

**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

**ELECTRONIC APPLICATION OF )  
HARDIN COUNTY WATER DISTRICT )  
NO. 2 FOR ACCREDITATION ) CASE NO. 2023-00280  
APPROVAL OF COMMISSIONER )  
TRAINING )**

**APPLICATION**

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

In support of its application, the Joint Applicants state:

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

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

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

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

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

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

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<sup>1</sup> On August 21, 2023, Hardin District No. 2 gave notice pursuant to 807 KAR 5:001, Section 8, of its intent to file this application and of its use of electronic filing procedures.



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

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

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

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

8. Joint Applicants propose to sponsor and conduct a water management training program on September 25, 2023, at Hardin District No. 2's office in Elizabethtown, Kentucky. The program is entitled "Hardin County Water Commissioner Training Seminar." A copy of the proposed agenda is attached to this Application as **Exhibit 1**.

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

a. Recent developments in utility regulatory law, including an overview of recent Kentucky court opinions and Public Service Company decisions, the rules and regulations concerning borrowing money, compliance with PSC Orders and PSC investigations, and unaccounted water loss;

b. Applicable legislative changes enacted by the 2023 Kentucky General Assembly, including HB 360 (new sales tax exemption for construction materials purchased by contractors pursuant to a construction contract with a water utility), HB 522 (increasing bidding threshold), SB 263 (regionalization), the amendments to 2022 HB 8 (concerning the residential utilities sales tax exemption), and how these legislative changes will impact water districts;

c. The various provisions a water district should include in its tariff to protect against financial and legal liability and to avoid common customer disputes, including an overview of the statutory and regulatory framework for utility tariffs, the process by which a tariff may be revised, and practical considerations for improving the water district's tariff;

d. The respective roles of a water district's General Manager and its Board of Commissioners, and how they should work harmoniously to benefit the water district, with a focus on helping the Board members in understanding and improving their performance of the Board's oversight, policy making, strategic planning, and emergency preparedness roles; and

e. A panel discussion on frequently recurring legal issues faced by water utilities, which is anticipated 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, the Bidding Requirements provision of KRS Chapter 424, Eminent Domain, Local Model Procurement Law, the Whistle Blowers Act, and general laws related to special districts.

10. 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.**

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

12. The written materials to be provided to each attendee are attached at **Exhibit 3**. Should any presenter revise or amend his or her presentation prior to the presentation or provide additional written materials to the attendees, Joint Applicants

will include a copy of the revised presentation with its sworn statement and report regarding the instruction.

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

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

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

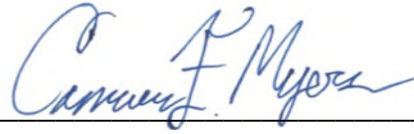
16. The Joint Applicants will include with the sworn statement documentary evidence of the program's certification by certifying authorities and a copy of any written material given to the attendees that has not been previously provided to the Public Service Commission.

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

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

Dated: August 22, 2023

Respectfully submitted,



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Louisville, KY 40202  
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cameron.myers@skofirm.com

*Counsel for Hardin County Water District  
No. 2*



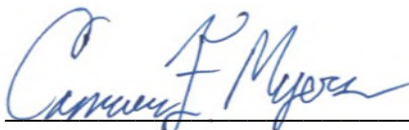
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damon.talley@skofirm.com

*Counsel for Hardin County Water District  
No. 2*

CERTIFICATE OF SERVICE

In accordance with the Commission's Order of July 22, 2021 in Case No. 2020-00085 (Electronic Emergency Docket Related to the Novel Coronavirus COVID-19), this is to certify that the electronic filing has been transmitted to the Commission on August 22, 2023; and that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means.



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Cameron F. Myers

# **EXHIBIT 1**





# Hardin County Water Commissioner Training Seminar

Presented by

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

September 25, 2023

## Morning Agenda

8:00 - 8:25 **Registration and Refreshments**

8:25 - 8:30 **Program Overview and Welcome – Mike Bell**

8:30 - 9:30 **Recent Developments in Utility Regulation (Part I) – Damon Talley**

This presentation reviews recent developments in public utility law and regulation. Topics include unaccounted water loss, borrowing money, compliance with PSC Orders, and PSC Investigations. The presenter will also examine and discuss recent court and PSC decisions.

9:40 - 10:40 **What the 2023 General Assembly Did for Water Districts – Cameron F. Myers**

The 2023 Kentucky General Assembly enacted several laws which affect water districts: HB 360 (new sales tax exemption for materials purchased by contractors); HB 522 (increasing bidding threshold); and SB 263 (Regionalization). It also amended HB 8 enacted by the 2022 General Assembly concerning residential sales tax exemption for utility customers. The presenter will discuss all these legislative changes and how they will impact water districts.

10:50 - 11:50 **Water District Tariff: Practical Considerations – Gerald Wuetcher**

This presentation highlights various provisions that a water district should include in its tariff to protect against financial and legal liability and to avoid common customer disputes. 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 practical considerations for improving the water district's tariff.

11:50 - 12:30 **Lunch (provided on-site)**

## **Afternoon Agenda**

- 12:30 - 1:30    **Working Effectively With Your Board – Robert K. Miller**  
This presentation addresses the role of a water district General Manager, the role of the Board of Commissioners, and how they should work harmoniously to benefit the water district. In particular, the presenter will guide the Board members in understanding their role, performing their role, and improving their performance. The presentation will focus on the Board’s oversight, policy making, strategic planning, and emergency preparedness role.
- 1:40 - 2:40    **Recent Developments in Utility Law – Part II**  
**Damon Talley and Gerald Wuetcher**  
Continuation of Earlier Presentation.
- 2:45 - 3:45    **Legal Issues in the Operation & Management of Water Systems**  
**Panel Discussion – Damon Talley & Gerald Wuetcher**  
A panel of attorneys will entertain audience questions regarding frequently recurring legal issues faced by water utilities. Discussion is expected to address KRS Chapter 74 and its effects on the management and operation of water districts, as well as other highly relevant statutory provisions, such as the Claims against Local Government Act, Bidding Requirements provision of KRS Chapter 424, Eminent Domain, Local Model Procurement Law, Whistle Blowers Act, and general laws related to special districts. PSC regulatory requirements will also be discussed.
- 3:45    **Closing Remarks & Administrative Announcements**

# **EXHIBIT 2**

**QUALIFICATIONS**

**EDUCATION**

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

**YEARS OF EXPERIENCE:** 38

**SPECIALIZATION**

*Senior Executive in Drinking Water, Wastewater, and Stormwater Industry*

**PROFESSIONAL AFFILIATIONS**

*American Water Works Association QualServe Peer Reviewer*

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

*AWWA Utility Management Standards Committee Member (past)*

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

*AWWA Management Controls Sub-Committee Chair (past)*

*AWWA Research Foundation Project Participating Utility Member (past)*

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

**Professional Profile**

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

**Qualifications and Experience**

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

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

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

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

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

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

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

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

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

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



## Biography

Cameron F. Myers  
Associate  
Stoll Keenon Ogden PLLC

2023

Cameron is an Associate in Stoll Keenon Ogden's Louisville office. He has been with the firm since 2021 and contributes to the Tax, Trusts & Estates, and Utility practice groups.

After graduating from the University of Kentucky, Cameron earned his J.D. at the University of Kentucky College of Law, where he served as senior staff editor of the *Kentucky Law Journal* and as treasurer of the Student Bar Association. Upon graduating, he was elected to the Order of the Coif.

### Education

- University of Kentucky College of Law, J.D., 2021, *magna cum laude*
- University of Kentucky, B.S., 2018, *summa cum laude*

### Recognition

- *Best Lawyers: Ones to Watch® in America*, Tax Law, 2024
- Order of the Coif, University of Kentucky College of Law, 2021
- CALI Awards: Advanced Estate Planning; Antitrust Law; Contracts & Sales; Evidence; Legal Research & Writing

### Published Works

- Author, *Setting a Dangerous Precedent: A Constitutional Analysis of Kentucky Courts' Public Policy Exception to Conflicts-of-Law Jurisprudence*, 109 KY. L.J. O. 1 (2021)
- Co-author, *Kentucky Tax Legislation Update*, KY BAR ASSOC. B&B MAGAZINE, Fall 2022 edition (2022)
- Co-author of the Kentucky Tax Update section to the semiannual Council on State Taxation's multistate tax update (2022-23)
- Author, *KY General Assembly Passes Bill Expanding Sales Tax Exemption to Materials Purchased by a Contractor for a Water or Sewer Project with a Governmental Utility*, KRWA WATERPROOF MAGAZINE, Summer 2023 edition



**Damon R. Talley**

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

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

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

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

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

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

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



**Gerald E. Wuetcher**

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

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

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

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

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

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

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

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

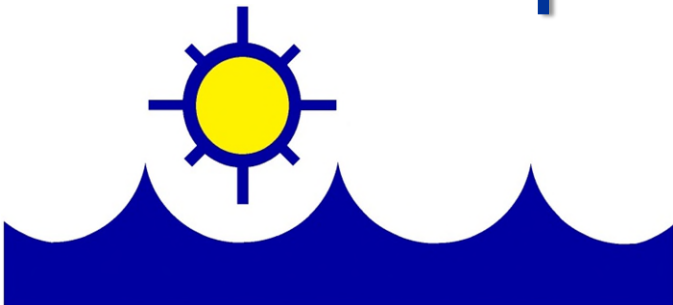
# **EXHIBIT 3**





# **HARDIN COUNTY WATER COMMISSIONER TRAINING SEMINAR**

**September 25, 2023**



# WELCOME

**Michael L. Bell, Chairman**

**Hardin County Water District No. 2**



# HOT LEGAL TOPICS

**Damon R. Talley**  
**Stoll Keenon Ogden PLLC**  
**[damon.talley@skofirm.com](mailto:damon.talley@skofirm.com)**



**September 25, 2023**



# DISCUSSION TOPICS

1. PSC Filings
2. Comply with PSC Orders
3. Minutes
4. Notable PSC Orders
5. Borrowing Money
6. Cases to Watch





***DISCLAIMER***



# PSA for PSC



# Reporting Requirements

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



# Vacancy

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







# E-Mail Address Regs.

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



# E-Mail Address

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



# Why Municipals?

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





**Talley's Tips**

# Default Regulatory E-mail Address

- Send E-mail to PSC
  - [psc.reports@ky.gov](mailto:psc.reports@ky.gov)
  - [PSCED@ky.gov](mailto:PSCED@ky.gov)
- Send Letter to PSC
  - Linda C. Bridwell,  
Executive Director







# No More Paper Copies

Case No: 2020-085 (COVID)

Order: 07-22-2021

Holding: Electronic Filings Only

- Utilities
- Lawyers
- Complainants
- Everyone







**Talley's Tips**

# Electronic Filing

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



**Comply  
With All  
PSC  
Orders**



# PSC Case No. 2021 - 343

Filed: 12-14-2021

Type: Failure to Comply  
with PSC Order

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

Decided: 07-15-2022



# PSC Case No. 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

Hearing: 01-04-2023

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 - 215

(cont.)

## Affirmative Steps to Mitigate

- Former Gen. Mgr. Retired
- New Gen. Mgr. Hired
- Commissioners & GM Attended Training
- Filed Rate Case
- No Hearing in Rate Case



# PSC Case No. 2022 - 228

Date: 08-22-2022

Type: Failure to Comply  
with PSC Order

Issue: Did Not Timely File  
Rate Application

RD Case: Filed 09-29-2022


Decided: 12-08-2022



# 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.)

- Affidavit: RD Rate Case
  - 31% Increase
- District is Getting CJE to Re-appoint Commissioners



# PSC Case No. 2022 - 228

## Outcome:

- RD Rate Case 31%
- No Hearing
- Commissioners & GM
  - Fined \$250
  - Waived
    - 12 Hours PSC Training
    - Good Behavior

. . . (cont'd)



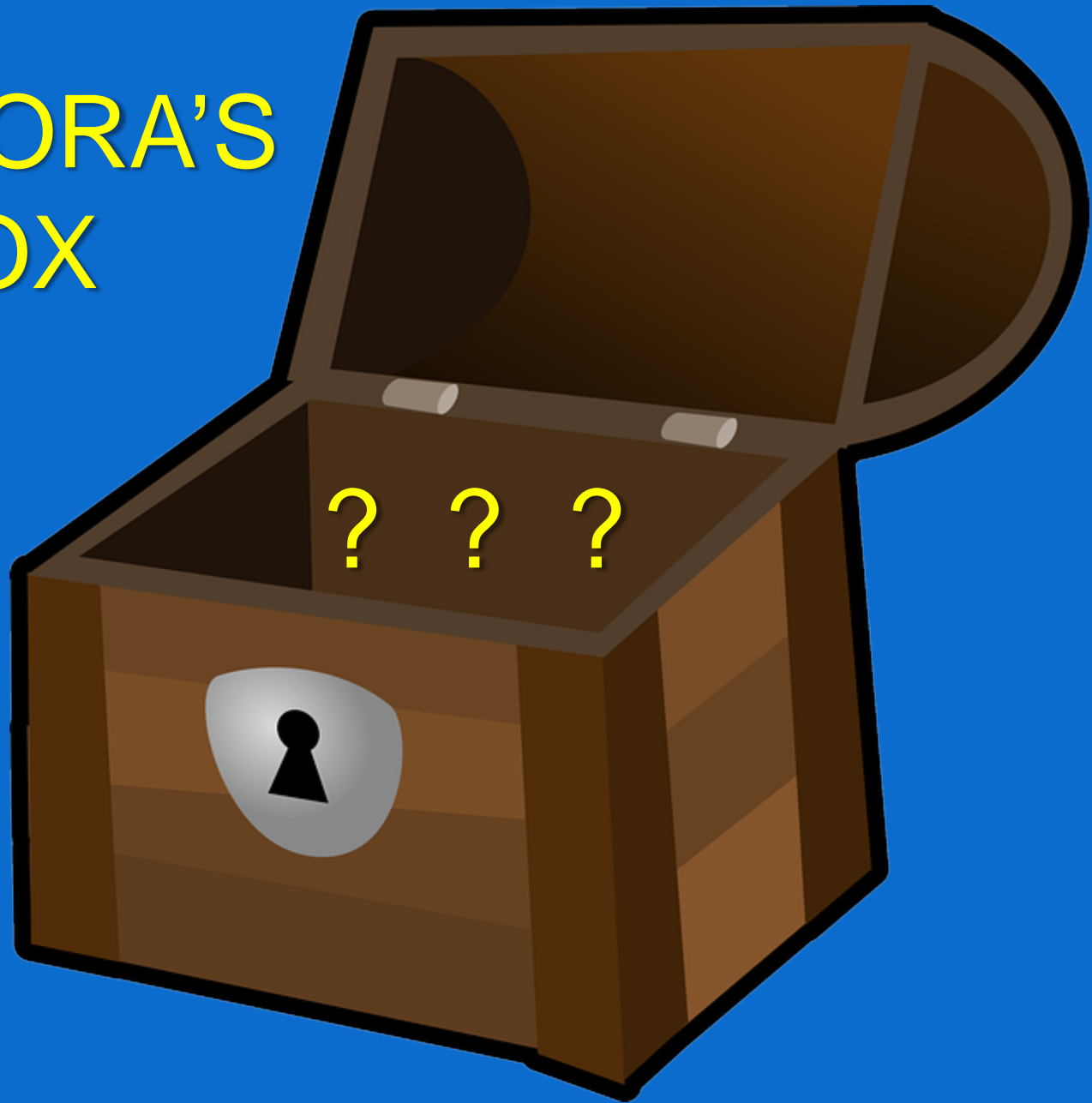
# PSC Case No. 2022 - 228

## Outcome:

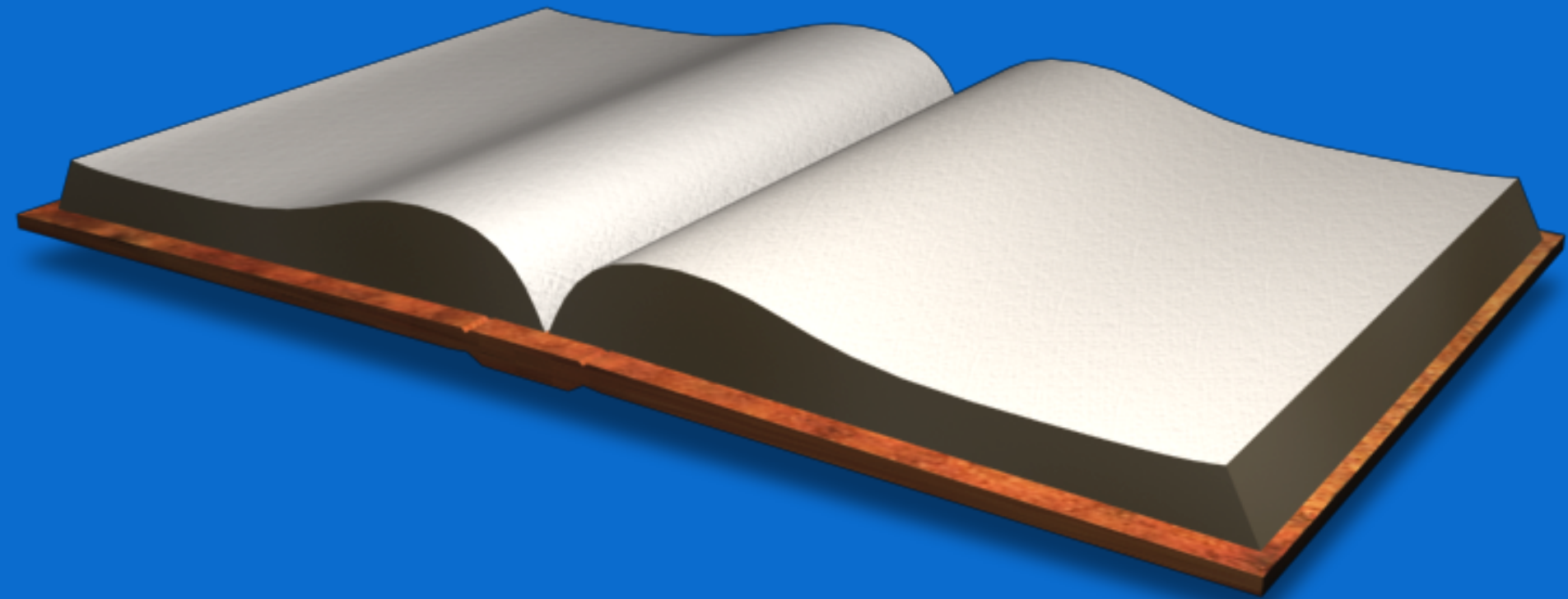
- File Rate Case: 06-30-2023
- Proposed  
Increase: 5.18%
- Rate Case: Discovery



# PANDORA'S BOX



# MINUTES



# What Are MINUTES?

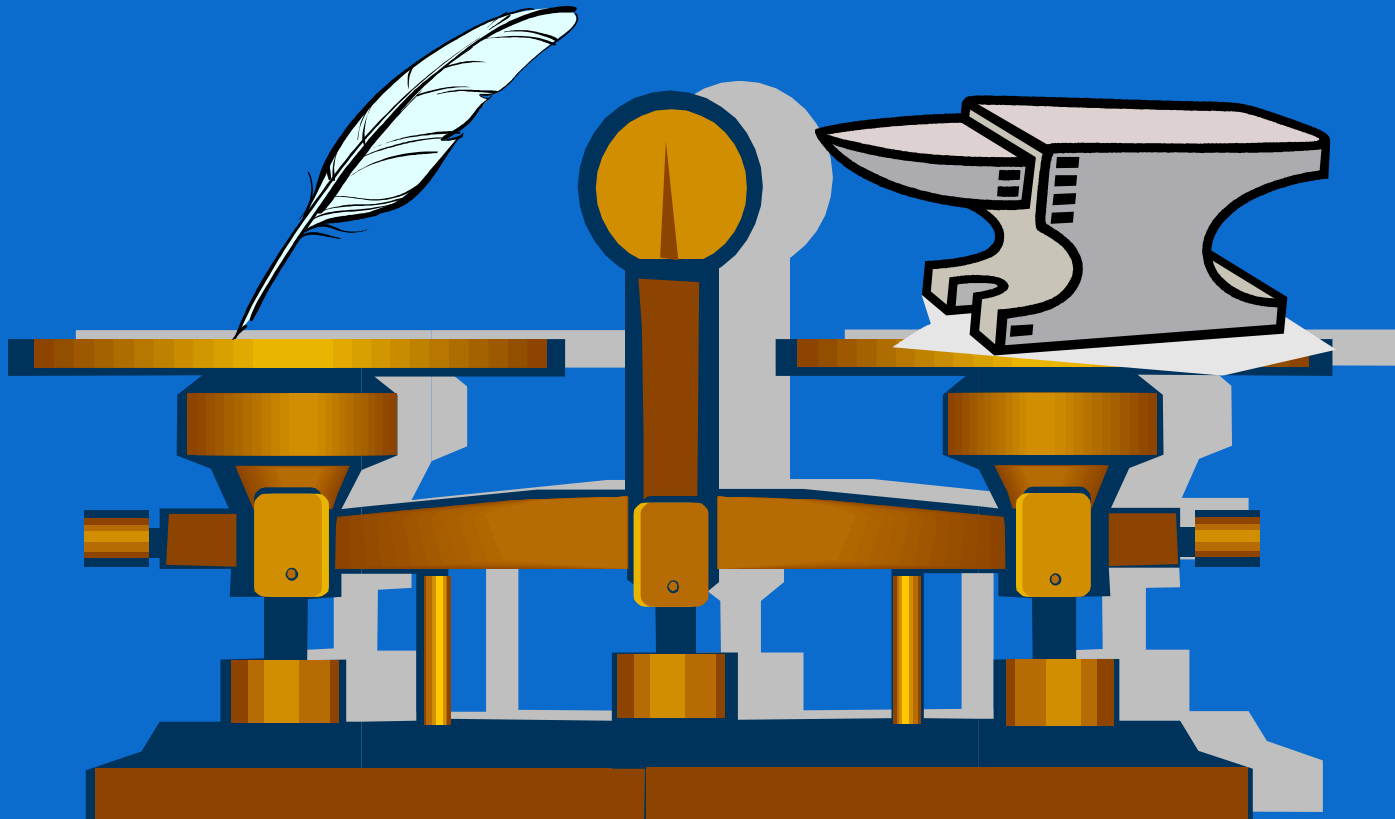
- Official Record
- Much, Much More . . .



**AN OUNCE  
OF  
PREVENTION**

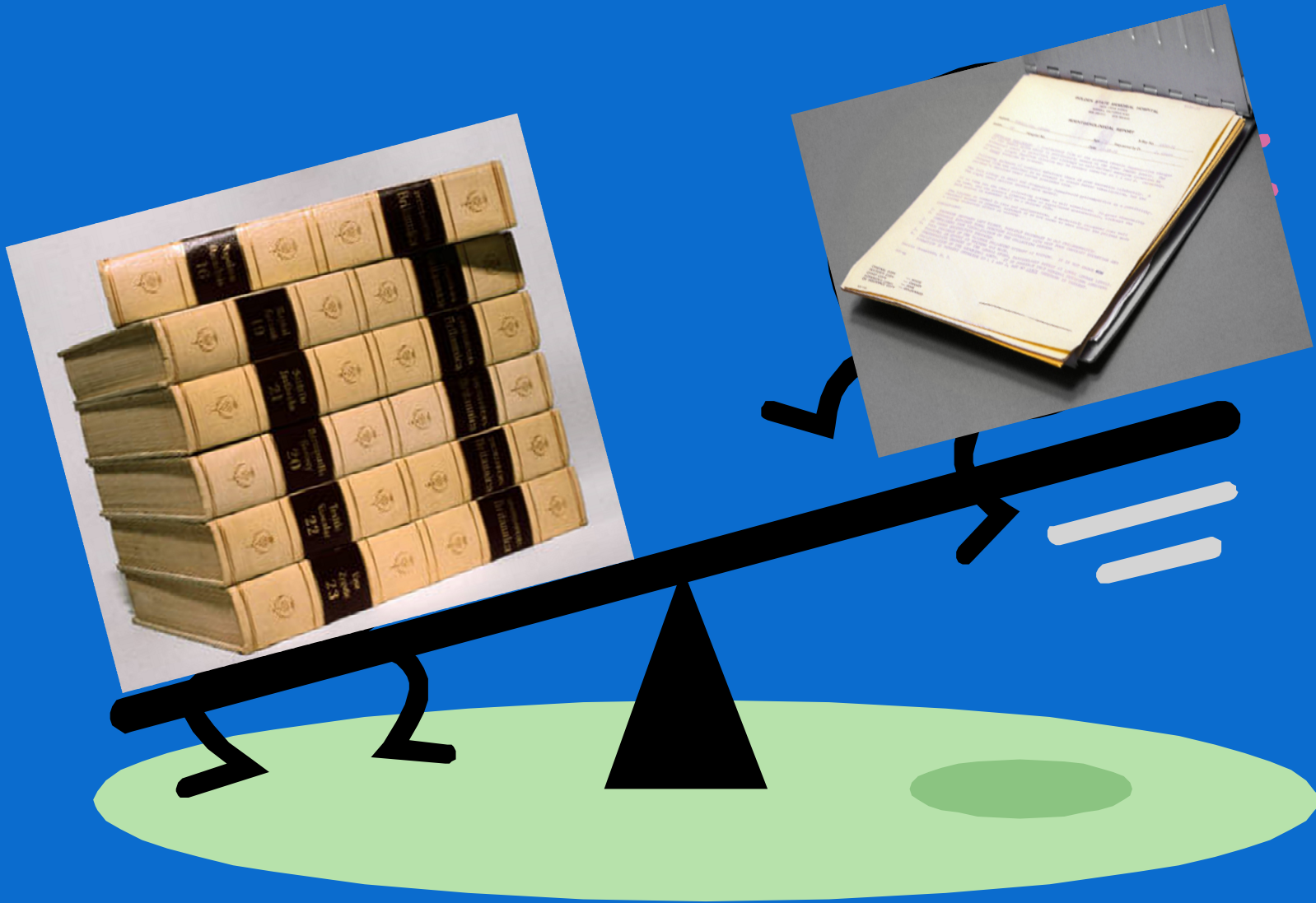
**=**

**A POUND  
OF CURE**





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



# Minutes

## How MUCH is too MUCH?

- No definitive answer
- Art not a science

Cont.



# Minutes ...

## How MUCH is too MUCH?

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



“Conversations are  
NOT official actions of  
the Board.”

Virginia W. Gregg

Former PSC Staff Attorney



# WHY Include Summary of Conversations in Minutes?

- Document Board's Due Diligence (e.g. Water Loss)
- Document Board's Oversight Role (e.g. Compliance with PSC Orders)
- Avoid or Win Litigation



# TALLEY'S TIPS



# Talley's Tips

## Prepare Minutes for a Reader...

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



# Notable PSC Orders





# PSC Case No. 2022 - 065

Filed: 3-29-2022

Utility: Southeastern Water Assoc.

Type: CPCN – New Office Bldg.

Issue: Reasonable Alternatives  
Considered

Decided: 8-30-22



# PSC Case No. 2022-065

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



# PSC Case No. 2022-065

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



# PSC Case No. 2023 - 192

Filed: 6-09-2023

Utility: Ohio Co. WD

Type: CPCN – Raw Water  
Intake Rehab

Issue: Reasonable Alternatives  
Considered

Decided: 7-31-23



# PSC Case No. 2023-192

- Preliminary Engineering Report
  - Alternative 1: Cadillac
  - Alternative 2: Chevrolet
- Final Engineering Report
  - Only Discussed Alt. 2



# PSC Case No. 2023-192

- Extensive Discovery Alt. 1
  - Initial Cost
  - Depreciation Expense
  - Annual Operating Cost
  - Rate Increase Needed
- Comparison of Both Alternatives



# Borrowing

LOANS



Money

# KRS 278.300(1)

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





# Practical Effect

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





**Violation**

# Show Cause Cases



# 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

Hearing: 07-06-2023

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
- 05-19-22: 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:

- Multiple Rounds of DR
- Hearing Date: 07-26-23
- Post Hearing Data Request
- Brief Due: 09-08-2023



# 2023 Show Cause Case Borrowing Money

First Case: 2022-344



# 2023 Case # 1

Case No. 2022 - 344

Opened: 04 - 14 - 2023

Issue: KRS 278.300  
(4 Violations)

Hearing: 07-06-2023

Decided: Pending



# 2023 Case # 1

## Defenses:

- Advice of Counsel
  - No Opinion Letter from Counsel
- No Answer Filed
- Lawyer Mea Culpa Letter



# 2023 Case # 1

## Case Status:

- 3 Rounds of DR
- Hearing: 07-06-2023
- Very Interesting Hearing
- Post Hearing DR
- Brief Due: 08-31-2023





# Cases to Watch

# PSC Case No. 2021 - 422

Filed: 11-22-2021  
Utility: Southern Madison Utilities  
Type: Investigation by PSC  
Issue: Fiber Optic in Water Lines  
Hearing: 08-24-2022  
Decided: 11-30-2022



# PSC Case No. 2021 - 422

**Holding:** Fiscal Court Can Install Fiber Optic Cables in Water Lines

**Conditions:** (1) Prepare Agreement Between Fiscal Court and Water Utilities  
(2) File Agreements with PSC

**Status:** No Agreement Filed







**QUESTIONS?**

**[damon.talley@skofirm.com](mailto:damon.talley@skofirm.com)**

**270-358-3187**



# 2023 GENERAL ASSEMBLY

**Cameron F. Myers**  
**Stoll Keenon Ogden PLLC**  
**[cameron.myers@skofirm.com](mailto:cameron.myers@skofirm.com)**



**September 25, 2023**



# 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



# Materials Purchased by Contractor

HB 360 See Pages 58 - 60

- New Sales Tax Exemption
  - Materials Purchased by Contractor
  - For Water or Sewer Project
  - For Certain Utilities



# HB 360

- Eligible Utilities
  - Municipally Owned Utility
  - Water District
  - Water Commission
  - Sanitation District
  - Joint Sewer Agencies
  - Chapter 58 Utility
  - Other Governmental Agency



# HB 360

- Not Eligible

- Water Associations

- Investor Owned Utilities

- Ky. American Water

- Water Service Corp. of Ky.

- Privately Owned Utilities



# HB 360

- Codified in KRS 139.480(34)
- Retroactive to 1-1-23
- Materials Would be Exempt if Purchased Directly by Utility





# HB 360

- DOR Form 51A383 (4-23)
- Who Signs Form
  - Utility
  - Contractor
  - Subcontractor  
(if it Purchases Materials)
- Submit Form to Vendor

Handout





**CERTIFICATE OF EXEMPTION  
FOR BUILDING MATERIALS, FIXTURES AND SUPPLIES  
PURCHASED BY A CONSTRUCTION CONTRACTOR FOR  
A SEWER OR WATER PROJECT WITH A  
GOVERNMENTAL AGENCY**

Important—Certificate not valid  
unless completed in full.

In accordance with KRS 139.480(34), this certificate may be executed only for those purchases (on or after 01/01/2023) of building materials, fixtures and supplies that will be permanently incorporated into a structure or improvement to real property, or will be completely consumed, in fulfilling a construction contract with a governmental agency for the purpose of furnishing water or sewer services to the general public. The building materials, fixtures and supplies purchased must also be exempt from the sales and use tax if purchased directly by the governmental agency. This certificate must be executed jointly by the governmental agency and the construction contractor who is under contract with the governmental agency and purchases the property to fulfill the terms of the construction contract.

THE UNDERSIGNED HEREBY CERTIFIES THAT THE PROPERTY TO BE PURCHASED FROM:

\_\_\_\_\_  
Vendor Name and Address

will be permanently incorporated into a structure or improvement to real property, or will be completely consumed, in fulfilling a construction contract with a governmental agency for the purpose of furnishing water or sewer services to the general public.

Type and description of property to be purchased:

Building Materials: \_\_\_\_\_

Fixtures: \_\_\_\_\_

Supplies: \_\_\_\_\_

Project Period of Construction Contract: Start Date \_\_\_\_\_ End Date \_\_\_\_\_

**This jointly executed certificate of exemption, shall be valid only for purchases made for the project period of the construction contract indicated on the certificate at the time of purchase. A construction contractor shall jointly execute a new certificate with a government agency for additional purchases of building materials, fixtures and supplies required for the same project after the initial expiration date or for additional projects.**

I, the purchaser, understand that if the property described above is used in a nonexempt manner, I am liable for the payment of sales tax as provided in KRS 139.270, as if I were the retailer making a retail sale of the property at the time of such use and the cost to me shall be deemed the gross receipts from such retail sale. I will immediately remit to the Department of Revenue, Frankfort, Kentucky 40620, the required tax measured by the purchase price of the property. I also understand that the department shall hold the purchaser liable for the remittance of the tax and may apply any penalties as provided in KRS 139.990.

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

\_\_\_\_\_  
Governmental Agency Exemption Number

\_\_\_\_\_  
Governmental Agency Authorized Signature Date

\_\_\_\_\_  
Construction Contractor Name (Print) FEIN

\_\_\_\_\_  
Construction Contractor Authorized Signature Date

\_\_\_\_\_  
Sub-Contractor Name (Print) FEIN

\_\_\_\_\_  
Sub-Contractor Authorized Signature Date

[https://revenue.ky.gov/Forms/51A383%20\(4-23\).pdf](https://revenue.ky.gov/Forms/51A383%20(4-23).pdf)



**Talley's Tips**

# Talley's Tips

- Educate
  - Engineer
  - Contractors
  - Vendors
- Bid Specs
- Pre-Bid Conference
- Contract Signing
- Stored Materials Invoice



# Procurement

HB 522 (KRS 424.260) &  
(KRS 45A.385)

- Threshold: \$40,000
- Effective: June 28, 2023



# Amendment to HB 8 (2022)

- HB 360 (See page 42)
- Modifies Residential Exemption For:
  - Mobile Home Park
  - Multi-Unit Apartment
  - RV Park
- More User Friendly
  - Residents Do **Not** Sign D of D



# Amendment to HB 8 (2022)

- Additional Requirements
  - Master Meter
  - Owner Signs New D of D
  - All Occupants Must Be Ky. Residents
  - Place of Domicile
- New D of D Form
  - 51A382 (4-23)



# Form 51A382 (4-23)

- Only Owner or Operator Signs
- No Tenant Signs D of D
- Effective: When Form 51A382 Is Submitted
- See DOR FAQ

Handout







**MULTI-UNIT DECLARATION OF DOMICILE FOR AN OWNER  
OR OPERATOR OF A MULTI-UNIT RESIDENTIAL RENTAL FACILITY  
OR MOBILE HOME AND RECREATIONAL VEHICLE PARK**

Under penalties of perjury, I declare that I am the owner or operator of a multi-unit residential rental facility or mobile home and recreational vehicle ("RV") park, and that the sewer services, water or fuel being purchased is for use by Kentucky residents in their place of domicile in accordance with KRS 139.470(7). I swear or affirm that the declaration I am submitting includes 100% of the dwelling units at the service address below. The purpose of this declaration is to exempt the residents from the cost of sales tax on their utility usage.

\_\_\_\_\_  
Service Address Number of Dwelling Units

Account Number (if available) \_\_\_\_\_ Account Name (printed) \_\_\_\_\_

Authorized Signature \_\_\_\_\_ Date \_\_\_\_\_

**Instructions**

- **DO NOT SUBMIT THIS FORM TO THE DEPARTMENT OF REVENUE. Submit this Multi-Unit Declaration of Domicile form to each applicable utility provider or rural electric cooperative.**
- This Declaration of Domicile is for owners, operators, landlords or other persons holding an account with a utility provider or rural electric cooperative which serves multiple dwelling units at a multi-unit residential rental facility, mobile home park, or RV park.
- Submit this form for each meter that measures utility service to multiple rental units.
- Do not submit this form for any meter that measures utility service exclusively for the common areas of a multi-unit residential rental facility, mobile home park, or RV park (e.g., parking lot lighting, gas, and electric service for a common laundry room, etc.). Accounts for meters that measure service exclusively to common areas of a multi-unit residential rental facility, mobile home park, or RV park are not eligible for the residential sales tax exemption.
- Do not submit this Multi-Unit Declaration of Domicile for any single meter that measures service to both residential and common areas if the common area usage measured by that meter is greater than 10% of the total meter usage.\* Accounts for meters that serve both common areas and residential areas where the common area usage is greater than a de minimis amount (greater than 10% of the total metered usage) are not eligible for the residential sales tax exemption.
- 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.Websponsesales@ky.gov](mailto:DOR.Websponsesales@ky.gov)

\* If your utility meter does not measure common area usage separately from residential usage, you may estimate common area usage based on the hourly common area usage compared to hourly residential usage over a 7-day period. You must calculate a new estimation for each calendar year and maintain documentation of your calculations for verification by the Department of Revenue upon request. **Do not send common area usage calculations to your utility provider or rural electric cooperative.**

[https://revenue.ky.gov/Forms/51A382%20\(4-23\).pdf](https://revenue.ky.gov/Forms/51A382%20(4-23).pdf)

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](mailto: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](mailto: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 30<sup>th</sup>, 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](mailto: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





***QUESTIONS?***

***cameron.myers@skofirm.com***





**STOLL**  
KEENON  
OGDEN

PLLC



# WATER UTILITY TARIFFS: PRACTICAL CONSIDERATIONS

Gerald Wuetcher  
Stoll Keenon Ogden PLLC  
[gerald.wuetcher@skofirm.com](mailto:gerald.wuetcher@skofirm.com)  
(859) 231-3017



# ORDER OF PRESENTATION

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

# LEGAL FRAMEWORK



# KRS 278.030

Provides that every utility may:

- Demand and **collect fair, just and reasonable rates**
- Establish **reasonable rules** governing the **conduct of its business** and **the conditions under which it will provide service**
- Employ **reasonable classifications** of its service, patrons, and rates



# 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/customer 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
- Revenue may not exceed costs
- Income Statement & Balance Sheet
- Stmt Why Not Filed in Rate Case
- Tariff Sheet



# NRC: RECENT CHANGE

- As of 11/2020, Labor expense no longer included in cost calculations
- PSC Case No. 2020-00141:  
“Unreasonable to allocate a cost already incurred to maintain system  
Specific Cost Justification”



# NRC: EFFECT OF CHANGE

CHARGE	ACTUAL	ALLOWED
Connection	\$55.00	\$10.44
Meter Test Request	\$65.00	\$20.44
Reconnection	\$55.00	\$10.44
Service Call Investigation	\$55.00	\$10.44
Reconnection (After Hours)	\$65.00	\$53.62



# NRC: EFFECT OF CHANGE

CHARGE	ACTUAL	ALLOWED
Fire Hydrant Permit	\$53.03	\$16.00
Meter Test	\$63.45	\$ 4.00
Overtime Charge	\$66.39	\$49.00
Service Charge	\$53.40	\$ 4.00
Return Check Charge	\$10.00	\$ 5.00



# SPECIAL CONTRACTS

- Contracts that provide for rates or conditions of service not in general tariffs
- Designed to address unusual customer circumstances
- Must be filed with PSC



# 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.\*
- 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: PHOTO ID PRESENTMENT

- May not limit ID to government-issued photo ID
- Alternate ID forms permitted for voter registration should be accepted ILO photo ID





# 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: GENERAL RULES

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



# LATE PAYMENT FEES: RECENT HISTORY

- COVID-19: PSC prohibits assessment of fees (3/15/2020)
- Summer 2020: PSC collects data on payment delinquency
- 9/21/2020: Ends prohibition on assessment; expresses doubt re: reasonableness/effectiveness



# LATE PAYMENT FEES: RECENT HISTORY

- Prohibits WD from assessing fees (11/6/2020)
- Finds late payment fees not cost-based; ineffective
- Proceeds to prohibit on a case-by-case basis





# LATE PAYMENT FEES: KRS 278.154

- Enacted in response to PSC's action
- Permits WD/WA to assess a 10% late payment fee
- PSC may not interfere with WD/WA
- No late payment fees on WD/WA bills receiving 3<sup>rd</sup> party billing assistance



# LEAK ADJUSTMENTS

- No Duty to Make Adjustment
- Tariff Provision Necessary
- 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 Bill



# 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





# IMPUTED LIABILITY: PSC RESPONSE

- Does Not Recognize Benefit of Service Theory
- Accepts Agency Theory but Utility must demonstrate agency
- Will permit imputation of debt only for purpose of denying service



# TAMPERING FEE

- Fee Imposed on Customer  
Tampering or Damaging Equipment
- Penalty intended to deter misconduct
- Case No. 2019-00271: Duke Kentucky proposes



# TAMPERING FEE

- Duke: Penalty permissible as PSC has plenary ratemaking power
- PSC finds Fee is NRC and must be cost-based
- PSC rejects Fee as not cost-based



# 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



# 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?







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# Working Effectively With Your Board

Robert K. Miller  
September 25, 2023

# Helping Your Board To...

- ... Understand Their Role
- ... Perform Their Role
- ... Improve Their Performance

# Helping Your Board Understand Their Role

- Policy Making
- Strategy Setting
- Regulatory Compliance
- Planning
- Financial Oversight
- Management Oversight
- System Oversight
- Decision Making
- Emergency Preparedness

# Understand: Policy Making

*"Each board must determine if it is a policy-making board or an operating board. They must pick a lane and stay in it."*

*"A policy is a decision made at leisure in advance to keep from making a mistake in haste later on."*

*"The keys to success in management are competence, character, and the freedom to act."*

# Understand: Policy Making



## Service Rules and Regulations

- Water Main Extensions
- Turn Offs for Delinquent Accounts
- Resolving Billing Disputes

## Personnel Matters

- Compensation
- Vehicle Use
- Paid Time Off
- Discipline
- Purchasing
  - Competitive Pricing
  - Approval Limits
  - Credit Cards

# Understand: Strategy Setting

*"If you don't know where you are going, any road will get you there."*

- Water Treatment or Purchase
- Participation in Local Economic Development
- Extension to Distribution System
- Infrastructure Replacement
- Merger with Adjacent System
- Employee Succession Planning





# Understand: Regulatory Compliance



## Regulatory Duties and Current Status

- Tariff
- Kentucky Public Service Commission
- Kentucky Division of Water

## Violations and Remediation Plans

- Awareness
- Communication
- Follow Through to Resolution

# Understand: Planning

## Infrastructure Planning

- Growth Related
- Service Level Related

## Financial Planning

- Ratemaking
- Debt Issuance

## Succession Planning

- Board Officer Roles
- Critical Staff Roles



# Understand: Financial Oversight



## Timely Financial Information

- Income Statement
- Balance Sheet
- Statement of Cash Flows
- Completion of Audit

## Relevant Comparisons

- Budget Variance
- Prior Year Variance

## Key Metrics

- Days of Cash and Debt Service Coverage
- Collection Rate and Aging of Receivables

# Understand: Management Oversight

- Recruitment of Utility Manager
- Establishing Performance Criteria
- Obtaining Independent Measurements of Regulatory Compliance, Customer Satisfaction, and Employee Morale
- Evaluation of Performance
- Determination of Retention and Compensation





# Understand: System Oversight

## Metric Based with Trend Information and Variance Analysis

- Water Quality and Pressure
- Production, Sales, and Water Loss Volumes
- Key Infrastructure Failures
- Key Infrastructure Out of Service
- Telephone Response Rates
- Service Response Times



# Understand: Decision-Making



What decisions does the Board want to ...

... make on its own?

... be consulted on in advance?

... be notified of?

*All other decisions are the responsibility of the utility manager*

How will the Board make its decisions?

- By consensus or by majority vote

# Understand: Decision Making

## What decisions must be made by the Board?



- Approving the board meeting minutes
- Hiring of the utility manager
- Hiring of legal counsel and auditor
- Applying for changes in tariff and rates
- Authorizing borrowings
- Authorizing expenditures



# Understand: Emergency Preparedness

## Knowing What Can Keep Utility from Fulfilling its Mission:

- Disruption in water supply.
- Disruption in power supply.
- Disruption in treatment process.
- Disruption in transmission and distribution system.
- Disruption in workforce.

## Knowing What Will be Done to Restore System

## Knowing Who Will Communicate to Customers, Regulators, and Elected Officials





# Helping Your Board Perform Their Role

- Set Agendas for Meetings
- Provide Meeting Materials
- Presentations and Discussions
- Document Discussions and Decisions
- Follow Through
- Deal with Elected Official Participation
- Deal with Citizen Participation
- Deal with Media Participation

# Performance: Setting Meeting Agendas



Establish calendar for the year of meeting dates and pre-scheduled topics:

- Review of Management Performance
- Review of Financial Results and Audit
- Review of System Condition

Discussion between Board Chairman and Manager on Board Initiated Topics

Follow-up Items from Previous Meetings

# Perform: Provide Meeting Materials

## Establish process for preparing and assembling materials for Board meeting:

- Must contain background information, recommended action, and draft resolution.
- Review for acceptance by Utility Manager
- Delivery format (print or electronic) including summary # days in advance of meeting
- Firm deadline for delivery to Board members
- Online availability to public and media
- Keep for permanent record



## Perform: Presentations and Discussions

- Staff presents background, key facts, alternatives considered, and recommendations.
- Presentations may be supplemented by consultants and vendors with no surprises.
- Chairman leads discussion by Board Members. Once discussion begins, no further participation by non-members.
- Chairman may require that each Board Member gets to speak once before any Board Member speaks twice.
- Chairman determines if Board is ready to vote and calls for motion.
- Once vote is conducted, move to next agenda topic.

# Perform: Document Decisions

## The Board speaks through its minutes!

- Create a permanent written record to document exercise of Board authority.
- Document alternatives, recommendations, and discussions.
- Document vote tallies, especially when not unanimous.
- Assume that it will be needed in litigation to defend actions.
- Do not retain audio or video records of meeting beyond minutes.

*Note: Minutes do not need to be read if distributed in writing in advance of the meeting.*



# Perform: Decisions by Consensus or Vote

## High Performing Boards Make Decisions by Consensus!

- Consensus requires understanding.
- Understanding takes time and consideration.
- Disagreement is a marker along the highway to agreement.
- Some decisions require more than one meeting.

*With all that said, sometimes a decision must be made by a vote.*

# Perform: Follow Through

- Execute Board decisions as soon as practicable.
- Identify unresolved matters and assign for follow through.
- Include time to communicate follow through on unresolved matters at next meeting.
- Work with Chairman to determine if disagreements require fence-mending.



# Perform: Elected Official Participation

- Treat attendance by elected officials as honored guests without subordinating the role of the Board or the Utility Manager.
- Allow elected officials to speak at the beginning of the meeting without limit on time.
- Allow elected officials to speak on specific issues after staff presentation but before board consideration.
- Chairman is responsible for ensuring independence of board decisions.



# Perform: Citizen Participation

- Require written sign-in of all attendees.
- Require written indication of request to speak to Board, identifying agenda topic related to their remarks.
- Limit remarks to three minutes.
- Identify staff person to address their concerns.
- Do not engage in back-and-forth between customer and Board.



# Perform: Media Participation

- Ensure media receives board materials in advance of meeting, when requested.
- Allow media to create B-roll video footage of meeting room and attendees, but do not allow video recording of meeting proceedings.
- Allow media to speak after the meeting to one spokesperson designated by chairman and record interviews.
- Ensure that media has adequate time to gather necessary information and gain understanding while meeting their deadlines.

# Helping Your Board Improve Their Performance

- Facilitate Board Member Orientation
- Facilitate Board Calendar
- Track Attendance
- Monitor Terms
- Facilitate Compensation Discussion
- Ensure Time for Board Self-Evaluation
- Deal with Problematic Board Members



# Improve: Board Orientation

## Orientation by Chairman and Utility Manager

- KY DOW and KY PSC regulatory requirements
- Tariff components
- Delineation of Board and Staff roles
- Procurement process
- Meeting preparation and attendance expectations
- Board decision-making style



# Improve: Board Calendar

## Establish Rolling Twelve-Month Calendar:

### Identify routine items for schedule

- Evaluation of Utility Manager Performance
- Setting annual goals for utility
- Adopting Annual Budget
- Meeting with Auditors to review financial results

### Identify targeted dates for non-routine items

- Engineering and Financial Plans due dates
- Procurement due dates

# Improve: Track Attendance

## Tracking board member attendance:

- Ensures proper compensation  
(if compensation is tied to attendance)
- Provides accountability to County Judge Executive and Fiscal Court
- Provides support for Chairman when evaluating Board performance



# Improve: Monitor Terms

## County Judge Executive:

- Nominates Water District Commissioners

## County Fiscal Court :

- Appoints Water District Commissioners
- Sets term of service
- Sets compensation

## Board Secretary:

- Tracks terms and expirations

## Board Chairman:

- Offers suggestions for consideration
- Reminds County Judge Executive of upcoming vacancies

# Improve: Board Compensation

## Components of Compensation:

- Community acceptance of compensation amounts
- Role performed on Board
- Amount of training accomplished

Chairman may advise County Judge Executive and Fiscal Court on current and proposed compensation amounts





# Improve: Board Self-Evaluation



Board members need time to evaluate their own performance (individually and as a group) without staff present:

- Attendance
- Preparation
- Participation
- Collegiality

# Improve: Problem Board Members

## Attributes of Problem Board Members:

- Attempting to Conduct Board business outside of meetings
- Directing staff on operational decisions
- Bullying other Board Members during meetings
- Unduly influencing procurement decisions or water main extensions

*Board Chairman must confront and address problem behaviors*



# Why?

Why Should a Utility Manager  
Help the Board on These Topics?

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1. It helps the Board perform their role to the best of their capability.

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1. It helps the Board perform their role to the best of their capability.
2. It helps ensure that the Manager has the necessary freedom to act.

# Questions?