

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF)	
NORTHERN KENTUCKY WATER DISTRICT)	
AND STOLL KEENON OGDEN PLLC FOR)	CASE NO. 2023-00109
ACCREDITATION AND APPROVAL OF A)	
PROPOSED WATER DISTRICT)	
MANAGEMENT TRAINING PROGRAM)	

APPLICATION

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

In support of their application, the Joint Applicants state:

1. NKWD is a water district organized pursuant to KRS Chapter 74.
2. NKWD’s mailing address is: 2835 Crescent Springs Road, Erlanger, Kentucky 41018-0640. Its email address is: tedge@nkywater.org.
3. NKWD provides retail water service to all or portions of Boone, Campbell, and Kenton Counties, Kentucky and provides wholesale water service to non-affiliated water distribution systems in Boone, Campbell, Kenton and Pendleton Counties, Kentucky.
4. NKWD is not a corporation, limited liability company or partnership. It has no articles of incorporation or partnership agreements.
5. Stoll Keenon Ogden PLLC is a Kentucky Limited Liability Company that was organized under the laws of the Commonwealth of Kentucky on December 28, 2005 and is currently in good standing. It provides legal services to local, regional, national and international clients.

6. Stoll Keenon Ogden PLLC's mailing address is: 300 West Vine Street, Suite 2100, Lexington, Kentucky 40507-1801. Its email address for purposes of this Application is: gerald.wuetcher@skofirm.com.

7. The Joint Applicants propose to sponsor and conduct a water management training program on May 10, 2023 at NKWD's offices in Erlanger, Kentucky. The program is entitled "Northern Kentucky Water Training 2023." A copy of the proposed agenda is attached to this Application as **Exhibit 1**.

8. As reflected in Exhibit 1, the proposed training program will include presentations on recent developments in utility regulatory law, including a general overview of recent Kentucky court and Public Service Commission decisions; Public Service Commission show cause proceedings; the statutory and regulatory requirements for water utility tariffs and the rate and conditions of service that a water utility should consider placing in its tariff; general employment law principles for senior management with a special emphasis on federal and state laws regarding employment discrimination and a water utility board member's responsibilities regarding the prevention and elimination of discriminatory workplace practices; an overview of proposed revisions to several U.S. Environmental Protection Agency regulations governing water utilities; and a panel discussion on recurring legal issues present in the operation and management of water and wastewater systems. These presentations will enhance the attendees' understanding of relevant legal issues involved in the management, operation, and maintenance of water and wastewater systems and are calculated to enhance and improve the quality of the management, operation and maintenance of the attendees' water and wastewater systems.

9. The proposed training program consists of six hours of instruction and should be accredited and approved as water management training satisfying the requirements set forth in KRS 74.020(7) to establish a water district commissioner's eligibility for a maximum annual salary

of \$6,000. **Joint Applicants are not requesting that the proposed training program be accredited as a program of instruction for newly appointed commissioners.**

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

11. The written materials to be provided to each attendee are attached at **Exhibit 3**. These materials are of the same type and nature as those previously provided at the accredited training program conducted at NKWD's offices for the past four years.¹ The Joint Applicants will provide each attendee with a copy of each speaker's presentation. In addition, presenters may provide attendees with copies of applicable laws, regulations, Kentucky court decisions, and Public Service Commission orders. The Joint Applicants will include a copy of these materials with their sworn statement and report regarding the instruction. Should any presenter revise or amend his or her presentation prior to the presentation or provide additional written materials to the attendees, a copy of the revised presentation will also be submitted.

12. The Joint Applicants have applied or will shortly apply to the Kentucky Bar Association, the Division of Compliance Assistance, and the Department of Local Government for accreditation of the proposed training program for six hours of continuing education credit.

13. The Joint Applicants have sent notice of the proposed training program by electronic mail to the water districts and water associations that are under Public Service

¹ See *Electronic Application of Northern Kentucky Water District and Stoll Keenon Ogden PLLC for Accreditation and Approval of A Proposed Water District Management Training Program*, Case No. 2022-0338 (Ky. PSC Dec. 22, 2022); *Electronic Application of Northern Kentucky Water District for Approval of Commissioner Training and Continuing Education Credit*, Case No. 2019-00081 (Ky. PSC June 4, 2019); *Application of Northern Kentucky Water District For Accreditation and Approval of A Proposed Water District Management Training Program*, Case No. 2018-00091 (Ky. PSC May 9, 2018); *Application of Northern Kentucky Water District For Accreditation and Approval of A Proposed Water District Management Training Program*, Case No. 2017-00144 (Ky. PSC March 23, 2017); *Application of Northern Kentucky Water District and Stoll Keenon Ogden PLLC For Accreditation and Approval of A Proposed Water District Management Training Program*, Case No. 2016-00146 (Ky. PSC May 5, 2016); *Application of Northern Kentucky Water District and Stoll Keenon Ogden PLLC For Accreditation and Approval of A Proposed Water District Management Training Program*, Case No. 2015-00147 (Ky. PSC May 18, 2015).

Commission jurisdiction as well as representatives of investor-owned and municipal utilities, county judge/executives, county attorneys, and members of the Kentucky Bar Association who are believed to have an interest in the proposed program's subject matter.

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

15. No later than June 1, 2023, the Joint Applicants will file with the Public Service Commission a sworn statement:

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

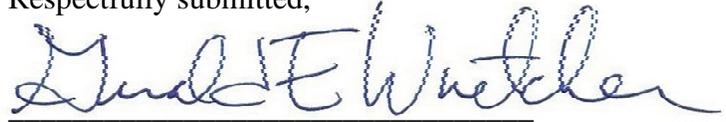
16. The Joint Applicants will include with the sworn statement documentary evidence of the program's certification for continuing education credit by certifying authorities and a copy of any written material provided to the attendees that is not included in this Application.

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

WHEREFORE, the Joint Applicants request that the Public Service Commission approve and accredit the proposed training program entitled “Northern Kentucky Water Training 2023” for six hours of water district management training.

Dated: April 7, 2023

Respectfully submitted,



Gerald E. Wuetcher
Stoll Keenon Ogden PLLC
300 West Vine Street, Suite 2100
Lexington, Kentucky 40507-1801
gerald.wuetcher@skofirm.com
Telephone: (859) 231-3017
Fax: (859) 259-3517

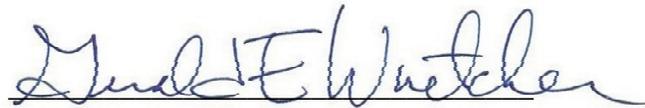
Counsel for Stoll Keenon Ogden PLLC

Tom Edge
General Counsel
Manager of Legal, Compliance, and Regulatory
Affairs
Northern Kentucky Water District
2835 Crescent Springs Rd.
P.O. Box 18640
Erlanger, KY 41018
tedge@nkywater.org
Phone - 859-578-5457
Fax - 859-426-2770

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 April 7, 2023 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

EXHIBIT 1

Northern Kentucky Water Training 2023
Presented by
Northern Kentucky Water District & Stoll Keenon Ogden PLLC
May 10, 2023
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 **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 Public Service Commission Orders, keeping Minutes, and laws enacted by the 2023 General Assembly. The presenter will also examine and discuss recent court and PSC decisions.

9:35 – 9:45 **Break**

9:45 – 10:45 **Water Utility Tariffs: Practical Considerations – Gerald Wuetcher**

A water utility’s tariff offers a unique opportunity for the water utility to structure its relationship with its customers. This presentation will highlight various provisions that a water utility should have as part of its tariff to protect against financial and legal liability as well as avoid common customer disputes. In the first portion of his presentation, the presenter will discuss the statutory and regulatory framework for utility tariffs and the process by which a tariff may be revised. The presentation will conclude with some practical suggestions for improving a water utility’s tariff.

10:45 – 10:55 **Break**

10:55 – 11:55 **Employment Law In the Workplace – Amy Miles**

This presentation reviews existing federal and state employment laws designed to protect employees and applicants for employment. Presenter will discuss legal responsibilities of water utility board members regarding the prevention and elimination of discriminatory work and hiring practices and how these responsibilities can be met.

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

Afternoon Agenda

- 12:30 – 1:30 **In the Dock: PSC Show Cause Proceedings – Gerald Wuetcher**
This presentation examines the methods the Public Service Commission uses to enforce KRS Chapter 278 and Public Service Commission regulations. It will review PSC enforcement hearing procedures and the sanctions that the Public Service Commission may impose for violations. The presenter will discuss various approaches to responding to Public Service Commission enforcement actions, including strategies to mitigate the severity of possible sanctions, and actions that utilities and their officers can take to prevent common statutory and regulatory violations. He will also discuss the potential liabilities that utility officers, including commissioners and directors, face and strategies to reduce those officers' exposure.
- 1:30 – 1:40 **Break**
- 1:40 – 2:40 **Kentucky Division of Water Law Update – Alicia Jacobs**
This presentation provides an overview of the organization and mission of the Kentucky Division of Water and its current regulatory initiatives. The presenter will also discuss the U.S. Environmental Protection Agency's proposed PFAS Rule, revisions to the Lead and Copper Rule, proposed revisions to the consumer confidence reports, and its recent guidance to state regulators to include a review of a water system's cybersecurity practices when conducting sanitary surveys and how they may affect Kentucky's public water systems.
- 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**

EXHIBIT 2

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.

ALICIA JACOBS

ALICIA JACOBS serves as the manager of the Drinking Water Branch. She oversees the state's Safe Drinking Water Act compliance, public water system technical assistance, and the laboratory certification programs. Alicia has been with the Kentucky Division of Water since 2014, with experience in state government since 2007. She has a bachelor of science in zoology from Southern Illinois University. She currently chairs the Drinking Water and Clean Water Advisory subcommittees for Lead in Drinking Water, Compliance and Regulations, and PFAS.



Amy L. Miles

Direct Phone: 502.568.5751

amy.miles@skofirm.com

BAR & COURT ADMISSIONS

Kentucky

U.S. District Court, Northern District Of Indiana

U.S. District Court, Southern District Of Indiana

U.S. District Court, Eastern District Of Kentucky

U.S. District Court, Western District Of Kentucky

U.S. Court Of Appeals, Sixth Circuit

U.S. Court Of Appeals, Seventh Circuit

EDUCATION

University of Louisville Brandeis School of Law
2014, J.D., magna cum laude

Centre College
B.A., cum laude

RECOGNITION

ABA-BNA Award for Excellence in Labor and
Employment Law, 2014

Kentucky Rising Stars® Honoree, 2022-2023

University of Louisville Brandeis School of Law
Carl A. Warns, Jr. Award, 2014

University of Louisville Brandeis School of Law ALI
CLE Scholarship and Leadership Award, 2014.

University of Louisville Law Review Managing
Editor, Volume 52

Phi Kappa Phi

Brandeis Honor Society

Amy L. Miles

Amy joined Stoll Keenon Ogden's Louisville office in 2015 and is in the Labor, Employment & Employee Benefits practice. Amy represents a variety of national, regional and local employers, from franchised auto dealerships to health care organizations.

As employment laws continually change, Amy counsels businesses and organizations on how to navigate complex statutes and regulations, which can create confusion around an employer's legal obligation to their employees. She provides practical, business-tailored advice that helps employers bridge the understanding gap in their organizations and avoid costly challenges in the courtroom.

Prior to beginning her practice at SKO, Amy served as a clerk for the honorable Candace J. Smith, U.S. Magistrate Judge in the Eastern District of Kentucky.

Labor, Employment & Employee Benefits: Amy has experience in all areas of employment law, from pre-litigation investigations to litigation and appeals. She also handles agency investigations, including proceedings before the Equal Employment Opportunity Commission, the Department of Labor and the Kentucky Commission on Human Rights.

Amy routinely advises employers on strategies to resolve workplace issues and prevent litigation by offering recommendations on day-to-day operational practices and broader employee-related policies. She has also conducted training for her clients relating to a variety of issues, including the Americans with Disabilities Act, the Family and Medical Leave Act and Title VII of the Civil Rights Act.

In cases of litigation, Amy represents employers responding to claims of discrimination, retaliation and wrongful termination, employment breach of contract, and wage and hour disputes, among other concerns.

Auto Dealer Services: Automobile manufacturers and franchised dealers are among the employers that Amy advises through her practice at SKO. She has a deep understanding of the industry and customizes her recommendations to match her clients' unique needs.

Health Care: Amy also counsels health care organizations and providers on a wide variety of employment-related matters. Her thorough knowledge of the evolving regulations governing the industry allows her to identify opportunities to reduce risks and costs.

Work Highlights

Defense of Discrimination and Retaliation Claims

Served as first chair in SKO's successful defense of its clients against claims brought by a former manager in the U.S. District Court for the Western District of Kentucky alleging FMLA retaliation and gender discrimination in violation of the Kentucky Civil Rights Act. The plaintiff sought lost wages of more than \$480,000 and emotional distress damages on her sex discrimination claim of nearly \$1.5 million. After a six-day jury trial in May 2022, an eight-member jury returned a unanimous verdict in favor of the company, finding that the company had not engaged in unlawful retaliation or discrimination. SKO's trial team won the case by proving to the jury that the company had a legitimate, non-discriminatory and non-retaliatory basis for the manager's termination: her consistently poor performance, which she failed to improve despite repeated efforts by the company.

Summary Judgment—FMLA Retaliation

Secured summary judgment for a manufacturing corporation accused of FMLA retaliation by a former employee.

Dismissal of Race Discrimination and Retaliation Claims

Secured dismissal of race discrimination and retaliation claims when the U.S. District Court for the Western District of Kentucky granted SKO's Motion for Judgment on the Pleadings and dismissed Plaintiff's claims as barred by judicial estoppel.



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)

EXHIBIT 3

HOT LEGAL TOPICS

May 10, 2023

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

SPONSORED BY



DISCUSSION TOPICS

1. PSC Filings
2. Comply with PSC Orders
3. 2023 General Assembly
4. HB 8 Update
5. Borrowing Money



DISCLAIMER



PSA for PSC



Reporting Requirements

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



Vacancy

- Inform CJE 60 Days Before Term Ends (KRS 65.008)
- CJE / Fiscal Court – 90 Days
- Then, PSC Takes Over
 - CJE Loses Right To Appoint





E-Mail Address Regs.

- All PSC Orders Served by E-mail
- Duty to Keep Correct E-mail Address on file with PSC
 - Default Regulatory E-mail Address
- Duty to List E-mail Address in Application & All Other Papers
 - Utility Official
 - Its Attorney



E-Mail Address

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



Why Municipals?

- Contract Filing
- Tariff Change (Wholesale Rate)
- Protest Supplier's Rate Increase
- Acquiring Assets of Another Utility
- Avoid Delays





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



2023
General
Assembly



Notable Bills

- HB 360 – New Sales Tax Exemption
- HB 522 – Procurement \$30,000 Threshold Increased to \$40,000



Notable Bills (cont.)

- SB 263 – Regionalization
 - Numerous Incentives
 - Both Water & Sewer
 - Regionalization
 - Ownership or
 - Common Management



The background of the slide features a dynamic splash of water in shades of blue and white, creating a sense of movement and freshness. The water splashes are most prominent at the top and bottom edges, framing the central text area.

**HOUSE BILL 8
RESIDENTIAL SALES TAX
EXEMPTION FOR
UTILITY CUSTOMERS**

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)



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-METER 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 if 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

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)



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-METER 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.

Water Service Sewer Service _____
Signature if 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



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



Department of Revenue

- D of D Template in Final Form
- DOR FAQs on Website
- DOR Letter 11-30-2022
- PSC Website Has Links



COMMONWEALTH OF KENTUCKY
DEPARTMENT OF REVENUE
FRANKFORT
40620
revenue.ky.gov

November 30th, 2022

OLDHAM COUNTY WATER
DISTRICT
PO BOX 51
BUCKNER KY 40010

RE: Residential Exemption for Utility Purchases

To Utility Providers Impacted by House Bill (HB) 8, effective January 1, 2023

Utility providers may no longer utilize tariffs filed with the Public Service to determine the residential use exemption from sales tax. Beginning with the January 1, 2023, effective date, a utility customer is only eligible for the residential exemption for services received at his or her place of domicile defined under KRS 139.470(7)(b)(1) as *“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.”*

Utility companies should examine their databases to determine if they have any customers with a residential coding for more than one service address. In such cases, utility companies must document the address that the customer declares as his or her place of domicile. In addition, utilities must obtain the declaration of domicile information for any accounts classified as residential whenever there is a change in account holders and whenever a new residential account is established.

Utility providers should not contact existing account holders that have only one residential service address in the utility database. Also, separate additional meters at the same residential service address for detached garages and other buildings will also qualify for the residential use exemption unless the building is for commercial use or other non-residential use once the utility receives a completed Declaration of Domicile for that account.

The Department has developed two new exemption certificate forms for utility customers to declare their place of domicile. The 51A380 Declaration of Domicile is for use by the resident of the service address, whether as the owner or the tenant of the residence. The 51A381 Multi-unit Declaration of Domicile for Landlords or other Accountholders is for use by the landlord operating a multi-unit rental facility with a master meter. **Please note that a customer account with a master meter that serves only common areas or that serves common areas and multiple dwelling units is not eligible for the residential use exemption.**

The submittal of a 51A381 form must also include a completed 51A380 Declaration of Domicile for each unit in the facility. The 51A380 must be completed and signed by the individual tenant. **Landlords that operate a single-family rental unit only need to submit a completed 51A380 signed by the tenant.** The exemption forms are available on the Department of Revenue's website at this link: <https://revenue.ky.gov/Get-Help/Pages/Forms.aspx>. Please search by form number to locate the particular form.

If you need assistance with this process or have further questions regarding this matter, please contact the Division of Sales & Use Tax at 502 564-5170 or by email at KRC.WebResponseSalesTax@Ky.gov

Sincerely,

Kentucky Department of Revenue
Division of Sales & Use Tax

PSC

- Tariffs
 - Confusion
 - KRWA E-News
 - Check Your Tariff
 - Ask Your Lawyer



Any QUESTIONS



About HB 8 ?

Borrowing



KRS 278.300(1)

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



Practical Effect

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





Violation

Show Cause Cases



2022 Show Cause Cases Borrowing Money

First Case: 2022-061

Second Case: 2022-197



2022 Case # 1

Case No. 2022 - 061

Opened: 04 - 08 - 2022

Issue: KRS 278.300
(2 Violations)

Repeat Offender - 2013

Decided: 11 - 14 - 2022



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
- Hearing Date: None



2022 Case # 1

Outcome:

- Chairman
 - Fined \$500
 - 12 Hours of Training
 - Previous Offender (2012)
 - Tongue Lashing



2022 Case # 1

Outcome:

- Other Commissioners
 - No Fine
 - 12 Hours of Training
- Bond Lawyer
 - Reimburse Utility for Lawyer Fees



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
 - 2 Rounds Thus Far
- Hearing Date: ? ? ?
- Ordered Utility to File Rate Case



2022 Case # 2

Case Status:

- No Hearing Date Yet
- Probably Waiting for Results of Rate Case





QUESTIONS?

damon.talley@skofirm.com

270-358-3187



WATER UTILITY TARIFFS: PRACTICAL CONSIDERATIONS

Gerald Wuetcher
Stoll Keenon Ogden PLLC
gerald.wuetcher@skofirm.com
<https://twitter.com/gwuetcher>
(859) 231-3017



ORDER OF PRESENTATION

- Legal Framework
- Process for Revising Tariff
- Tariff Provisions To Consider
- Managing Your Tariff

LEGAL FRAMEWORK



KRS 278.160(1)

Under rules prescribed by the commission, **each utility shall file with the commission,** within such time and in such form as the commission designates, schedules showing **all rates and conditions for service established by it and collected or enforced.** The utility shall keep copies of its schedules **open to public inspection** under such rules as the commission prescribes.



KRS 278.160(2)

No utility shall **charge, demand, collect or receive** from any person **a greater or less compensation** for any service rendered or to be rendered than that **prescribed in its filed schedules**, and no person shall receive any service from any utility for **a compensation greater or less than that prescribed in such schedules.**



WHAT IS A RATE?

[A]ny individual or joint **fare, toll, charge, rental, or other compensation for service** rendered or to be rendered by any utility, and any rule, regulation, practice, act, requirement, or privilege in any way relating to such fare, toll, charge, rental, or other compensation, and **any schedule or tariff or part of a schedule or tariff thereof.**

KRS 278.010(12)



EXAMPLES OF A “RATE”

- Commodity Charge
- Water Meter Installation Charge
- Billing Recalculation Policy
- Length Of Time To Pay Bill
- Minimum Contract Period
- Rule/Regulation



WHAT IS A CONDITION OF SERVICE?

Requirement, action or task that must be met or taken by applicant for service as a prerequisite for receiving or continuing to receive service.



EXAMPLES OF A “CONDITION OF SERVICE”

- Completing An Application Form
- Providing Evidence Of Inspections
- Deposit Requirement
- Easement Requirement
- Technical Specifications For Connection



EFFECT OF KRS 278.160

- Tariff Has The Status Of Law
- Only Filed Rates May Be Charged
- Only Filed C of S May Be Imposed
- Filed Rates/C of S **MUST** be Enforced
- Tariff Governs Utility's Relationship With Customer



FAILURE TO COMPLY WITH KRS 278.160

- Refund/Backbilling
- Assessment of Penalties
- Removal of WD Commissioners
- Compensatory & Punitive Damages

REVISING TARIFFS: PROCEDURE



GENERAL PROCEDURES

- 30 Days Prior Notice To PSC
- Notice Is Filing Of New Tariff Sheet
- Submit Cover Letter & Tariff Sheet
- Tariff Sheet Must Comply With PSC
Regs



GENERAL PROCEDURES

- Tariff Sheet Should State Effective Date
- Attorney Is **NOT** Required
- Public Notice Must Be Provided



PUBLIC NOTICE

- Three Methods to Provide Notice
- For Contents of Notice, See 807 KAR 5:011
- Post Copy of Notice at Office
- Post Notice on Utility's Website and Social Media Accounts



PSC RESPONSE TO FILING

- Take No Action – Becomes Effective 30 days from Filing
- Request Minor Modifications
- Suspend & Investigate
- Final Action Within 10 Months of Filing



NONRECURRING CHARGES

A charge designed to recover customer-specific cost incurred that would otherwise result in monetary loss to the utility or increased rates to other customers to whom no benefits accrue from the service provided or action taken.



EXAMPLES OF NONRECURRING CHARGES

- Meter Connection Fees
- Inspection Fees
- Returned Check Charges
- Turn-off/Turn-on Charge
- Field Collection Charge
- Meter Resetting Charge



NONRECURRING CHARGES

- Letter Filing
- No Attorney Required
- Specific Cost Justification
- Income Statement & Balance Sheet
- Stmt Why Not Filed in Rate Case
- Tariff Sheet

TARIFF PROVISIONS TO CONSIDER



REQUIRED PROVISIONS

- Deposit Requirements
- Special Charges
- Monthly Budget Plan Availability
- Reconnection Charge
- Requested Meter Test Charge



REQUIRED PROVISIONS

- Rules & Administrative Regulations
- Rules Re: Size, Design, Material and Installation of Service Lines
- Rules Re: Service Line Installation & Maintenance
- Customer Usage Monitoring Procedures



APPLYING FOR SERVICE

- Is Customer Required to Complete Application or Agreement?
- Are **ALL** Contents Listed in Tariff?
- Case No. 2013-00309: All Conditions/Requested Info In Application Must Be in Tariff or Form Must Be Filed



APPLICATION: CUSTOMER INFO

- Name and Address
- Social Security Number - **NO**
- Driver's License No.*
- Presentation of Photo ID*
- E-mail Address
- Mobile Telephone No.



APPLICATION: CUSTOMER INFO

- Employer's Name & Address
- Marital Status
- Spouse's Name
- Own or Rent?
- Rental Agreement



APPLICATION: CUSTOMER INFO

- Adults Living In Household
- “Do You or Any Household Members Owe The Utility For Unpaid Water Service Or Other Tariff Charges?”



APPLICATION: CONDITIONS FOR SERVICE

- Comply With Rules & Regulations
- Release of Liability If Not Present
At Service Turn-On
- Duty to Maintain Current Info
- Pay All Charges & Fees
- Attorney Fees/Collection Fees



APPLICATION: CONDITIONS FOR SERVICE

- Electronic Delivery of Bills
- Electronic Delivery of Notices
- Permission to Send Text Messages
- Easements



DEPOSITS

- Utility May Require Deposit
- Must State Method For Calculating Deposit Amount
- Criteria for Requiring Deposit
- Policy/Rules on Refunding
- Policy on Interest



RENTER ISSUES

- Deposit Requirement Based On Status as Renter **Prohibited**
- Deposit Requirement on Landlord for Renter's Benefit **Disfavored**
- Required Payment Guaranty from Landlord **Disfavored**



PAYMENT

- Form of Payment
- Fees For Credit Card/ACH Payment
- Returned Check Fee
- Payment Date
- “Dropbox” Payment
- Multiple Structures/Single Meter



LATE PAYMENT FEES

- Assessed if no payment by due date
- Assessed only once on any bill
- No penalty on unpaid penalties
- Payments applied 1st for service
- Late Posting/Delays in Transit
- Federal/State Agencies



LEAK ADJUSTMENTS

- No Duty to Make Adjustment
- Tariff Provision Necessary To Make Adjustments
- Uniform Application of Provision
- Utility Must Recover At Least The Variable Cost of Water



COMPONENTS OF LEAK ADJUSTMENT CLAUSE

- Average Use @ Regular Rate + Excess @ Leak Adjustment Rate
- Written Request From Customer
- Evidence of Leak/Repairs
- Use Limited: Number/Time Period
- Board Oversight



REFUSING SERVICE: PSC GROUNDS

- Violation of PSC Or Utility Rules*
- Dangerous Conditions**
- Refusal of Access*
- Outstanding Indebtedness
- Noncompliance with Gov't Codes*
- Nonpayment of Bills*
- Illegal Use/Theft of Service**



REFUSING SERVICE: ADDITIONAL GROUNDS

- Waste of Water
- Tampering/Interfering W/Facilities
- Misrepresentation
- Obtaining Service By Fraud



REFUSING SERVICE FOR NONPAYMENT

- May Refuse Service For **Any Debt For Service Or Tariff Charges**
- May Discontinue Service Only for **Debt Incurred at Present Location**
- 5 Days Notice Prior to Termination
- No Termination Before 20 days After Mailing Date of Original Unpaid Bil



IMPUTED LIABILITY

- Family/Household Member Requests Service After Termination
- No Prior Contract With Utility
- PSC Regs Requires Utility to Provide Service To New Applicant

UNLESS



IMPUTED LIABILITY

- Tariff Provides That Liability for Unpaid Bills Is Imputed to Each Adult Member of Household
- Uses Benefit of Service Theory
- Not Sufficient to Obtain Judgment
- Adequate Basis to Deny Service



BILLING FOR SEWER SERVICE

- Utility Provides Both Services - Follow PSC Regs
- City/Water District Provides Service - Follow KRS 96.930-.943
- Sanitation Dist - Follow KRS 220.510
- Private Sewer Utility – PSC Approval Required



BILLING FOR GARBAGE COLLECTION

- Cities May Discontinue H2O Service For Failure to Garbage Collection Bill
- PSC Utilities: Not Permitted Unless PSC expressly approves
- OAG 17-30: City May Delegate Its Authority to Water District



BILLING FOR OTHER SERVICES

- 911 Fees
- Service Line Warranty Programs
- Establish **Priority of Payment** in Tariff
- Bill Format Must Reflect All Other Billed Services



STOLL
KEENON
OGDEN

PLLC

FIRE PROTECTION SERVICES

- Free H2O To Fire Depts Permitted
- Fire Protection/Fire Training Only
- Fire Dept Must Keep Usage Estimates & Report Quarterly
- Penalty If Reports Not Timely Filed
- Tariff Provision Required



FIRE PROTECTION SERVICES

- Free Service Without Tariff Provision Violates KRS 278.170(3)
- Allowing Fire Dept to Withdraw H2O Without Reports Violates KRS 278.160
- Failure to assess penalty against Fire Dept violates KRS 278.160



FIRE PROTECTION SERVICES

- Limit Amount Of “Free H2O” Per Fire Event
- Example: No More Than 4 Hours – Then Property Owner Responsible
- Avoids Potential Financial Hardship For Water Utility



LIMITING TORT LIABILITY

- Disclaimer of Liability
- Low H2O Pressure – Damage to Customer Equipment/Facilities
- Lack of Adequate Fire Flows
- Interruptions in Water Supply
- Hydrant Usage



MISCELLANEOUS

- Water Main Extension Policies
- Incentive/Discount Tap-on Fees
- Water Priority/Water Shortage Response Plans
- Special Contracts
- Forms

MANAGING YOUR TARIFF





MANAGING YOUR TARIFF

- Know The Contents of Your Tariff
- Review At Least Annually
- Encourage Utility Staff Involvement in Review
- Tariff Is Not Internal Management & Practices Manual



MANAGING YOUR TARIFF

- Do Not Repeat PSC Regulations
- Provide For Widest Utility Discretion
- Annual Review of NRCs
- Make NRC & Tariff Changes Part of Rate Adjustment Applications



MANAGING YOUR TARIFF: FILINGS WITH PSC

- Explain In Detail Purpose/Reasons For Filing In Cover Letter
- Provide Supporting Evidence
- Research/Anticipate Expected Questions/Issues
- Address Those Issues In Advance



QUESTIONS?



This Presentation

<https://bit.ly/2SGqpoY>

PSC Sample Tariff

<https://psc.ky.gov/Home/Library?type=TariffSamples>



Gerald Wuetcher
Stoll Keenon Ogden PLLC
gerald.wuetcher@skofirm.com
<https://twitter.com/gwuetcher>
(859) 231-3017

Employment Law in the Workplace

Amy L. Miles

amy.miles@skofirm.com

Stoll Keenon Ogden PLLC

May 10, 2023





Agenda

- Overview of Employment Laws
- Supervisor's Role
- Documentation
- Avoiding Common Pitfalls
- Hypotheticals



GENERAL OVERVIEW OF EMPLOYMENT LAW



Employment At Will

❖ Employment at Will

- *General Rule: In the United States, employees without a written employment contract generally can be discharged for good cause, no cause or a cause that some may view as morally indefensible*
- **EXCEPTIONS:**
 - *The discharge may not violate a State's public policy.*
 - *The discharge may not violate an implied contract of employment, if established.*
 - *The discharge may not violate employment protection laws.*



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.*



Employment Protection Laws

❖ Unemployment Insurance

- *Temporary benefits intended to help workers who lose jobs through no fault of their own.*

❖ Workers' Compensation

- *Provides compensation to an employee for a work-related injury.*

❖ Retaliation

- *Prohibits taking adverse action against an employee for exercising a protected activity. No employee should be retaliated against for reporting harassment or any other violation of the law.*



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.



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.



Suggestions for Avoiding Retaliation Claims

- Do not engage in informal “watercooler” conversation about an employee’s protected activity
- After an employee has engaged in “protected activity,” consider the personal effects of any subsequent employer actions on that employee
- Establish an independent review procedure for all managerial decisions or actions that might adversely affect an employee who has engaged in protected activity



- Keep information of an employee's protected conduct on a strict "need to know" basis
- Follow written company policies and procedures!
- Document, document, document
- Be consistent with your personnel decisions: treat all similarly situated employees the same! **DO NOT PLAY FAVORITES!**



- Encourage employees who have engaged in protected conduct to immediately report any conduct they believe is discriminatory. Provide several channels for reporting such conduct
- Have one or two witnesses present for any important conference with a “protected employee”



SUPERVISOR'S ROLE IN THE ORGANIZATION

Supervisor's Role In the Organization

- Anything you know + No matter how you learned it = Organizational Knowledge
- Any reasonable promise you make = Accountability of the Organization
- Anything you request = An Order from the Organization





DOCUMENTATION



Characteristics of Proper Documentation

Document – Document – Document
If it's not in writing ... **it didn't happen**





Common Pitfalls

- ❑ Supervisor Not Equipped to Assess Whether Absence is Protected by Law
 - When learning of the reasons for absences, the supervisor may also learn of an employee's need for FMLA leave, need for an accommodation, need for military leave, etc.
 - If the supervisor is not familiar with employment protection laws, the supervisor may not realize that the organization must act in response to the information it has received

Common Pitfalls

❑ Communication Breakdown

- Supervisor collects information and does not pass some or all of the information on to the person who needs to know
 - What the supervisor knows is organizational knowledge
 - If the supervisor learns the employee is absent for an FMLA qualifying event, the organization must provide the employee with FMLA paperwork, or risk violating the FMLA



Common Pitfalls

❑ Inconsistent Documentation

- What one supervisor considers “excused” another may consider “unexcused”
- One supervisor may characterize an absence as “sick” when it is “FMLA leave”, etc.



Best Practices When Documenting Absences

- Persons receiving information should be trained to identify basic HR issues
 - Ex. Does the organization need to provide the employee with FMLA paperwork?
 - Ex. Does the organization need to engage in an interactive ADA dialogue with the employee?
- Persons receiving information should make sure all information is communicated to the appropriate person(s)
- Persons receiving information should make sure they are complying with organization's attendance policies



FOSA System of Documentation

Facts

Objectives

Solutions

Actions



Facts

- What happened?
- When did it happen?
- Where did it happen?
- Who was involved?



Objectives

- What are the performance expectations and when were they communicated to the employee?
- Key phrase: **“This job requires X.”**



Solutions

- What forms of assistance or coaching were offered to help him/her solve the performance problem?



Actions

- What are the consequences for the employee if he/she does not improve performance?



Common Pitfalls When Documenting

- Stating opinions and conclusions instead of facts
- Overcoming fear of confronting unpleasant situations
- Failing to make positive comments



Effective Use of Emails

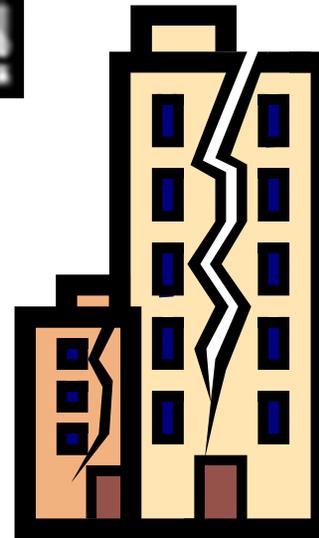
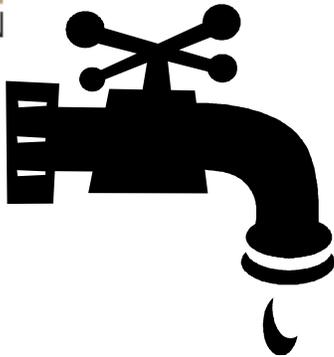
- ❑ Email has become the default tool for many businesses
- ❑ Tips for Using Email Effectively
 - Know your audience
 - Proofread your emails
 - Stop and think before pressing “send”
 - Know when to pick up the phone



Effective Use of Emails

- ❑ Reply All Emails
 - Hurt Productivity
- ❑ Privileged Emails
 - Know when emails are privileged and when they are not
 - Avoid forwarding privileged emails (may destroy privilege)
 - Save certain communications for privileged emails or for the phone

Hypotheticals





Whenever there is an employee issue, follow these steps:

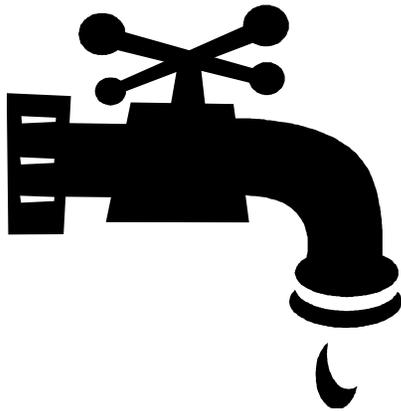
1. Identify the problem – what is the performance impact when “X” is not getting done?
2. Identify potential legal rights.
3. Identify your role as supervisor – do you need help from HR or it is a matter of addressing performance?
4. Document

Hypothetical #1

You see an employee at a local restaurant while you and your family are out to dinner — not during working hours. The employee pulls you aside and says that she wanted to tell you, confidentially, about another supervisor who has been telling sexual jokes and otherwise offending her with his actions. You listen to her and ask her what she would like you to do. She says, “I don’t want you to report it—I’ll handle it.” What do you do?



Hypothetical #2



Ron is consistently late for work. It's either his broken alarm clock or his car. You've listed the dates and times on your calendar, but Ron is over 40 and you're afraid he'll sue the company if you say anything to him. What do you do?

Hypothetical #3

Clare and Mark work together. They are often teamed together on special projects and spend a considerable amount of time together. Mark is attracted to Clare and has asked her out on several occasions. Clare repeatedly rejects his offer, but Mark believes in the theory that persistence will win out. Clare is in your office describing the events. What do you do?



Hypothetical #4

An employee looks at the new work schedule and sees that his hours have been increased to meet production deadlines, and that he is assigned to work Saturdays. He tells you that his religion prevents him from working on Saturdays. What do you do?



Hypothetical #5

An employee, who's a good friend, loses his temper at work and tells you that he's ready to pull out his gun and "take out" a few people who keep messing up. You've noticed some recent behavior changes, but he's usually under control. You've also noticed he's been talking about guns more often recently. What do you do?



QUESTIONS?

Amy L. Miles

(502) 568-5751

amy.miles@skofirm.com

Stoll Keenon Ogden PLLC







**IN THE DOCK:
SHOW CAUSE PROCEEDINGS
BEFORE THE PUBLIC SERVICE
COMMISSION**

**Gerald Wuetcher
Stoll Keenon Ogden PLLC
gerald.wuetcher@skofirm.com
(859) 231-3017**



PREFACE

“We have also **emphasized the hearing of** rural water district rate and **investigative cases** in light of what appears to have been a systemic failure of local county governments to manage water utility finances, replace deteriorating infrastructure and to reliably provide safe and clean water for their residents. The Commission is working to develop in coordination with other state agencies a comprehensive plan to address these deficiencies and **to hold individual water district officials accountable for their malfeasance and misfeasance in office.**”

Michael J. Schmitt, Chair, KY PSC



ORDER OF PRESENTATION

- Statutory Authority
- Enforcement Methods
- Show Cause Procedure
- Mitigating Violations/Sanctions
- Avoiding Violations



STATUTORY AUTHORITY



STATUTORY AUTHORITY

- KRS 278.040(1): PSC shall regulate **utilities** and shall have the power to enforce provisions of KRS Chapter 278
- KRS 278.040(2):
 - PSC's jurisdiction extends to all **utilities** in state
 - PSC shall have exclusive jurisdiction over utility rates and service



STATUTORY AUTHORITY

- KRS 278.040(3): “PSC may investigate the methods and practices of **utilities** to require **them to conform** to the laws of the state and to all reasonable rules, regulations and orders of the commission”
- KRS 278.250: PSC may investigate condition of utility



STATUTORY AUTHORITY

- KRS 278.260(1): PSC may initiate investigations into rates & service on its own motion
- KRS 278.270: PSC has power to order changes in rates after hearing upon reasonable notice to utility
- KRS 278.280(1): PSC has power to require changes in rules, methods, practices, equipment after hearing upon reasonable notice



STATUTORY AUTHORITY

- KRS 278.310: PSC may establish rules for hearings and investigations
- PSC KRS 278.320: PSC may issue subpoenas, subpoenas duces tecum, & necessary process
- KRS 278.330: PSC may take sworn testimony & may compel obedience to orders to give testimony & subpoenas through application to Circuit Court



STATUTORY AUTHORITY

- KRS 278.390: PSC may compel obedience to its orders by proceedings in Franklin Circuit Ct
- KRS 278.990: PSC may assess civil penalties



ENFORCEMENT METHODS



ENFORCEMENT METHODS

- PSC Order Directing Action or Non-Action
- Injunctive Relief from Circuit Court
- Referral for Criminal Prosecution
- Assessment of Civil Penalties
- Removal of WD Commissioners



PSC ORDER

- Has force of law
- Order remains in effect until:
 - Expires
 - PSC revokes or modifies
 - Court suspends or vacates



PSC ORDER

- May prohibit action temporarily without holding hearing
- After hearing may require utility to act or refrain from acting permanently
- May require compliance with statute or regulation without hearing



INJUNCTIVE RELIEF

- KRS 278.390: PSC may request injunctive relief from Court to enforce its Orders
- Court orders utility to comply with PSC Order
- Contempt of court proceedings available if utility or its officers do not comply with court's order



CRIMINAL REFERRAL

- KRS 278.990(1): **ANY PERSON** who violates KRS Ch. 278, PSC Reg or Order may be subject to **CRIMINAL PENALTY**
- Maximum: Six Months Imprisonment
- Misdemeanor Offense
- Must be prosecuted within one year
- District Court has jurisdiction/County Attorney prosecutes



CIVIL PENALTY

- KRS 278.990(1) authorizes PSC to assess civil penalties
- **WILLFUL VIOLATION** required
- Minimum: \$25/Maximum: \$2,500
- Penalty may be assessed for **each offense**
- Action may constitute multiple offenses



WHAT IS A WILLFUL VIOLATION?

- “[A]n act that is committed intentionally, not accidentally nor involuntarily.”
- “[A] willful violation has been explained as one which is intentional, knowing, voluntary, deliberate or obstinate, although it may be neither malevolent nor with the purpose to violate the law.”



WHAT IS A WILLFUL VIOLATION?

- Does not require bad faith
- Lack of knowledge/ignorance of law is no excuse
- Good faith reliance on opinion of legal counsel re: legality of act – **NO DEFENSE**
- Reliance on lending institution or PSC Staff – **NO DEFENSE**



AGAINST WHOM CAN A PENALTY BE ASSESSED?

Any **Utility** that **WILLFULLY**:

- Violates KRS Chapter 278
- Violates PSC Regulation
- Fails to Obey any PSC Order
- Does any act prohibited or fails to perform duty imposed by those statute or regulation



AGAINST WHOM CAN A PENALTY BE ASSESSED?

- Employee's act may be imputed to utility
- KRS 278.990(1): "Each act, omission, or failure by an officer, agent, or other person acting for or employed by a utility and acting within the scope of his employment **shall be deemed to be the act, omission, or failure of the utility.**"



AGAINST WHOM CAN A PENALTY BE ASSESSED?

Any Utility Officer/Employee/Agent or Any Other Person that **WILLFULLY** violates

- KRS Chapter 278
- PSC Regulation/PSC Order

OR

WILLFULLY procures, aids, or abets a violation by a **Utility**



“AIDING AND ABETTING”

“**Help, assist, or facilitate** the commission of a crime, promote the accomplishment thereof, help in advancing or bringing it about, or **encourage, counsel, or incite** as to its commission. . . . It **comprehends all assistance** rendered by words, acts, encouragement, support, or presence, actual or constructive to render assistance if necessary.”

Black’s Law Dictionary (5th ed.) 63



EXAMPLES: “AIDING AND ABETTING”

- Commissioners vote to issue a note with 4-year term without PSC authorization
- Commissioners sign a loan agreement with KIA without prior PSC authorization
- Commissioners OK start of construction of a building without obtaining a CPCN



WHO CAN AID & ABET A VIOLATION?

- Water District Commissioners
- Water Association Directors
- General Managers
- Legal Counsel
- Fiscal Agents
- Lending Institutions



PSC WARNING

“Water District Commissioners should be advised that fines and penalties may be assessed against them individually for any such violations, as the Commission does not believe that . . . [water district’s] customers should bear the cost of civil penalties in their rates for the negligence or malfeasance of the Water District Commissioners.”

Case No. 2016-00400, Order of 1/5/2018 at 5-6.



PSC FINAL WARNING

“To date the Commission has assessed, but not sought, to collect civil penalties against individual water district commissioners for essentially two reasons. First, the Commission's goal has been to obtain compliance with the requirements of the statute and not to exact a penalty and, second, the Commission was determined to send a message to these utilities and their local commissioners that they were out of compliance and future violations could result in individual penalties as well as a separate penalty against the utility.”



PSC FINAL WARNING

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

Case No. 2017-00469, Order of 9/17/2018 at 7-8.



REMOVAL OF WATER DISTRICT COMMISSIONERS

- KRS 74.025 authorizes PSC to remove a water district commissioner
- A grounds for removal: failure to comply with rules, regulations, and orders issued by the Public Service Commission



REMOVAL OF WATER DISTRICT COMMISSIONERS

- Other grounds
 - Incompetency
 - Neglect of Duty
 - Gross immorality
 - Nonfeasance - Misfeasance - Malfeasance in Office



PROCEDURE



SHOW CAUSE PROCEEDING: PHASES

- Preliminary Investigation
- Order To Show Cause
- Respondents' Response
- Discovery
- Hearing
- Final Order
- Appeal/Enforcement of Order



PRELIMINARY INVESTIGATION

- Initiated upon suspicion of unlawful conduct
- No formal proceeding required
- May be part of unrelated formal proceeding
- No notice required
- PSC may examine utility records without providing cause
- PSC may require submission of reports or information



ORDER TO SHOW CAUSE

- Describes Alleged Violation
- Identifies Statute or Regulation Violated/Source of Allegations
- Notice of Penalty
- Directs Response
- Establishes Hearing Date
- Sets Time to Request Staff Conference
- Orders Publication of Notice of Hearing



LEGAL REPRESENTATION REQUIRED

- Quasi-judicial proceeding
- Adversarial Proceeding
- Potential Adverse Consequences
 - Civil Penalties
 - **CRIMINAL PENALTIES**
 - Restrictions/requirements placed on utility
 - Adverse effect on reputation



LEGAL REPRESENTATION: ISSUES

- Separate v. Joint Representation
 - Who does the water utility's attorney represent?
 - Potential Conflicts of Interest with Utility
 - Potential Conflicts with Other Utility Officers
 - Benefits/Disadvantages
- Who pays the legal fees?



RESPONSE TO ORDER

- Written Response
 - Should I Respond?
 - Jt. vs. Individual Response
 - Potential Defenses
 - Mitigating Factors
- Waiver of Hearing
- Offer of Settlement/Conference with Staff



DISCOVERY

- PSC Staff permitted to conduct discovery prior to/after hearing
- No Legal Authority for Respondents to Conduct Discovery
- PSC has refused to permit discovery on its Staff
- Why should Respondents conduct discovery?



HEARING

- PSC Staff – Prosecutor
- Burden of Proof
- Order of Presentation of Evidence
- Compelling Respondents to Testify
- Witnesses
- Scope of Hearing/Relevancy of Inquiries
- Video Record/Streamed Live



FINAL ORDER

- No required deadline for decision
- Must contain factual findings
- If violation or failure to comply found, order may impose sanctions
- Publicizing the Order



SANCTIONS PREVIOUSLY IMPOSED

- Assessment of Civil Penalty
- Additional Proceedings re: Removal from Office
- Mandatory Attendance at PSC Water Management Training Programs
- Changes in Utility Practices and Procedures



SANCTIONS PREVIOUSLY IMPOSED

- Suspended/Vacated Penalties
 - Conditions Imposed
 - Finding of Violation is usually not vacated



REQUEST FOR REHEARING

- Affected Party may request rehearing from PSC within 23 days of Order
- Must show legal or factual error
- Offer additional evidence not available at time of hearing
- PSC has 20 days to rule on request



ACTION FOR REVIEW

- May file action in Franklin Circuit Ct
- No request for rehearing required
- File within 33 days of Order (or 23 days after denial of rehearing)
- Must demonstrate Order is unlawful or unreasonable



MITIGATING VIOLATIONS/SANCTIONS



ACTIONS UPON RECEIPT OF SHOW CAUSE ORDER

- Investigate the alleged violation
- Identify:
 - Mitigating factors
 - Failures in processes/procedures
 - Actions to correct/prevent failures
 - Any **UNEXPLODED TIME BOMBS!**



ACTIONS UPON RECEIPT OF SHOW CAUSE ORDER

- Take corrective/preventive actions:
 - Develop and implement written policies and procedures
 - Provide additional training
 - Hire/retain resources or professionals necessary to prevent recurrence



WITNESS PREPARATION

- Prepare each witness for hearing
- Utility officials should:
 - Review incident
 - Be able to explain what happen
 - Identify mitigating factors
 - Describe and explain all corrective actions



WITNESS PREPARATION

- Utility officials should:
 - Be familiar with major aspects of utility's operation
 - Be familiar with utility's finances
 - Be familiar with laws governing utility's operations



POINTS TO EMPHASIZE

- Acknowledge any errors or mistakes
- Corrective Actions
- Preventive Measures
- Lack of previous violations



LEGAL DEFENSES

- Statute of Limitations
- Immunity granted due to prior testimony
- Violation not willful
- Violation occurred prior to appointment to governing board



AVOIDING VIOLATIONS



AVOIDING VIOLATIONS

- Know the Law
 - Maintain/improve your knowledge of legal requirements
 - Attend training programs
 - Encourage your employees to attend relevant training programs



AVOIDING VIOLATIONS

- Retain Attorney on recurring basis to review Board actions
 - Ensure legal review of major actions
 - Have attorney attend board meetings
 - Legal review of board meeting agenda & minutes



AVOIDING VIOLATIONS

- Review other utilities' violations - develop & implement procedures to avoid
- Have attorney review any application prior to filing for evidence of possible violations
- Audit your records
- When in doubt – seek legal opinion or apply to PSC for Declaratory Order



OTHER ACTIONS TO CONSIDER

- Develop policy re: representation of Bd members and payment of legal costs
- Consider purchase of directors and officers liability insurance
- Document board meetings and discussions re: critical decisions
- Develop policy re: role of attorney in your utility



QUESTIONS





Division of Water Regulatory Updates

Alicia Jacobs
May 10, 2023

- Division of Water Drinking Water Program General Overview
- Per- and polyfluoroalkyl substances (PFAS) Proposed Rule
- Lead and Copper Rule Revisions and Improvements
- Consumer Confidence Proposed Rule Updates
- Cybersecurity updates for Sanitary Surveys

Division of Water Drinking Water Program

- Water Infrastructure Branch
 - Watershed Management Branch
 - Field Operations Branch
 - Drinking Water Branch
-
- Website
 - Contacts

Division of Water Drinking Water Program

- 2022 SDWA Compliance Rates in Kentucky
- Other updates

EPA's Proposed PFAS Rule

- Announced March 14, 2023
- EPA is proposing a National Primary Drinking Water Regulation (NPDWR) to establish legally enforceable levels, called Maximum Contaminant Levels (MCLs) for six PFAS in drinking water.
 - PFOA and PFOS as individual contaminants, and
 - PFHxS, PFNA, PFBS, HFDO-DA (GenX) as a PFAS mixture

EPA's Proposed PFAS Rule

- EPA is also proposing health-based, non-enforceable Maximum Contaminant Level Goals (MCLGs) for these six PFAS chemicals.
 - MCLG is the maximum level of a contaminant in drinking water at which no known or anticipated adverse effect on the health of persons would occur, allowing an adequate margin of safety.

PFAS Proposed MCLs and MCLGs

Compound	Proposed MCLG	Proposed MCL (enforceable levels)
PFOA	0 ppt*	4.0 ppt*
PFOS	0 ppt*	4.0 ppt*
PFNA	1.0 (unitless) Hazard Index	1.0 (unitless) Hazard Index
PFHxS		
PFBS		
HFPO-DA (GenX)		

*ppt = parts per trillion (ng/L)

Lead and Copper Rule Revisions - Overview

- December 16, 2021 – officially enacted
- October 16, 2024 – initial compliance deadline

Main Provisions	What you need to know
Service Line (SL) Inventory	Due to DOW by October 16, 2024
Tap sampling plan and procedures	New definition of Tiers (new sampling locations), sample collection protocol, start fresh with standard monitoring
Lead service line replacement plan	Need to develop a plan and submit it to DOW along with SL inventory*
Customer communication	Begin communicating with customers more about lead
School Sampling	Sample taps at 20% of daycares and elementary schools annually

Consumer Confidence Proposed Rule

- Require CWS serving a population of greater than 10,000 to provide the CCR twice per year. The second delivery after July 1 should include a 6-month update if applicable (violation, ALE, new UCMR results). **However**, systems without violation, ALE, or no new information in 6-month period can resend the same report.
- Part of primacy package, states will include description of intent to support systems unable to provide translation assistance to limited English proficient consumers. States must also maintain translation support plans from large systems for 5 years.
- States submit compliance monitoring data (CMD) collected from PWS to EPA, including all monitoring data and related data for determining compliance. EPA will use this data to “more readily identify and respond to problems nationally and at specific systems that could pose a threat to public health.” – This is something to dig into, as it sounds like an erosion of trust. I
- EPA is estimating the total average annual cost including primacy agency and water systems to be \$22.2 million.

Addressing PWS Cybersecurity in Sanitary Surveys

- March 3, 2023 EPA memo
- EPA clarifies with this memorandum that states must evaluate the cybersecurity of operational technology⁸ used by a PWS when conducting PWS sanitary surveys or through other state programs.
- Training for primacy agencies underway
- No compliance date given in memo

Questions?

Alicia Jacobs
Division of Water
Drinking Water Branch
502-782-6987
Alicia.Jacobs@ky.gov

Graphics: NC PFAS Testing Network & City of Arvada, CO