- Sometime in February or March, pipes froze and burst
- Owner files lawsuit, alleging negligence by the WD for failing to disconnect the water at his property

**Governmental Immunity
To whom does it apply?**

Who created the entity?
State? County? City? Other?

Do the functions of the entity focus on
state level government concerns
common to all citizens?

Comair, Inc. v. Lexington-Fayette Urban Cnty. Airport Corp.,
295 S.W.3d 91, 94 (Ky.2009)

Governmental Immunity

Does governmental immunity apply to
water districts?

Yes, in 2011

S. Woodford Water Dist. v. Byrd,
352 S.W.3d 340, 343 (Ky. Ct. App. 2011)

Governmental Immunity

Does governmental immunity apply to water districts?

No, in 2019

Northern Kentucky Water District v. Carucci, 600 S.W.3d 240, 242 (Ky. 2019)

Claims Against Local Government Act

A local government shall not be liable for injuries or losses resulting from:

Any claim arising from the exercise of judicial, quasi-judicial, legislative or quasi-legislative authority or others, exercise of judgment or discretion vested in the local government.

Claims Against Local Government Act

- (a) The adoption or failure to adopt any ordinance, resolution, order, regulation, or rule;
- (b) The failure to enforce any law;
- (c) The issuance, denial, suspension, revocation of, or failure or refusal to issue, deny, suspend or revoke any permit, license, certificate, approval, order or similar authorization;
- (d) The exercise of discretion when in the face of competing demands, the local government determines whether and how to utilize or apply existing resources; or
- (e) Failure to make an inspection.

Claims Against Local Government Act

- (a) The adoption or failure to adopt any ordinance, resolution, order, regulation, or rule;
- (b) The failure to enforce any law;
- (c) The issuance, denial, suspension, revocation of, or failure or refusal to issue, deny, suspend or revoke any permit, license, certificate, approval, order or similar authorization;
- (d) The exercise of discretion when in the face of competing demands, the local government determines whether and how to utilize or apply existing resources; or
- (e) Failure to make an inspection.

Claims Against Local Government Act

Nothing contained in this subsection shall be construed to exempt a local government from liability for negligence arising out of acts or omissions of its employees in carrying out their ministerial duties.

Claims Against Local Government Act

Discretionary Acts
vs.
Ministerial Acts

Claims Against Local Government Act

Discretionary Acts

personal deliberation, decisions and judgment


protects governmental employees from liability for good faith judgment calls in a legally uncertain environment

Claims Against Local Government Act

Ministerial Acts

The duty is absolute, certain, and imperative, involving mere execution of a specific act based on fixed and designated facts.

Discretionary Acts vs. Ministerial Acts



City of Frankfort v. Byrns, 817 S.W.2d 462, 464 (Ky. App. 1991)

- Westgate Subdivision – Flooding
- Once the City of Frankfort made a decision to design and construct the system in question, a decision which was within its discretionary capacity, its subsequent actions in designing and building the system were ministerial.

Greenway Enterprises, Inc. v. City of Frankfort, 148 S.W.3d 298, 302 (Ky. App. 2004)



Greenway Enterprises, Inc. v. City of Frankfort, 148 S.W.3d 298, 302 (Ky. App. 2004)



Claims Against Local Government Act

Discretionary Acts
vs.
Ministerial Acts

Courts have generally determined that a utility's decision to construct or open service is a discretionary act, but it has a ministerial duty to non-negligently construct, maintain, and repair its system.

Mason v. City of Mt. Sterling, 122 S.W.3d 500, 504 (Ky, 2003)

Siding Sales, Inc. v. Warren Cnty. Water Dist., 984 S.W.2d 490, 491 (Ky. Ct. App. 1998)

- Arson destroys commercial building
- City approves building permit for new building, conditioned on WD providing fire protection flow
- City and WD split cost to increase water line size
- Building owner sued, arguing that water pressure was insufficient to protect building

Siding Sales, Inc.

Building owners argue:

- That City failed to enforce fire protection standards
- That City issued permit knowing that lot did not comply with fire protection safety standards
- That CALGA does not apply because these are ministerial duties.

Siding Sales, Inc.

The Court of Appeals held:

- The allegations are really that the City failed to prevent the injury by providing insufficient water.
- The City's (and WD's) role was merely regulatory in nature, related to establishing and enforcing fire protection standards.
- This type of governmental action is subject to CALGA.

The Court also noted that a City may not be held to the same standard as a private corporation.

Claims Against Local Government Act



Claims Against Local Government Act

Russell v. City of Owensboro,
No. 2012-CA-002006-MR, 2014 WL 1407238
(Ky. App. Apr. 11, 2014).

- A woman tripped due to a two-inch break in a sidewalk
- Lawsuit vs. City of Owensboro, arguing negligent sidewalk repair plan
- City's official policy required prioritization of repairs because of the limited financial resources

Russell v. City of Owensboro

The Court of Appeals:

- Cities have a traditional duty to maintain sidewalks
- But then the General Assembly passed CALGA
- In *Sliding Sales*, CALGA applied because the WD had discretion on how to spend its limited resources.
- City does not have enough money to repair every sidewalk every year.
- Policy prioritizes repairs and allocates limited resources.

Russell v. City of Owensboro

The Court of Appeals:

- CALGA applies because
 - Exercise of discretion when in the face of competing demands, the local government determines whether and how to utilize or apply existing resources
 - Failure to make an inspection

Failure to make an inspection



Failure to make an inspection



Claims Against Local Government Act

City of Booneville v. Marshall
Owsley Circuit Court, Nov. 2022



Claims Against Local Government Act

Making it work for Water Districts & Cities

1. Have a policy in place.

2. Focus on elements of CALGA.

3. Do not accept the plaintiff's characterization of the claims.

Qualified Official Immunity

Protects all public officials and employees from lawsuits except those who are “plainly incompetent” and/or those “who knowingly violate the law.”

Rowan Cnty. v. Sloas,
201 S.W.3d 469, 475 (Ky. 2006)

Qualified Official Immunity

Applies when:

Actor’s conduct is a

- 1) Discretionary act
- 2) That was made in good faith (not in bad faith)
- 3) And within the scope of the employee’s authority

Other Litigation Strategies

Expert Witnesses

The Plaintiff shall be required to present expert testimony to support its position that the Defendants failed to meet the proper standard of care in the wastewater industry in clearing the obstruction in the sewer line.

Common Utility Litigation

1. Negligence
2. Breach of Contract
3. Employment Matters
4. Open Records Meetings
5. Wrongful Termination of Service
6. Invasion of Service Territory

Negligence

Duty

Breach of that Duty

Injury

Causation between the breach and the injury

Failure to Terminate Water Service

Operational Tips

Document Request

Document Service Call

Water Line Break

Operational Tips

- Immediately notify your insurance company if you think there may be a property damage
- Photographs or video
- Have a policy in place to help with CALGA defense
- If prolonged litigation, demand expert from the plaintiff

Sewer Line Backup

Operational Tips

- Document service call and location of blockage
- If employees communicate with property owner, get detailed facts (e.g. location of inflow, etc.)
- Have a policy in place to help with CALGA defense
- In litigation, ask about why the homeowner may share responsibility. New basement bathroom? No check valve?
- These cases are hard for the utility to win at trial because of the “yuck” factor.

Failure to Notify Customers of Repair

Operational Tips

- Notify your customers in non-emergency situations
- Consider Social Media

Leaving Meter Pit Unlocked or Open

Most states hold that there is no duty to lock a meter or meter vault.

Maryland Cas. Co. v. City of Jackson, 493 So.2d 955 (Miss. 1986) (“the City is still not held to be an insurer of the safety of motorists on its streets or customers of its water services”)

City of Bryan v. Jenkins, 247 S.W.2d 925 (Tex. App. 1952)

Smith v. Alabama Water Service Co., 225 Ala. 510 (1932)

Construction Negligence

Hyden-Leslie Water Dist. v. Jessie Hoskins, No. 2010-CA-000599-MR, 2011 WL 919818, at *1 (Ky. Ct. App. Mar. 18, 2011)

- Plaintiff was injured when a bridge collapsed
- He claimed that a bridge cable was damaged when a water line was being installed a few months prior
- Lawsuit against the WD and the construction company

BREACH OF CONTRACT

Breach of Contract

“Such a district, therefore, is a political subdivision and in the execution of contracts with third parties must observe the same formalities required of counties and municipalities. . . . This Court has repeatedly held that one contracting with a political subdivision does so at his peril, unless the contract is executed in the manner provided by statute.”

Louisville Extension Water Dist. v. Diehl Pump & Supply Co., 246 S.W.2d 585 (Ky. 1952)

Louisville Extension Water Dist. v. Sloss, 503, 236 S.W.2d 265 (1951)

EASEMENTS

Types of Easements

- Written
- Prescriptive
- Easement by Necessity
- Quasi-Easement (Easement by Prior Use)
 - A “perfect example” of a quasi-easement is the “continued use of an existing public utility.” *Kremer v. Harmon*, 336 S.W.2d 561, 563 (Ky. 1960)

EMPLOYMENT DISPUTES

Kentucky's Whistleblower Act

prohibits any reprisal by certain public employers against an employee who in good faith discloses any facts or information relative to an actual or suspected violation of any law or mismanagement, waste, fraud, and abuse of authority

Kentucky's Whistleblower Act

Employer

Includes water districts
Davis v. Powell's Valley Water Dist., 920 S.W.2d 75, 78 (Ky. Ct. App. 1995)

Not cities
Cruey v. City of Somerset, 2012 WL 3257567, at *4 (E.D. Ky. Aug. 8, 2012)

Kentucky's Whistleblower Act

Does Not Apply To

publicly known or available information
Admin. Office of Courts v. Miller, 468 S.W.3d 323, 330
(Ky. 2015)

disagreements with supervisors over
job-related activities
Moss v. Kentucky State Univ., 465 S.W.3d 457, 460
(Ky. Ct. App. 2014)

First Amendment

Freedom of Speech

First Amendment

Congress shall make no law . . .
abridging the freedom of speech

First Amendment – Free Speech

Applied to the States by Supreme Court decisions by the Fourteenth Amendment

First Amendment – Free Speech

FIRST:

A government employee has first amendment rights when the employee speaks:

1. as a **citizen** (rather than as an employee)
2. on a matter of **public concern** (rather than on a matter solely of work-related concern)

SECOND:

If first test met (and thus employee has first amendment rights), then must **balance employee's first amendment rights against employer's interest in efficiency, orderly administration.**

Pickering v. Board of Education, 391 U.S. 563 (1968)

First Amendment – Free Speech

Examples of Issues of "Public Concern":

- Public Fraud, Mismanagement
- Racial and Other Illegal Discrimination
- Sexual Harassment
- Use of Public Monies, Assets
- Public Policy
- Ethics, Professional Responsibility
- Statutory and Other Duties of Governmental Entities

First Amendment – Free Speech

Speaking as a “citizen”

Statements by public employees made pursuant to their employment or as a part of their job duties have no First Amendment protection.
- Garcetti v. Ceballos, 547 U.S. 410 (2006)

First Amendment – Free Speech

Hypothetical

County Water District has a leak adjustment policy in its tariff that permits the Water District to adjust bills for leaks that are repaired and verified by a plumber.

County Water District customer and licensed plumber Jose Chavez submitted a request for adjustment based on a leak that he repaired at his house.

County Water District denied Mr. Chavez's request, indicating that the verification had to be received from a plumber other than the customer.

Two weeks later, a utility employee writes a letter to the editor supporting a presidential candidate's position to build a wall on the U.S.-Mexico border.

Mr. Chavez complains to the Water District officials about racial discrimination, who then terminate the utility employee's employment.

Americans with Disabilities Act

ADA

ADA prohibits discrimination

“qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.”

ADA

“disability”

- A physical or mental impairment that substantially limits one or more major life activity (MLA) of an individual; or
- A record of such an impairment; or
- Being regarded as having such an impairment

ADA

“qualified individual”

individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires

ADA

“reasonable accommodation”

Required unless accommodation “would impose an undue hardship”

Reassignment to vacant position is not required unless position is vacant and employee is qualified.

Family Medical Leave Act

FMLA

Workers should not have to choose between the job they need and the family members they love and who need their care.

FMLA

Eligible employees may take FMLA leave:

- For the birth or placement of a child for adoption or foster care
- To care for a spouse, son, daughter, or parent with a serious health condition
- For their own serious health condition
- Military Family Leave

FMLA

Employers cannot:

- interfere with, restrain or deny employees' FMLA rights
- discriminate or retaliate against an employee for having exercised FMLA rights
- discharge or in any other way discriminate against an employee because of involvement in any proceeding related to FMLA
- use the taking of FMLA leave as a negative factor in employment actions

FMLA

Amount of Leave

- Employee's workweek is basis for entitlement
- Eligible employees may take up to 12 workweeks of FMLA leave
- In calculating the amount of leave, employer must use the shortest increment the employer uses to account for other types of leave, provided it is not greater than one hour

Kentucky's Whistleblower Act

KRS 61.102

Harrassment

Harrassment

Syed v. N. Kentucky Water Dist.,
2010 WL 1235365, at *1
(E.D. Ky. Jan. 8, 2010)

Title VII of the Civil Rights Act
Age Discrimination Act of 1967
Kentucky Civil Rights Act

Syed v. N. Kentucky Water Dist.

- Syed is of Pakistani descent and an adherent of the Islamic religion
- Employed as a temporary employee in financial department
- Water District had a vacancy for their Comptroller position
- CEO allegedly refused to hire Syed as Comptroller, seeking “younger” employee
- Water District gave Syed full-time employment as Senior Accountant
- Later, Syed alleges WD stripped him of certain duties
- Claimed age, race, and religious discrimination; hostile work environment

Hostile Work Environment

- (1) he belongs to a protected group;
- (2) he was subject to unwelcome harassment;
- (3) the harassment was based on that protected group status;
- (4) the harassment affected a term, condition, or privilege of his employment; and
- (5) the existence of employer liability.

Hostile Work Environment

- Protected group examples
- Sex & Gender
 - Race & Color
 - Religion & Creed
 - National Origin
 - Disability
 - Age
 - Sexual Orientation & Gender Identity
 - Other Protected Classes (*i.e.*, veteran status)

Hostile Work Environment

- When an environment is objectively and subjectively offensive so that a reasonable person would find it hostile and the victim actually perceived it to be so.
- Factors considered include the frequency of the conduct; its severity; whether it is physically threatening; and whether it unreasonably interferes with an employee's work performance.

Hostile Work Environment

- Examples of potential "harassment"
- Obscene gestures
 - Inappropriate pictures, cartoons, posters, graffiti, e-mail
 - Off-color jokes, comments, slurs, epithets
 - Threats or Insults
 - Exposing oneself
 - Propositions
 - Inappropriate touching
 - Stalking, staring, leering
 - Inappropriate gifts

Hostile Work Environment- Employer Liability

Syed v. N. Kentucky Water Dist.

Level of Management

- Human Resources Manager told him that "Europeans know how to deal with you people"
- Accounting Assistant gives him (once) "the finger"
- Senior Accountant calls him a "muslim terrorist"

Employee must take advantage of corrective opportunities

- CEO and VP employment decisions were 9 months before alleged discriminatory acts
- District had anti-harassment policies that Syed knew about
- Syed never complained about harassment

OPEN RECORDS ACT & OPEN MEETINGS ACT

Open Records Act & Open Meetings Act

An agency is subject to penalties for a “willful” violation.

ORA - KRS 61.882
OMA - KRS 61.848

Open Records Act & Open Meetings Act

“Willful” connotes that the agency withheld requested records without plausible justification and with conscious disregard of the requester's rights.

City of Fort Thomas v. Cincinnati Enquirer, 406 S.W.3d 842, 854 (Ky. 2013); citing Bowling v. LFUCG, 172 S.W.3d 333, 345 (Ky. 2005)

Open Records Act & Open Meetings Act

Bd. of Commissioners of the City of Danville, Kentucky v. Advocate Commc'ns, Inc., 2016 WL 1739310, at *4 (Ky. Ct. App. Apr. 29, 2016)

- City Commissioners met in closed session to discuss possible amount of bid on real property that was being auctioned
- City failed to respond to OMA complaint within 3 days
- Court of Appeals suggests that failure to respond within 3 days is a willful violation, subjecting agency to penalties
- Court held that it was improper for City to agree to hire bidding agent in closed session.
- Court held that there was no OMA exception applicable, and therefore, the City violated the OMA

Open Records Act & Open Meetings Act

OMA Exception

Deliberations on the future acquisition or sale of real property by a public agency, but only when publicity would be likely to affect the value of a specific piece of property to be acquired for public use or sold by a public agency.

Open Records Act & Open Meetings Act

Bd. of Commissioners of the City of Danville, Kentucky v. Advocate Commc'ns, Inc., 2016 WL 1739310, at *4 (Ky. Ct. App. Apr. 29, 2016)

Important Court statements:

- Public agency can only have deliberations or discussions in closed session
- Public agencies cannot take final action on bidding in closed session
- The City did not take action on the bidding in open session prior to the auction
- Decision to participate in auction required binding "non-contingent" contract to participate
- City's actions in closed session violated the OMA without plausible justification and with conscious disregard of the requester's rights
- City declined to respond to newspaper's agency complaint

Open Records Act & Open Meetings Act

Tips

- Comply with the law
- Respond within 5 days
- After lawsuit is filed, plead and pursue finding of good faith
- Argue that "willful" violation requires showing that the public agency "acted in bad faith with an intent to violate the Open Records Act and without plausible explanation for the alleged errors."
Sinha, M.D. v. Univ. of Kentucky, 284 S.W.3d 159, 162 (Ky. App. 2008) (citing Bowling v. LFUCG, 172 S.W.3d 333, 345 (Ky. 2005))

Extending Water Service into Another's Territory

7 U.S.C. § 1926(b)

7 U.S.C. § 1926(b)

A plaintiff must establish that

- 1) it is an 'association' within the meaning of the Act;
- 2) it has a qualifying outstanding federal loan obligation; and
- 3) it has provided or made service available in the disputed area.

7 U.S.C. § 1926(b)

Has the WD provided or made service available in the disputed area?

- 1) Pipes in the ground?
 - a) To the property
 - b) Adjacent or within the property
- 2) Legal right under state law to serve the disputed territory
 - a) CPCN from PSC Lexington-S. Elkhorn Water Dist. v. City of Wilmore, 93 F.3d 230, 238 (6th Cir. 1996)
 - b) Service territory

TODD OSTERLOH




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Kentucky Water Workforce Survey Results


Presenters: Donna McNeil and Valerie Lucas

Co-Authors: Emily Koyagi, Dr. Lindell Ormsbee, and James Shelley


 **Kentucky Water Resources Research Institute**

Outline

- Survey Overview
- Demographics
- Retention
- Recruitment
- Utility Challenges
- Conclusions
- Recommendations
- Next Steps



Survey Overview

 **Kentucky Water Resources Research Institute**

Operator Recruitment and Development (ORD) Committee

Committee members:

- Valerie Lucas, Clean Water Professionals
- Jessica Wilhoite and Veronica Roland, Kentucky Operator Certification Program
- Donna McNeil, KWRRRI
- Kay Sanborn, KY-TN American Water Works Association
- Doug Kimbler, Bowling Green Municipal Utilities
- Kim Padgett and Maggie Mahan, Kentucky Rural Community Assistance Program
- Heather Stevenson and Jason Pennell, Kentucky Rural Water Association
- Robin Strader, Kentucky Wastewater Operators Certification Board Vice Chair
- Mary Carol Wagner, Northern Kentucky Water District
- Adam Scott, Kentucky Water and Wastewater Operators Association
- Alicia Jacobs, Amanda Lefevre, Joseph Uliasz, Energy and Environment Cabinet Representatives



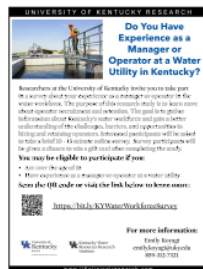
ORD's Goals and Objectives

- Bring operator recruitment and development issues to the forefront.
- Gain a better understanding of recruitment and retention in the water workforce.
- Help decision makers better understand operator challenges.



Kentucky Water Workforce Survey

- Two Surveys:
 - Operator Survey (36 questions)
 - Manager Survey (31 questions)
- Open from May 3, 2022 – June 7, 2022
- Recruitment methods:
 - Email
 - Social media
 - Newsletters
 - Promotion at events



Kentucky Utility Regulatory Information

- Kentucky Division of Water: 1,164 utilities
 - 436 drinking water systems
 - 728 KPDES permitted systems
- Kentucky Public Service Commission: 194 utilities
 - 136 drinking water systems
 - 58 sewer systems



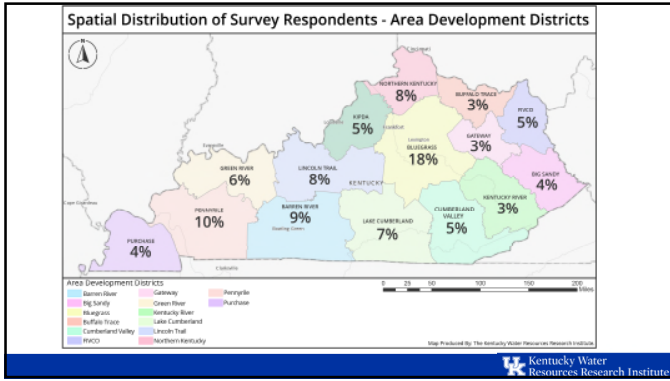
Survey Response

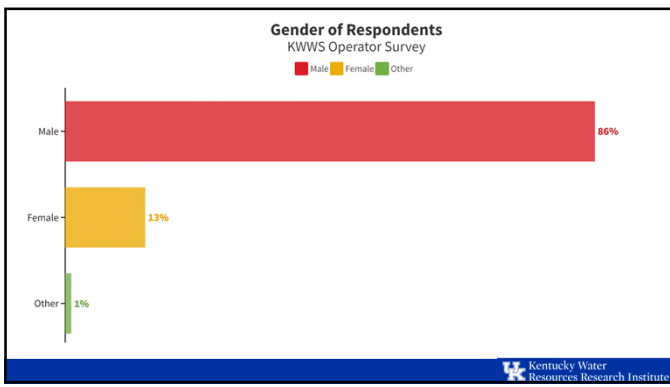
- Total respondents: 635
 - Operator Survey: 415
 - Manager Survey: 220

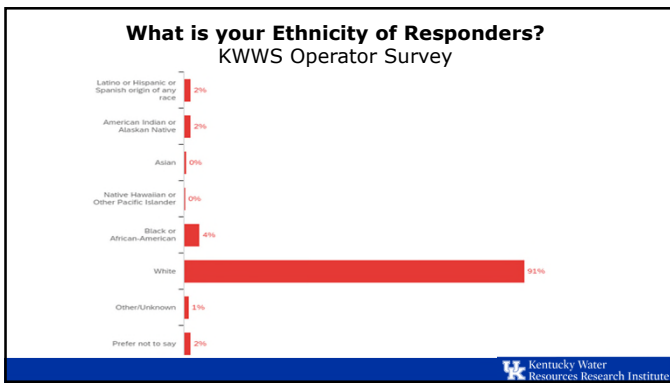


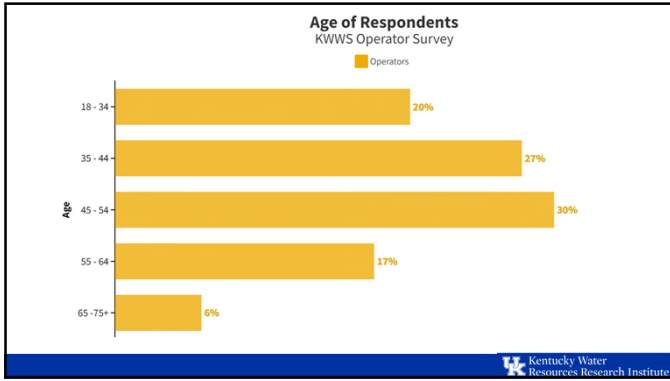
Demographics

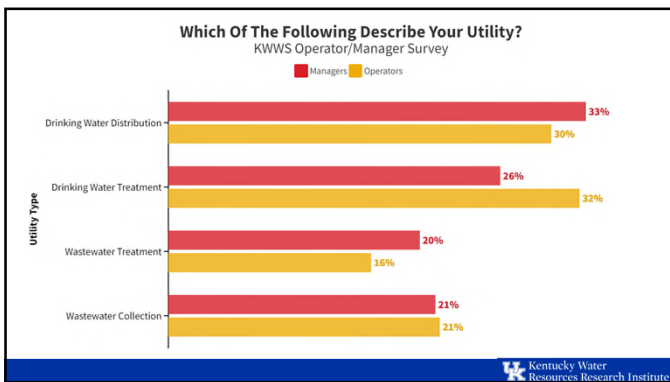


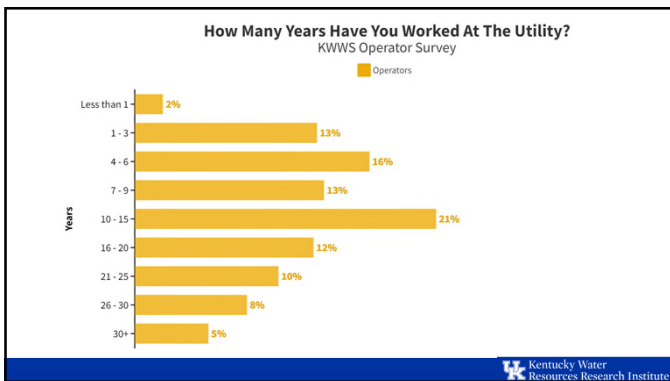


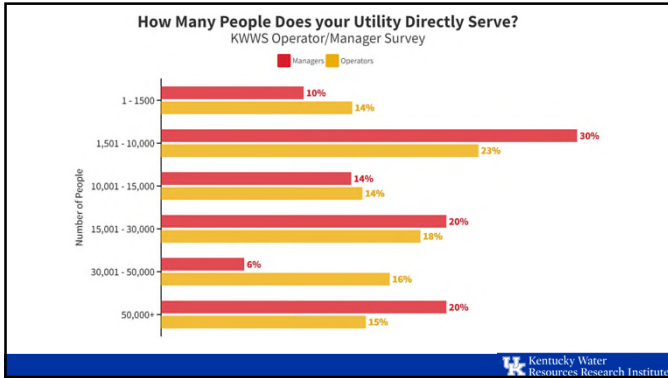












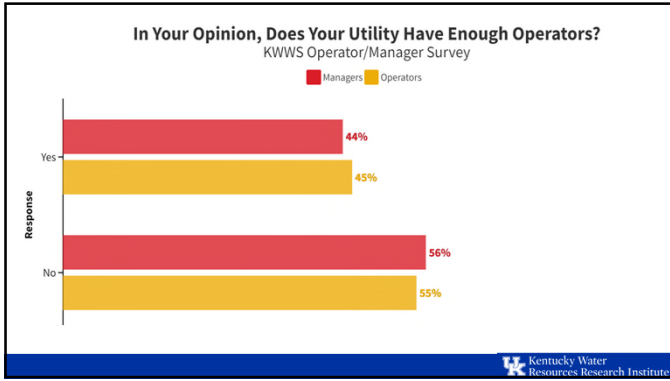
Operator Classification

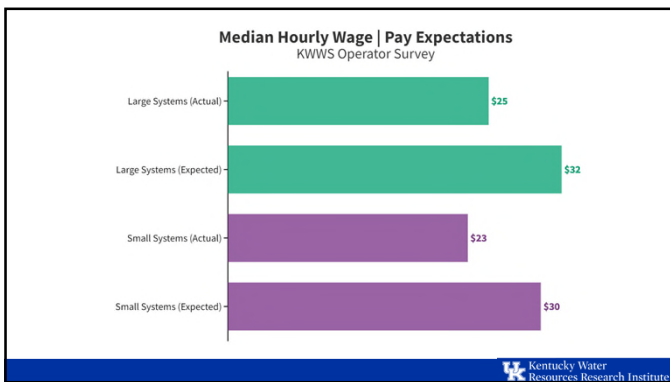
- All seven wastewater classifications were represented which included OIT and limited.
- 13 of the 15 drinking water classifications were represented which included bottled water and limited. Class IVB and OIT were not represented.

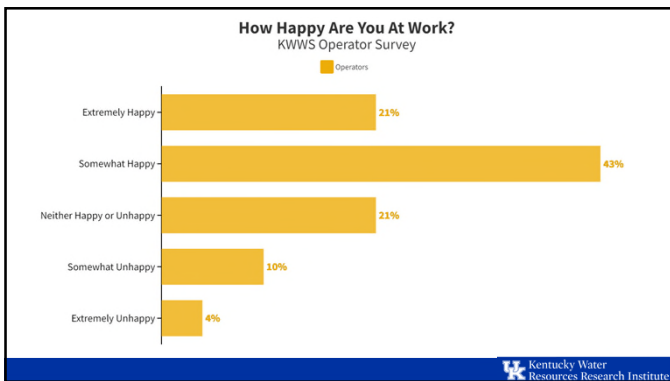
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Retention

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Retention: Key Points to Consider

- 76% like doing the tasks they do at work.
- 70% are given the equipment and tools needed to do my job effectively.
- 68% are satisfied with the benefits they receive.
- 39% are considering leaving the utility.
- 37% believe that they are not being paid a fair amount for the work.
- 32% believe that work is not distributed evenly at their utility.
- 28% are considering leaving the water industry.



**Aspects of the Job:
Somewhat Dissatisfied or Extremely Dissatisfied**

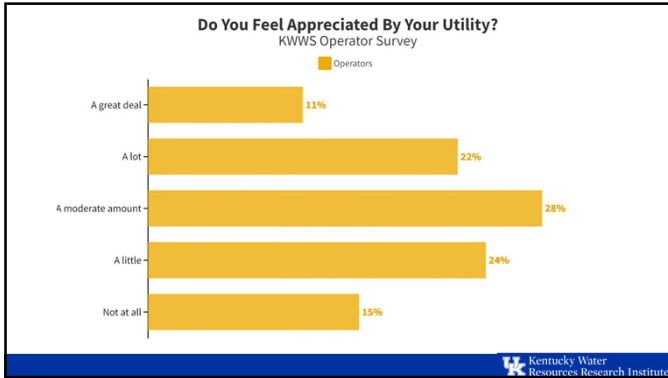
- Operator Responses:
- Pay – 39%
 - Certification Exam Process – 22%
 - Workload – 21%
 - Preferred Shifts– 17%
- Manager Responses:
- Pay – 38%
 - Certification Exam Process – 29%
 - Preferred Shifts– 20%
 - Workload – 20%



**Aspects of the Job:
Somewhat Satisfied or Extremely Satisfied**

- Operator Responses:
- Hours – 70%
 - Type of Work– 69%
 - Certification Renewal Process – 62%
 - Preferred Shifts– 60%
- Manager Responses:
- Hours – 67%
 - Type of Work – 67%
 - Certification Renewal Process – 54%
 - Preferred Shifts– 53%





Relationship with Decision Makers

How well do your utility's decision makers understand what you do in your job?

- **51% responded slightly well or not well at all.**

How often do your utility's decision makers communicate with the operators?

- **55% responded rarely or never.**

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What reasons do operators give for leaving the job?

- Better pay in another job opportunity – 72%
- Retiring – 62%
- Undesirable working hours (on-call, etc.) – 38%
- Career advancement – 36%
- Better benefits – 35%
- Too much responsibility – 22%
- No longer want to work in the water sector – 17%
- Certification exam and process is too difficult – 16%

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Succession Planning

Are you currently eligible to retire?

- **23% of operator survey respondents are eligible.**

Does your utility have a succession plan in place if a manager leaves or retires?

- **45% do not**

Does your utility have a succession plan in place if an operator leaves or retires?

- **46% do not.**



Recruitment



Barriers to Hiring Operators

- Rate of pay – 74%
- Lack of qualified applicants – 68%
- Available shifts are not desirable – 34%
- Type of work – 32%
- Financial limitations at the utility – 30%
- Certification process – 28%
- Certification requirements – 25%
- Applicants unwilling to become certified – 22%
- City Council or Utility Board – 16%
- Lack of benefits – 15%



What benefits does your utility provide?

Benefit	Percent of Respondents
Paid sick and vacation	90%
Paid holidays	89%
Health insurance	86%
Retirement benefits	82%
Paid time and travel to attend trainings	77%
Paid or reimbursed certification fees	73%
Overtime	69%
Life and disability insurance	64%
Annual raises	64%
Paid or reimbursed tuition or training expenses	63%

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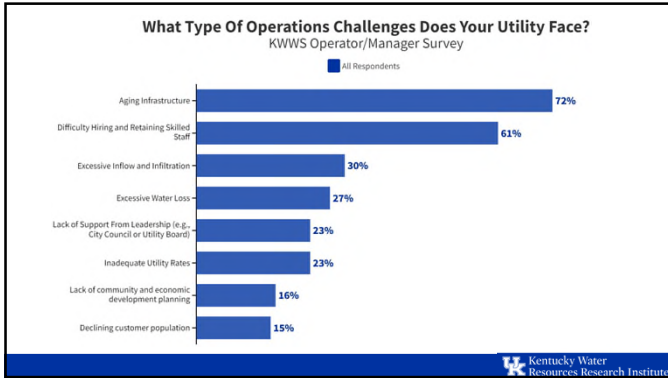
What advertising resources are used?

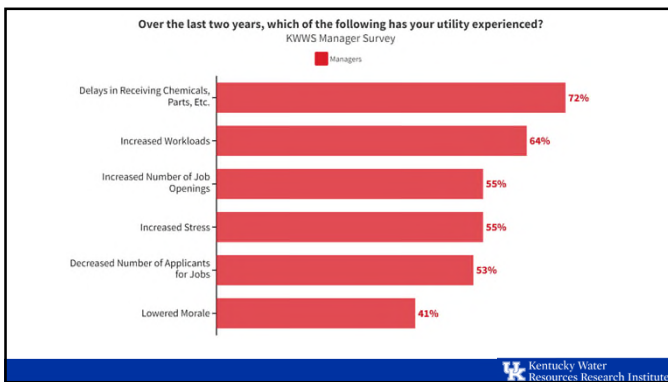
Job Resources	Resource Used by Utility	Resource Used by Operator
Newspapers	61%	18%
Online job posts	61%	32%
Social media	49%	15%
Industry-specific website	41%	18%
Local government site	29%	14%
Job fair	14%	8%
Unemployment office	12%	4%

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Utility Challenges

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NKADD, KIPDA, & BGADD Specifics (Manager Survey)

- 35.45% of manager survey responses
- 56% of managers: not enough operators at the utility

# of Operators	Treatment	Distribution	Treatment	Collection
Budgeted*	201	213	201	169
Filled*	181	181	168	142
Vacancies	20 (9%)	32 (8.5%)	33 (8.4%)	27 (8.4%)

*The vacancy rate should be slightly higher than shown because 15 managers did not report their budgeted positions but did report their filled positions.

Type of Operator	Median Entry-Level Wage	Range of Entry-Level Wage	Median Highest Paid Wage	Range of Highest Paid Wage
Drinking Water	\$16	\$12 to \$45	\$25	\$15 to \$52
Wastewater	\$16	\$12 to \$27	\$26	\$16 to \$48

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Conclusion:

There is an ongoing problem in recruiting and retaining qualified operators in Kentucky's water sector.



Retention Issues

- A lack of adequate pay
- A lack of consistent benefits
- Better pay elsewhere (poaching by other utilities)
- A lack of appreciation of employees by utility decision-makers
- A lack of succession planning
- A lack of appreciation of the retention problem by management
- Impacts from COVID



Recruitment Issues

- A lack of qualified applicants
- A lack of adequate pay
- A lack of consistent benefits
- A lack of a trainee or apprentice program
- A lack of effective recruitment strategies including advertisement
- A lack of appreciation of the recruitment problem by management




Recommendations



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Resources Research Institute

Retention Strategies

- Educate utility decision makers about the magnitude and nature of the problem.
- Increase pay.
- Increase benefits.
- Demonstrate a greater appreciation of employees.
- Develop succession plans for both operators and managers.
- Provide tools and support to management to help address recruitment issues.



Recruitment Strategies

- Evaluate utility financials and explore avenues to increase operator salary scales.
- Develop and implement an effective trainee internship and/or apprentice program.
- Develop more effective marketing strategies and techniques to advertise vacant positions.
- Evaluate utility benefit packages to ensure they are competitive with other industries or utilities.
- Improve communication and interaction with staff.



Additional Strategies

- Develop a template for an effective utility communication plan to improve employee, stakeholder, and public interaction during normal operating and emergency situations.
- Consider development of a decision maker training program for all utilities. The KPSC requires training for newly appointed water commissioners during their first year (116 of the 194 systems).



Future Steps



Next Steps

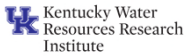
- Additional data analysis
- Final report completed August 30, 2022
- Present findings to water sector
- Present findings to public officials
- Start a conversation – plant seeds of thought
- Follow-up studies/surveys



Discussion/Questions

 Kentucky Water Resources Research Institute

Contact Information



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STOLL KEENON OGDEN  PLLC

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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(859) 231-3017


STOLL KEENON OGDEN  PLLC

ORDER OF PRESENTATION

- Certificate Basics
- Applying for A Certificate
- Debt Authorizations: The Basics
- Applying for Authorization to Issue Debt


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CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY: THE BASICS

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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 . . . 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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PURPOSE OF STATUTE

- Counter Incentives in Rate of Return Regulation That Encourage Waste
- Prevent Inefficient Investment
- Avoid Wasteful Duplication
- Ensure Project's Technically Feasibility

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WHAT REQUIRES A CERTIFICATE?

- Construction of Any Plant/Facility
- Installing Equipment
- Extensive Repairs/Remodeling of Existing Facility
- Replacement of Existing Facilities
- **Acquisition of Facility???**

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DOES NOT REQUIRE A CERTIFICATE

- Purchase of Building or Land
- Maintenance Projects
- Demolition/Destruction of Existing Facility
- Preparation of Land for Construction
- Contracting for Equipment???

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KRS 278.020(1): EXCEPTIONS


- Service Connections to Electric Consuming Facilities By Retail Electric Suppliers
- Ordinary Extensions of Existing Systems in the usual course of Business
- Water District/Association Exception

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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, §16(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” - TESTS**

- Percentage of Existing Net Utility Plant
- Debt Issued to Finance Project
- Project Cost Borne By Utility

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**EXTENSIONS IN THE ORDINARY COURSE:
PERCENTAGE OF UTILITY PLANT TEST**

- Percentage = Total Project Cost ÷ Net Utility Plant (Total Plant – Depreciation)
- Trigger for Certificate
 - 10 Percent Rule (**Abandoned**)
 - 3 Percent Rule – Case No. 2019-00257
 - 1 Percent Rule – Case No. 2014-00171
- Funding Source Not Considered

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**EXTENSIONS IN THE ORDINARY COURSE:
DEBT FINANCED CONSTRUCTION**

- Case No. 98-079: Projects financed through Utility Debt have a Material Effect on Utility's Finances
- Case No. 2000-481: "The method used to finance the cost of proposed facilities does not determine whether those facilities require a Certificate of Public Convenience and Necessity"

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**EXTENSIONS IN THE ORDINARY COURSE:
DEBT FINANCED CONSTRUCTION**

- Case No. 2022-00284: Notes that how project is financed is a factor; absence of long-term debt suggests no material affect on finances
- **Bottom Line:** Use of debt financing will be factor in whether project has a material affect on utility's finances

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**EXTENSIONS IN THE ORDINARY COURSE:
PROJECT COSTS BORNE BY UTILITY**

- 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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**PROJECTS FINANCED WITH
OTHERS' FUNDS: CASE NO. 2014-00368**

- IOU to construct gas line to serve industrial customer
- Gas Line = 55% of Net Utility Plant
- Customer pays cost
- No increase to Utility Plant
- No Rate Increase
- **NO MATERIAL EFFECT – NO CPCN**

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**PROJECTS FINANCED WITH
OTHERS' FUNDS: CASE NO. 2017-00195**

- IOU to relocate gas line running through landfill
- Landfill requests,pays most of relocate costs
- IOU's share of cost deemed too small to materially affect its financial condition
- No Rate Increase
- **NO MATERIAL EFFECT – NO CPCN**

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PROJECTS FINANCED WITH OTHERS' FUNDS: CASES NO. 2019-00067 & NO. 2020-00344

- \$16.5 Million Projects at Fort Knox
- Projects = 31.1% of Net Utility Plant
- US Govt funding entire project cost
- No increase to other customers' rates
- No affect on utility's financial condition
- **NO MATERIAL EFFECT – NO CPCN**

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PROJECTS FINANCED WITH OTHERS' FUNDS: GOVERNMENT GRANTS

- 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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GOVERNMENT GRANTS AND "MATERIAL EFFECT"

- Case No. 2022-00284
- W&S District to construct sewer main to serve new industry; seeks Declaratory Order
- Cost: \$1,751,352 (14.5% of net utility plant)
- Funding Source: EDA, ARC Grants
- Holding: No debt incurred – No material effect on financial condition – No certificate required

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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** – Grant funded portion not considered in percentage of utility plant test?

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**ALWAYS CONSIDERED
NOT IN THE ORDINARY COURSE**

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

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**EXTENSIONS IN THE ORDINARY COURSE:
REPAIRS OR REPLACEMENT**

- Proposed Amendment to 807 KAR 5:001, §15
- A certificate of public convenience and necessity shall not be required for any water district created pursuant to KRS Chapter 74, water association formed under KRS Chapter 273, or any other utility that provides the services described in KRS Chapter 278.010(3)(b) or KRS Chapter 278.010(3)(f) that intends to **replace in-kind, restore, repair or fix any facility** as a result of weather events occurring on or between July 26, 2022 and July 30, 2022. Any replacement, restoration, repair or fix shall be deemed **extensions in the ordinary course of business.**

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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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ANALYTICAL FRAMEWORK

- Is Construction or Installation of Equipment Involved?
- Does Action Fall Within An Exception?
 - Water District Exception?
 - Water Main Extension or Improvement?
 - Less than \$500,000?
 - No long-term debt or no rate increase?
 - Ordinary Extension In Usual Course?
 - Wasteful Duplication?
 - Interferes with Another Utility’s Certificate?
 - Any Material Effect on Utility’s Financial Condition?

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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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ADVANTAGES/DISADVANTAGES OF NO CERTIFICATE

- Advantages:
 - No delay for PSC proceedings
 - No litigation expense
- Disadvantages:
 - No presumption of reasonableness
 - No benefit if Long-Term Debt Required
 - Subject to Future Review & Disallowance

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PREPARING AN APPLICATION FOR 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 – Not Common
- Hearing – Not Common
- Final Order: 60 – 90 Days


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TIMING

- Obtain PSC Approval Prior to Executing Construction/Materials Contract
- File Application immediately after selecting winning bid
- State Due Date for PSC Approval in first paragraph of Application
- If Selecting Contract Prior to Final PSC Order, Make Contract Contingent on Grant of Certificate


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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
FINANCED CONSTRUCTION
PROJECTS**

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**RURAL DEVELOPMENT FUNDING:
LIMITED 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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**RURAL DEVELOPMENT FUNDING:
LIMITED PSC REVIEW**

- Once Minimum Filing Requirements Met, PSC must take all actions necessary to implement RD Financing Agreement


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**RURAL DEVELOPMENT FUNDING:
PSC CRITICISMS**

- Prevents PSC Review of Utility's financial condition and the technical aspects of project
- RD rates are generally inadequate, fail to allow for recovery of depreciation expense
- Water Utilities use RD-finance agreements to circumvent PSC Review


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**DEBT AUTHORIZATION:
THE BASICS**

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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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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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PREPARING AN APPLICATION FOR DEBT AUTHORIZATION

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CONTENTS OF APPLICATION

- Financial Exhibit
- Description of Applicant's Property
- Description of Use of Proceeds
- Detailed description of property to be acquired or constructed or proposed improvement
- Copy of contracts re: acquisition/construction of property, proposed improvement
- Notice to State Local Debt Officer

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CONTENTS OF APPLICATION

- Maps/Plans of Property to be Acquired or Constructed
- Estimates of the Cost of Property/Improvements
- Application must be signed under oath by utility officer
- **SUGGESTION:** If funds used for construction, provide same evidence/documents as Application for Certificate

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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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PROCEDURE

- Application
- Discovery
- Intervening Parties: Uncommon
- Hearing: Uncommon
- Matter to Go to Front of PSC Docket
- Final Order: 60 Days from filing of Application but application may be continued beyond 60 days

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QUESTIONS?

gerald.wuetcher@skofirm.com
859-231-3017

278.020 Certificate of convenience and necessity required for construction provision of utility service or of utility -- Exceptions -- Approval required for acquisition or transfer of ownership -- Public hearing on proposed transmission line -- Limitations upon approval of application to transfer control of utility or to abandon or cease provision of services -- Hearing -- Severability of provisions.

- (1) (a) No person, partnership, public or private corporation, or combination thereof shall commence providing utility service to or for the public or 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:
1. Retail electric suppliers for service connections to electric-consuming facilities located within its certified territory;
 2. Ordinary extensions of existing systems in the usual course of business; or
 3. A water district created under KRS Chapter 74 or a water association formed under KRS Chapter 273 that undertakes a waterline extension or improvement project if the water district or water association is a Class A or B utility as defined in the uniform system of accounts established by the commission according to KRS 278.220 and:
 - a. The water line extension or improvement project will not cost more than five hundred thousand dollars (\$500,000); or
 - b. The water district or water association will not, as a result of the water line extension or improvement project, incur obligations requiring commission approval as required by KRS 278.300.In either case, the water district or water association shall not, as a result of the water line extension or improvement project, increase rates to its customers;
- until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.
- (b) Upon the filing of an application for a certificate, and after any public hearing which the commission may in its discretion conduct for all interested parties, the commission may issue or refuse to issue the certificate, or issue it in part and refuse it in part, except that the commission shall not refuse or modify an application submitted under KRS 278.023 without consent by the parties to the agreement.
- (c) The commission, when considering an application for a certificate to construct a base load electric generating facility, may consider the policy of the General Assembly to foster and encourage use of Kentucky coal by electric utilities serving the Commonwealth.
- (d) The commission, when considering an application for a certificate to construct an electric transmission line, may consider the interstate benefits expected to be achieved by the proposed construction or modification of electric

transmission facilities in the Commonwealth.

- (e) Unless exercised within one (1) year from the grant thereof, exclusive of any delay due to the order of any court or failure to obtain any necessary grant or consent, the authority conferred by the issuance of the certificate of convenience and necessity shall be void, but the beginning of any new construction or facility in good faith within the time prescribed by the commission and the prosecution thereof with reasonable diligence shall constitute an exercise of authority under the certificate.
- (2) For the purposes of this section, construction of any electric transmission line of one hundred thirty-eight (138) kilovolts or more and of more than five thousand two hundred eighty (5,280) feet in length shall not be considered an ordinary extension of an existing system in the usual course of business and shall require a certificate of public convenience and necessity. However, ordinary extensions of existing systems in the usual course of business not requiring such a certificate shall include:
 - (a) The replacement or upgrading of any existing electric transmission line; or
 - (b) The relocation of any existing electric transmission line to accommodate construction or expansion of a roadway or other transportation infrastructure; or
 - (c) An electric transmission line that is constructed solely to serve a single customer and that will pass over no property other than that owned by the customer to be served.
 - (3) Prior to granting a certificate of public convenience and necessity to construct facilities to provide the services set forth in KRS 278.010(3)(f), the commission shall require the applicant to provide a surety bond, or a reasonable guaranty that the applicant shall operate the facilities in a reasonable and reliable manner for a period of at least five (5) years. The surety bond or guaranty shall be in an amount sufficient to ensure the full and faithful performance by the applicant or its successors of the obligations and requirements of this chapter and of all applicable federal and state environmental requirements. However, no surety bond or guaranty shall be required for an applicant that is a water district or water association or for an applicant that the commission finds has sufficient assets to ensure the continuity of sewage service.
 - (4) No utility shall exercise any right or privilege under any franchise or permit, after the exercise of that right or privilege has been voluntarily suspended or discontinued for more than one (1) year, without first obtaining from the commission, in the manner provided in subsection (1) of this section, a certificate of convenience and necessity authorizing the exercise of that right or privilege.
 - (5) No utility shall apply for or obtain any franchise, license, or permit from any city or other governmental agency until it has obtained from the commission, in the manner provided in subsection (1) of this section, a certificate of convenience and necessity showing that there is a demand and need for the service sought to be rendered.
 - (6) No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of

stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.

- (7) No individual, group, syndicate, general or limited partnership, association, corporation, joint stock company, trust, or other entity (an "acquirer"), whether or not organized under the laws of this state, shall acquire control, either directly or indirectly, of any utility furnishing utility service in this state, without having first obtained the approval of the commission. Any acquisition of control without prior authorization shall be void and of no effect. As used in this subsection, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a utility, whether through the ownership of voting securities, by effecting a change in the composition of the board of directors, by contract or otherwise. Control shall be presumed to exist if any individual or entity, directly or indirectly, owns ten percent (10%) or more of the voting securities of the utility. This presumption may be rebutted by a showing that ownership does not in fact confer control. Application for any approval or authorization shall be made to the commission in writing, verified by oath or affirmation, and be in a form and contain the information as the commission requires. The commission shall approve any proposed acquisition when it finds that the same is to be made in accordance with law, for a proper purpose and is consistent with the public interest. The commission may make investigation and hold hearings in the matter as it deems necessary, and thereafter may grant any application under this subsection in whole or in part and with modification and upon terms and conditions as it deems necessary or appropriate. The commission shall grant, modify, refuse, or prescribe appropriate terms and conditions with respect to every such application within sixty (60) days after the filing of the application therefor, unless it is necessary, for good cause shown, to continue the application for up to sixty (60) additional days. The order continuing the application shall state fully the facts that make continuance necessary. In the absence of that action within that period of time, any proposed acquisition shall be deemed to be approved.
- (8) Subsection (7) of this section shall not apply to any acquisition of control of any:
 - (a) Utility which derives a greater percentage of its gross revenue from business in another jurisdiction than from business in this state if the commission determines that the other jurisdiction has statutes or rules which are applicable and are being applied and which afford protection to ratepayers in this state substantially equal to that afforded such ratepayers by subsection (7) of this section;
 - (b) Utility by an acquirer who directly, or indirectly through one (1) or more intermediaries, controls, or is controlled by, or is under common control with, the utility, including any entity created at the direction of such utility for purposes of corporate reorganization; or
 - (c) Utility pursuant to the terms of any indebtedness of the utility, provided the

issuance of indebtedness was approved by the commission.

- (9) In a proceeding on an application filed pursuant to this section, any interested person, including a person over whose property the proposed transmission line will cross, may request intervention, and the commission shall, if requested, conduct a public hearing in the county in which the transmission line is proposed to be constructed, or, if the transmission line is proposed to be constructed in more than one county, in one of those counties. The commission shall issue its decision no later than ninety (90) days after the application is filed, unless the commission extends this period, for good cause, to one hundred twenty (120) days. The commission may utilize the provisions of KRS 278.255(3) if, in the exercise of its discretion, it deems it necessary to hire a competent, qualified and independent firm to assist it in reaching its decision. The issuance by the commission of a certificate that public convenience and necessity require the construction of an electric transmission line shall be deemed to be a determination by the commission that, as of the date of issuance, the construction of the line is a prudent investment.
- (10) The commission shall not approve any application under subsection (6) or (7) of this section for the transfer of control of a utility described in KRS 278.010(3)(f) unless the commission finds, in addition to findings required by those subsections, that the person acquiring the utility has provided evidence of financial integrity to ensure the continuity of sewage service in the event that the acquirer cannot continue to provide service.
- (11) The commission shall not accept for filing an application requesting authority to abandon facilities that provide services as set forth in KRS 278.010(3)(f) or to cease providing services unless the applicant has provided written notice of the filing to the following:
 - (a) Kentucky Division of Water;
 - (b) Office of the Attorney General; and
 - (c) The county judge/executive, mayor, health department, planning and zoning commission, and public sewage service provider of each county and each city in which the utility provides utility service.
- (12) The commission may grant any application requesting authority to abandon facilities that provide services as set forth in KRS 278.010(3)(f) or to cease providing services upon terms and conditions as the commission deems necessary or appropriate, but not before holding a hearing on the application and no earlier than ninety (90) days from the date of the commission's acceptance of the application for filing, unless the commission finds it necessary for good cause to act upon the application earlier.
- (13) If any provision of this section or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to that end the provisions are declared to be severable.

Effective: June 27, 2019

History: Amended 2019 Ky. Acts ch. 66, sec. 1, effective June 27, 2019. -- Amended 2018 Ky. Acts ch. 171, sec. 9, effective April 14, 2018; and ch. 207, sec. 9, effective

April 27, 2018. -- Amended 2016 Ky. Acts ch. 50, sec. 1, effective April 8, 2016. -- Amended 2006 Ky. Acts ch. 137, sec. 1, effective July 12, 2006. -- Amended 2004 Ky. Acts ch. 75, sec. 1, effective July 13, 2004. -- Amended 2001 Ky. Acts ch. 35, sec. 1, effective June 21, 2001. -- Amended 1998 Ky. Acts ch. 388, sec. 1, effective July 15, 1998. -- Amended 1994 Ky. Acts ch. 144, sec. 1, effective July 15, 1994. -- Amended 1992 Ky. Acts ch. 102, sec. 2, effective July 14, 1992. -- Amended 1988 Ky. Acts ch. 12, sec. 3, effective July 15, 1988; ch. 22, sec. 5, effective July 15, 1988; ch. 335, sec. 1, effective July 15, 1988. -- Amended 1986 Ky. Acts ch. 368, sec. 1, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 82, sec. 5, effective July 15, 1982; ch. 130, sec. 1, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 6, effective April 1, 1979. -- Amended 1974 Ky. Acts ch. 388, sec. 3. -- Amended 1972 Ky. Acts ch. 83, sec. 5. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-25.

278.300 Issuance or assumption of securities by utilities.

- (1) 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.
- (2) Application for authority to issue or assume securities or evidences of indebtedness shall be made in such form as the commission prescribes. Every such application shall be made under oath, and shall be signed and filed on behalf of the utility by its president, or by a vice president, auditor, comptroller, or other executive officer having knowledge of the matters set forth and duly designated by the utility. Every such application shall be placed at the head of the docket of the commission and disposed of promptly within sixty (60) days after it is filed with the commission, unless it is necessary for good cause to continue the application for longer time than sixty (60) days, in which case the order making the continuance shall state fully the facts that make it necessary.
- (3) The commission shall not approve any issue or assumption unless, after investigation of the purposes and uses of the proposed issue and the proceeds thereof, or of the proposed assumption of obligation or liability, the commission finds that the issue or assumption is for some lawful object within the corporate purposes of the utility, is necessary or appropriate for or consistent with the proper performance by the utility of its service to the public and will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purpose.
- (4) The commission may grant or deny the application in whole or in part, or may grant it with such modifications and upon such terms and conditions as the commission deems necessary or appropriate. The order of the commission shall specify that the securities or evidences of indebtedness, or the proceeds thereof, shall be used only for the lawful purposes specified in the application, and both the application of the utility and the order of the commission shall state in general terms the purpose of the issuance or assumption.
- (5) A copy of any order made and entered by the commission under this section, duly certified by the executive director of the commission, shall be sufficient evidence for all purposes of full and complete compliance by the utility with all procedural and other matters required precedent to the entry of the order.
- (6) Securities and evidences of indebtedness issued and obligations and liabilities assumed by a utility, for which, under the provisions of this section, the authorization of the commission is required, shall comply with the terms and conditions of the order of authorization entered prior to the issue or assumption, and where the order has been fully complied with the validity of the issue or assumption shall not be affected by a failure to comply with any provision of this section or rule of the commission relating to procedure or other matters preceding the entry of the order of authorization or order supplemental thereto.
- (7) The commission may require periodical or special reports from the utility issuing any security or evidence of indebtedness. The report shall show, in such detail as the commission requires, the disposition made of such securities or evidences of

indebtedness, and the application of the proceeds thereof.

- (8) This section does not apply to notes issued by a utility, for proper purposes and not in violation of law, that are payable at periods of not more than two (2) years from the date thereof, or to like notes, payable at a period of not more than two (2) years from date thereof, that are issued to pay or refund in whole or in part any such notes, or to renewals of such notes from time to time, not exceeding in the aggregate six (6) years from the date of the issue of the original notes so renewed or refunded.
- (9) Nothing in this section implies any guarantee of securities or evidences of indebtedness by the state, or any obligation on the part of the state with respect thereto, and nothing in this section limits the power of any court having jurisdiction to authorize or cause receiver's certificates or debentures to be issued according to the rules and practice obtaining in receivership proceedings in courts of equity.
- (10) This section does not apply in any instance where the issuance of securities or evidences of indebtedness is subject to the supervision or control of the federal government or any agency thereof, but the commission may appear as a party to any proceeding filed or pending before any federal agency if the issuance of the securities or evidences of indebtedness will materially affect any utility over which the commission has jurisdiction.
- (11) This section also does not apply to the issuance of securities or evidence of indebtedness by a utility principally engaged in transportation of gas by pipeline in interstate commerce and subject to the supervision, control or jurisdiction of the federal government or any agency, board or commission thereof.

Effective: July 15, 1994

History: Amended 1994 Ky. Acts ch. 166, sec. 3, effective July 15, 1994. -- Amended 1982 Ky. Acts ch. 82, sec. 34, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 37, effective April 1, 1979. -- Amended 1972 Ky. Acts ch. 9, sec. 1. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-24.

TAB 5

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

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

ID : 8660

Re : CLE Activity Accreditation
Date: October 07, 2022

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

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

Sponsor:	Stoll Keenon Ogden		
Activity:	Seventh Annual Water Law Series		
Format:	Live - a program at a specific date and time - On site		
Location:	Erlanger, Kentucky		
Date:	11/09/2022		
Activity No.	246917	Sponsor No.	8660
TOTAL CREDITS:	6	ETHICS CREDITS	0

Ethics credits are INCLUDED in the TOTAL number of credits.

TAB 6



ANDY BESHEAR
GOVERNOR

REBECCA W. GOODMAN
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT FOR ENVIRONMENTAL PROTECTION

ANTHONY R. HATTON
COMMISSIONER

300 SOWER BOULEVARD
FRANKFORT, KENTUCKY 40601

November 1, 2022

Stoll Keenon Ogden PLLC
Attn: Gerald Wuetcher
300 W Vine St Ste 2100
Lexington, Kentucky 40507

Agency Interest Number: 175355
RE: Operator Certification Training Approval for Continuing Education Hours

To Whom It May Concern:

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

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

Course Title	Date	Hours & Type Approved	DCA Event ID#	Comments
Northern Kentucky Water Training Program 2022	11/09/2022	DW - 6.0 Hours approved	26793	One time Approval

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

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

Sincerely,

Veronica Roland
Certification and Licensing Branch

RECEIPT

Commonwealth of Kentucky
Department of Environmental Protection

Received From: Gerald E. Wuetcher
Address: 110 Old Hickory Lane Versailles, KY, 40383
Receipt No.: 281299-0-1
Check Amt: \$51.50
Check Number: 123806
Total Paid: \$51.50



TAB 7

Wuetcher, Gerald

From: Thompson, Wendy (DLG) <wendy.thompson@ky.gov>
Sent: Tuesday, October 11, 2022 8:50 AM
To: Wuetcher, Gerald
Subject: RE: Request for Approval of Proposed Training Program

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

Thanks for being patient Jerry. You have been approved for up to 6 hours of in-person training. I will add this to the training page today.

From: Wuetcher, Gerald <Gerald.Wuetcher@skofirm.com>
Sent: Friday, October 7, 2022 2:41 PM
To: Thompson, Wendy (DLG) <wendy.thompson@ky.gov>
Subject: Request for Approval of Proposed Training Program

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

Wendy:

Good afternoon. I hope that all is well with you and your family.

Attached is an application for approval of Northern Kentucky Water Training 2022 as a qualified training program of the Local County Officials Training Program. Please contact me if additional information is required or there are any questions regarding the program.

Sincerely,

Jerry



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

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



Elected County Officials Training Incentive Program Training Approval Request Form

Training Approval Requested By: Gerald E. Wuetcher

Title: Attorney Agency: Stoll Keenon Ogden PLLC

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

Requester: Please complete both pages of this form, attach a copy of the detailed agenda that lists the start and end times of all training sessions while also indicating any breaks that may be given and submit to: Department for Local Government, 100 Airport Road, 3rd Floor Frankfort, KY 40601 Phone: 800-346-5605 Fax: 502-227-8691 E-mail: Wendy.Thompson@ky.gov

Training Event Information

Training Title: Northern Kentucky Water Training 2022

Training Provider: Stoll Keenon Ogden PLLC/Northern Kentucky Water District

Contact Name: Gerald E. Wuetcher Title: Attorney

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

Fax: (859) 259-3517 Website: https://www.krwa.org/events/2022-utility-law-seminar

Training Intended For: Fiscal Court County Clerk Sheriff Jailer All

Registration Fees: Yes: Dollar Amount: \$ 50 No

Enrollment Limitations: Yes: Maximum Enrollment: # _____ No

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

Training Dates with Locations: November 9, 2022 - 2835 Crescent Springs Road, Erlanger, Kentucky

FOR DLG USE ONLY

Approved By: _____ Date: _____ Hours: _____

Denied By: _____ Date: _____

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

Training Title: Northern Kentucky Water Training 2022 Provider: Stoll Keenon Ogden PLLC/N. Ky WD

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

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

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

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

See attached agenda and biographical materials.

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

Each attendee will be provided a copy of each presenter's presentation and presenter notes. Additional materials, such as copies of recent legislation, statutes and court decisions, will be provided for certain presentations.

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

Fiscal Court County Clerk Sheriff Jailer All

List corresponding KRS, KAR or other requiring entity:

KRS 74.020 (Water District Commissioners)

Northern Kentucky Water Training
Presented by
Northern Kentucky Water District & Stoll Keenon Ogden PLLC
November 9, 2019
2835 Crescent Springs Road
Erlanger, Kentucky

Morning Agenda

- 7:45 – 8:30 **Registration and Refreshments**
- 8:30 – 8:35 **Program Overview and Welcome**
- 8:35 – 9:35 **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.
- 9:35 – 9:45 **Break**
- 9:45 – 10:45 **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.
- 10:45 – 10:55 **Break**
- 10:55 – 11:55 **Litigation Involving Water Utilities – Todd Osterloh**
Just like any other type of business, water utilities frequently face litigation. Waterline breaks, contracts, property disputes, employment actions, and termination of service can all give rise to an aggrieved party filing a complaint in Court. This session is designed to inform water-utility managers about various types of litigation involving government-owned water utilities and ideas that can lead to prevention or a successful defense.
- 11:55 – 12:30 **Lunch (Provided on site)**

Afternoon Agenda

12:30 – 1:30 Kentucky Water Workforce Survey Results – Donna McNeil and Valerie Lucas

As the water utility industry workforce continues to age, there is a national concern about the problem of recruiting and retaining workers. The UK Kentucky Water Resources Research Institute conducted two online surveys to assess Kentucky's water utility workforce. One survey collected feedback directly from operators while the second survey asked managers and decision makers to provide feedback from the perspective of the utility. The surveys were designed to identify the challenges and barriers that utilities face in recruiting and retaining drinking water and clean water operators. The presentation will summarize the results of each survey.

1:30 – 1:40 Break

1:40 – 2:40 Everything You Wanted to Know About Certificates of Public Convenience and Necessity and Debt Authorizations But Were Afraid to Ask – Gerald Wuetcher

This presentation reviews the requirements that water and wastewater utilities must meet when constructing new facilities and issuing the debt necessary to finance such construction. The presenter examines the method of analysis that the Public Service Commission has historically used to determine whether a proposed project requires a certificate of public convenience and necessity and exceptions to those requirements. The forms of project financing that require PSC approval and the evidence that must be presented to obtain such approval also be reviewed.

2:40 – 2:45 Break

2:45 – 3:45 Legal Issues in the Operation & Management of Water Systems – Panel Discussion - Panelists: Damon Talley, Gerald Wuetcher

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

3:45 Closing Remarks/Administrative Announcements

VALERIE LUCAS

Valerie Lucas is the Executive Director of Clean Water Professionals of Kentucky and Tennessee (CWP-KT). Prior to serving as CWP-KT Executive Director, Valerie spent over a decade in the water sector as a consulting engineer. She is a licensed professional engineer in the state of Kentucky and holds a Bachelor and Master of Science in Civil Engineering from the University of Kentucky.

DONNA MCNEIL

Donna McNeil is a Research Engineer with the UK Kentucky Water Resources Research Institute (KWRRRI). Prior to joining KWRRRI, Donna was the Executive Director of the Kentucky Infrastructure Authority, during which she served on two Legislative Task Forces focused on Public Water and Wastewater Infrastructure and the Private Wastewater Systems. Her experience includes working as a compliance specialist with the Kentucky Rural Water Association and managing the Kentucky drinking water program at the Kentucky Division of Water. Donna has over 30 years of service helping drinking water and wastewater utilities staff, decision-makers, and consultants. Donna received a Bachelor of Science Degree in Civil Engineering from the University of Kentucky and has an Engineer-In-Training Certification in Kentucky.



Elizabeth S. Muyskens

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.

Work Highlights

Dismissal of Complaints

SKO sought dismissal of two complaints against a theological seminary, arguing that the First Amendment to the U.S. Constitution prevents the Court from considering the matter. More specifically, SKO argued that because of the Free Exercise and Establishment Clauses, courts do not have jurisdiction over claims arising from the employment relationship between a religious institution and its ministerial employees. The Court granted summary judgment for the Seminary, and the Kentucky Court of Appeals confirmed each judgment.

Breach of Employee Covenant

SKO filed suit on behalf of a relocation and executive housing provider to enforce the covenants in an employment agreement and to recover damages. A competitor hired a former employee of our client and conspired with the employee to steal business from our client by misappropriating trade secrets and improperly utilizing confidential information.

Elizabeth S. Muyskens

Direct Phone: 859.231.3626
elizabeth.muyskens@skofirm.com

BAR & COURT ADMISSIONS

U.S. Court Of Appeals, Sixth Circuit
U.S. District Court, Eastern District Of Kentucky
U.S. District Court, Western District Of Kentucky
Kentucky
U.S. Court Of Appeals, Seventh Circuit
United States Supreme Court

EDUCATION

University of Kentucky College of Law
2008, J.D., summa cum laude
University of Kentucky
2005, B.S., summa cum laude

RECOGNITION

Kentucky Rising Stars® Honoree,
2015-2022
Chambers USA, Leading Lawyer for
Business, Labor & Employment, 2015-
2016
Top Ranking Student in the Class
Order of the Coif



M. TODD OSTERLOH

Member
tosterloh@sturgillturner.com

EDUCATION

University of Kentucky, J.D. (2004)
Kentucky Law Journal, Editor-in-Chief
Western Kentucky University, B.A. (2001)

SERVICE AREAS

Government & Municipal Law
Utilities & Energy

AFFILIATIONS

Kentucky Rural Water Association
Kentucky Municipal Utilities Association
Kentucky Bar Association
American Bar Association
Federal Bar Association
Fayette County Bar Association

COMMUNITY OUTREACH

Leadership Frankfort, Class of 2012

ACCOLADES

Best Lawyers in America® Utilities Law
Lexington Lawyer of the Year (2021)
Best Lawyers in America® Utilities Law

Todd's primary practice areas involve utility regulation and municipal defense. As a former Staff Attorney for the Kentucky Public Service Commission, Todd is well-equipped to represent utilities and intervenors in any case before the regulatory agency. He represents the second largest investor owned water utility in the Commonwealth, and has represented a number of municipal utilities before the Commission. Working closely with Jim Gardner, Todd has also represented solar developers, transmission companies, and other companies in the energy sector.

Todd has also represented more than two dozen municipalities in a wide variety of matters. He has represented Cities on cases ranging from a small 4-inch sanitary sewer service line to a massive 120-inch stormwater sewer line. Todd's municipal work extends beyond utilities. He also advises public agencies on eminent domain as well planning and zoning matters. He also frequently represents Cities and their law enforcement officers on cases alleging false arrest, malicious prosecution, abuse of force, wrongful death and wrongful conviction.

In addition to advising clients in utility and municipal law, Todd expanded his practice when he and his wife expanded their family. Since adopting a son several years ago, Todd has helped over a dozen families finalize the adoption of a child. Although adoptions are not a significant percentage of his practice, they are the most rewarding part of his practice.

EXPERIENCE

Represents an industry group on regulatory issues impacting commercial utility customers.

Represented public utilities and municipalities in rate cases before the Public Service Commission.

Successfully defended a public utility in a "show cause" investigation established by the Public Service Commission.

Assisted a water district in obtaining approval for Kentucky

Infrastructure Authority financing and a certificate of public convenience and necessity from the PSC.

Advised a water district on refund of sewer charges ordered by the Public Service Commission.

Represented a public utility and its corporate parents in an administrative case in which the entities received approval of a transfer of control.

Defended several municipalities in litigation involving sanitary sewer backups onto private property.

Advised a regional sanitation district on the legal duty of certain private property owners to pay storm water fees.

Obtained summary judgment on behalf of a municipality and its police officer on claims of false arrest and malicious prosecution in federal court.

Successfully briefed arguments related to municipal contracts on behalf of a municipality, its mayor, and city council members, for which the Kentucky Court of Appeals upheld dismissal of the plaintiff's complaint.

Secured a verdict in favor of his client in a forcible detainer bench trial in Fayette District Court.

Represented parents in adoption finalizations in Fayette, Franklin, Anderson, Jessamine and Scott Circuit Courts.

Law clerk to U.S. Magistrate Judge Tu Pham in Memphis, TN
Supreme Court of the Republic of Palau, Court Counsel

SEMINARS

Problems with Public Records Requests, CLE presentation for the National Business Institute "Advanced Legal Issues Affecting Local Government and Municipalities: The Ultimate Guide" (November 2018)

Open Meetings and Public Hearing Law Changes, CLE presentation for the National Business Institute "Advanced Legal Issues Affecting Local Government and Municipalities: The Ultimate Guide" (November 2018)

Panel Discussion of Open Records/Open Meetings, CLE presentation for the Municipal Attorneys Association of Kentucky (MAAK) (May 2018)

Open Meetings Laws & Public Records Issues, CLE presentation for the National Business Institute "Ensuring Local Governments Comply with the Law" Seminar (2017, 2015, 2013)

Advanced Legal Issues Affecting Local Governments and Municipalities: An Ultimate Guide, National Business Institute CLE (December 2016)

Utility Rate Setting, presentation at the Kentucky League of Cities Annual Conference (October 2012)

Contracts between Cities and Public Utilities, CLE presentation for the Municipal Attorneys Association of Kentucky (MAAK) (October 2011)

Numerous CLE presentations on the Open Records and Meetings Acts at the Water Personnel Training Seminars hosted by the Public Service Commission.



Damon R. Talley

Direct Phone: 270.358.3187
damon.talley@skofirm.com

BAR & COURT ADMISSIONS

Kentucky
U.S. District Court, Eastern District Of Kentucky
U.S. District Court, Western District Of Kentucky
United States Supreme Court

EDUCATION

University of Kentucky College of Law
1975, J.D.
University of Kentucky College of Engineering
1972, B.S.M.E.

RECOGNITION

Best Lawyers®, Lawyer of the Year (Lexington),
Utilities Law, 2023
Best Lawyers®, Utilities Law, 2021-present
Sullivan Medallion, presented to Outstanding
Graduating Student, University of Kentucky
Moot Court Board, President, University of
Kentucky College of Law
Outstanding Student, University of Kentucky
College of Engineering
Omicron Delta Kappa, President, University of
Kentucky
Kentucky Association of Future Farmers of
America, President
Outstanding Citizen Award, LaRue County
Chamber of Commerce, 1990
Outstanding Citizen Award, Cave City Chamber of
Commerce, 1981
Outstanding Citizen Award, Horse Cave
Chambers of Commerce, 1979

Damon R. Talley

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

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

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

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

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

Work Highlights

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

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



Gerald E. Wuetcher

Direct Phone: 859.231.3017

gerald.wuetcher@skofirm.com

BAR & COURT ADMISSIONS

Kentucky

U.S. Court Of Appeals For The Armed Forces

U.S. District Court, Eastern District Of Kentucky

U.S. District Court, Western District Of Kentucky

EDUCATION

Emory University
1984, J.D.

Johns Hopkins University
1981, B.A.

RECOGNITION

Best Lawyers®, Utilities Law, 2021-present

Gerald E. Wuetcher

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

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

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

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

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

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

Work Highlights

Attorney, Kentucky Public Service Commission (1987-2014). Served as a staff attorney, deputy general counsel and executive advisor. Frequently appeared before the Commission in administrative proceedings involving electric, natural gas, water and sewer utility issues and represented the Commission in state and federal courts. Responsible for drafting and revising the Commission's regulations. Served as the Commission's representative in various interagency groups addressing water and wastewater issues. Served as the Commission's representative on the Kentucky Infrastructure Authority's Board of Directors (2009-2014). Developed the Public Service Commission's water training program for water utility officials.

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

Adjunct Professor of Law, University of Louisville (2011)