

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**IN THE MATTER OF:**

<b>ELECTRONIC APPLICATION OF ROWAN WATER,</b>	)	<b>CASE NO.</b>
<b>INC. FOR APPROVAL OF WATER TRAINING</b>	)	<b>2023-00370</b>

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**NOTICE OF FILING**

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Comes now Rowan Water, Inc., its individual directors and its general manager (collectively, “Rowan Water”), and Honaker Law Office, PLLC (“Joint Applicants”) to give notice of the filing of the following documents:

1. A sworn statement attesting that the accredited instruction entitled “**Rowan Water Director Training Session 1**” was performed on December 13, 2023 (Exhibit 1).
2. There were minor editing changes made to the materials proposed as curriculum filed with the Commission and an agenda, and a copy of the final edited presentations provided in paper form to the attendees is attached as Exhibit 2.
3. The name of each attending water association director, and the number of hours that they attended is attached as Exhibit 3.
4. All directors attended in person.
5. The only written materials provided the attendees were copies of the agenda and the presentations provided in Exhibit 2.

Dated this 15<sup>th</sup> day of December, 2023.

Respectfully submitted,

  
\_\_\_\_\_  
L. Allyson Honaker  
Brittany Hayes Koenig  
HONAKER LAW OFFICE, PLLC  
1795 Alysheba Way, Suite 6202  
Lexington, Kentucky 40509  
(859) 368-8803  
allyson@hloky.com  
brittany@hloky.com

*Counsel for Rowan Water, Inc.*

**CERTIFICATE OF SERVICE**

This is to certify that foregoing was submitted electronically to the Commission on December 15, 2023 and that there are no parties that have been excused from electronic filing. Pursuant to prior Commission orders, no paper copies of this filing will be submitted.

  
\_\_\_\_\_  
*Counsel for Rowan Water, Inc.*

# Exhibit 1

COMMONWEALTH OF KENTUCKY )  
 )  
COUNTY OF FAYETTE )

**AFFIDAVIT**

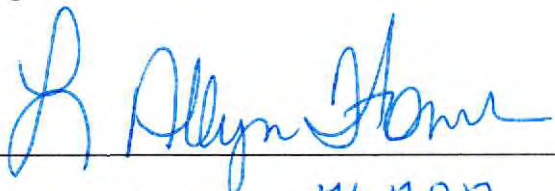
Brittany Hayes Koenig of Honaker Law Office, PLLC, Counsel for Rowan Water, Inc., being duly sworn, states that:

1. She has served as organizer and presenter of the water training program entitled "**Rowan Water Director Training Session 1**" in the above-referenced case.
2. "**Rowan Water Director Training Session 1**" was held on December 13, 2023, at the offices of Rowan County Water Association, 1765 Christy Creek Road, Morehead, Kentucky 40351.
3. The presentations listed in the proposed agenda submitted to the Kentucky Public Service Commission in this matter were conducted for the length of time specified, a total of 3 hours of instruction.
4. Each attendee was provided in paper medium a copy of the presentations and program agenda.

  
Brittany Hayes Koenig  
HONAKER LAW OFFICE, PLLC  
1795 Alysheba Way, Suite 6202  
Lexington, Kentucky 40509  
(859) 489-4667  
brittany@hloky.com

The foregoing Verification was signed, acknowledged and sworn to before me this 14th day of December 2023, by Brittany Hayes Koenig of Honaker Law Office, PLLC, Counsel for Rowan Water, Inc..



  
Notary Commission No. 76727  
Commission expiration: 8/2/27

# Exhibit 2

# **Rowan Water Director Training I**

*Presented by Rowan Water, Inc. and Honaker Law Office, PLLC*

*1765 Christy Creek, Morehead, Kentucky 40351*

**December 13, 2023. Session 1**

<b>10-10:15am</b>	<b>Board Registration and Welcome</b>
<b>10:15-11:15am</b>	<b>Utility Regulatory Requirements I (1 hour)</b>
<b>11:15-11:45pm</b>	<b>Commission Orders &amp; Updates I (.5 hour)</b>
<b>11:45-12:45pm</b>	<b>Lunch</b>
<b>12:45-1:15pm</b>	<b>Notes for Regulatory Practice/Review I (.5 hours)</b>
<b>1:15-2:15pm</b>	<b>Ethics in Leadership-Board Operations I (1 hour)</b>

**HONAKER LAW**  
**OFFICE, PLLC**

**ROWAN WATER**  
**DIRECTOR**  
**TRAINING**

PRESENTATION BY BRITTANY HAYES KOENIG

1

**INTRODUCTION &**  
**DISCLAIMER**

BRITTANY HAYES KOENIG



2

**REGULATORY**  
**REQUIREMENTS**



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**AGENDA**

- OVERVIEW STATUTES AND REGULATIONS FOR
  - Rates
  - Service
  - Construction – Certificate of Public Convenience and Necessity
  - Financing or Issuing Debt

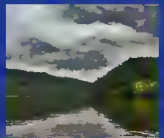


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**DIRECTORS ARE RESPONSIBLE FOR ENSURING THAT THE WATER ASSOCIATION COMPLIES WITH THE LAWS OF THE COMMONWEALTH AND COMMISSION REGULATIONS**


**KRS 74.020:**

Water District is administered by the Board of Commissioners who manage the affairs of the District.



**WATER ASSOCIATIONS**

KRS 273.215 contains standards for Directors: Good faith; informed basis; best interest of corporation.




**KRS 74.070:**  
DUTIES AND POWERS

**KRS 273.219** is the conflict-of-interest provision with focus on disclosure and fairness

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**PSC STATUTORY AUTHORITY**

- 1 **3-MEMBER INDEPENDENT ADMINISTRATIVE AGENCY**
  - Chairman, Kent A. Chandler
  - Vice-Chairman, Mary Pat Regan
  - Commissioner, Angie Hatton
- 2 **QUASI-LEGISLATIVE AND QUASI-JUDICIAL DUTIES**
  - Regulation fair, just and reasonable utility rates and service.
- 3 **KRS 278.040**
  - Exclusive jurisdiction over regulation of utility rates and service.
  - Adopt reasonable regulations to implement KRS Chapter 278.
  - Investigate utility methods and practices.
  - Require utilities to conform with the laws of the state.



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## PSC REGULATORY RESPONSIBILITY

- Rate increase or reduction.
- Compliance with service and safety regulations
- Construction and operation of utility facilities
- Meter accuracy
- Management Audits
- Issuance or assumption of securities by a utility
- Consumer Complaints

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## Rates

**KRS 278.010(12)**  
 Any 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 of tariff or part of a tariff and any schedule or tariff or part of a tariff thereof.




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## RATES

### METHODS FOR SETTING AND ADJUSTING RATES


- Tariff Filing
- Alternative Rate Adjustment
- Purchase Water Adjustment
- Non-recurring charges



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## WHAT IS A RATE CASE

- A base rate case for an increase in rates pursuant to KRS 278.190;
- 807 KAR 5:076 Alternative Rate Adjustment Procedure for Small Utilities
- KRS 278.023 Loan approval for United States Department of Agriculture Rural Development (USDA/RD) project
- *NOTE: Depreciation is not accounted for in USDA/RD loans the same as PSC.*



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## ISSUES FROM RATE CASES

### WATER LOSS

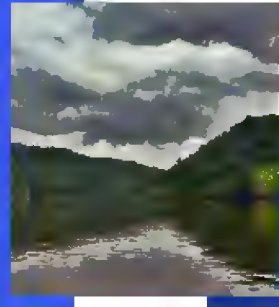
- CASE No. 2019-00041, Electronic Investigation into Excessive Water Loss by Kentucky's Jurisdictional Water Utilities (Ky.PSC Nov. 22, 2019) Appendix L, Confronting the Problems Plaguing Kentucky's Water Utilities: An Investigative Report By The Kentucky Public Service Commission November 2019.
- Findings and Recommendations
  - BOARD RESPONSIBILITY
  - POLICY CHANGES
  - BETTER BUSINESS PROTOCOLS



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## RATES : TARIFFS

- KRS 278.160: UTILITY MUST FILE AND ADHERE TO TARIFF
- KRS 278.170: no rate or service discrimination
- KRS 278.180: rate changes
- 807 KAR 5:001: rules of procedures for proceedings
- 807 KAR 5:006: general procedures for providing service
- 807 KAR 5:011: tariff regulations




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## RATES: TARIFFS

- KRS 278.160(1): RATES MUST BE FILED WITH PSC  
Utility must file tariff with PSC showing Schedule of rates for each class of customers Terms and conditions under which service is provided to customers
- KRS 278.160(2): Filed Rate Doctrine:  
Utility cannot charge or collect greater or less compensation for service rendered than its filed tariff  
Customer cannot receive service that differs from the tariff



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## KRS 278.170


- No unreasonable preference between customers



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### 807 KAR 5:006: GENERAL RULES FOR PROVIDING SERVICE

- Section 5: substantial service changes
- Section 6: special requirements require PSC approval
- Section 7: Meter readings and billing
- Section 8: Deposits
- Section 9: Nonrecurring charges
- Section 11: Bill Adjustment
- Section 15: Refusal or Termination of Service



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## RATES :TARIFFS

If it is not in your tariff, you **cannot** do it.

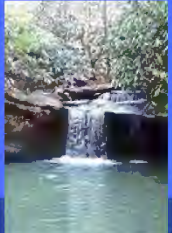
If it is in your tariff, you **must** do it.

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## TARIFF REVISIONS

### 807 KAR 5:011: FILING REQUIREMENTS FOR TARIFFS

- Customer Notice
- Billing insert
- Newspaper of general circulation.
- Newsletter distributed to all customers.
- Public posting in utility premises and web site.



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## Rates: Tariffs

### PROPOSED RATES BECOME EFFECTIVE ON DATE STATED IF:

- Proper Notice to the Public
- Tariff Sheet complies with 807 KAR 5:011
- Commission does not suspend the case pursuant to KRS 278.190

### 807 KAR 5:006 PROCEDURAL RULES FOR PROCEEDINGS

- Section 16: General Adjustment of Existing Rates
- Application not deemed filed until meets all requirements: Recent Issues
- Section 17: Notice of General Rate Adjustment




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## RATES

### ALTERNATIVE RATE FILING

- 807 KAR 5:076
- Purpose: Simplified and less expensive procedure;
- Utilities filed Simplified Application Form using utility personnel, however an Attorney must represent the utility if there is a hearing.
- Utilities with a Gross Annual Revenue of less than \$5,000,000-eligible to file.



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## 807 KAR 5:076

### Alternative Rate Filing

- Section 3: Record upon which decision is made
- Section 4: Application
- Section 5: Notice to Customers
- Section 6: Notice to Commission
- Section 7: Effective Date of Proposed Rates
- Section 13: Role of non-attorneys:
- Authorized water utility personnel may file:
  - Application;
  - Responses to Requests;
  - Appear at conferences
- BUT-Attorney must represent at hearing, if held.


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## RATES

### PURCHASED WATER ADJUSTMENT

KRS 278.015

- Adjust rates to reflect wholesale supplier increase without PSC Prior Approval
- 807 KAR 5:068
- File Application within 20 Days of Adjustment
- Notice to Customers
- File Revised Tariff Sheet within 20 Days of Commission Order Approving Proposed Rates




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## RATES

### NONRECURRING CHARGES


807 KAR 5:011 SECTION 10

- Documentation
- Cost Justification
- Public Notice
- Statement why revisions were not included in most recent rate case and should not be deferred until next general rate case.
- Only enough revenue to pay expenses incurred- Cost Based



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## SERVICE



### 807 KAR 5:006 GENERAL RULES FOR PROVIDING SERVICE

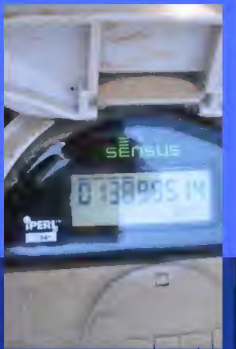
- Section 10: Customer Complaints
- Section 11: Bill adjustment and monitoring usage
- Section 14: Customer Relations
- Sections 17-19: Meter Testing
- Section 26: Inspection of Systems
- Section 27: Reporting Accidents
- **WITHIN 2 HOURS CALL OR EMAIL THE PSC**
- **CALL 502-782-7994 OR EMAIL PSC.Water.Notice@ky.gov**

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## SERVICE

807 KAR 5:066: general rules for water utilities

- Section 2: Information provided
- Section 3: Water Quality
- Section 4: Continuity of Service
- Section 5: Water Pressure
- Section 7: Construction
- Section 11: Extension of Service
- Section 12: Service Connections
- Section 15: Meter Accuracy Requirements



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## CONSTRUCTION

KRS 278.020 - CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

- Utility cannot construct any plant, equipment, property or facility until obtained certificate from the PSC that public convenience and necessity requires the construction.
- \* Exception: Extensions in the Ordinary Course of Business

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## CONSTRUCTION

DEFINITION OF EXTENSION IN THE ORDINARY COURSE OF BUSINESS

**EXTENSION THAT DOES NOT**

- CREATE WASTEFUL DUPLICATION
- CONFLICT WITH EXISTING SERVICE
- INVOLVE SUBSTANTIAL CAPITAL OUTLAY TO MATERIALLY AFFECT UTILITY'S CURRENT FINANCIAL CONDITION
- RESULT IN INCREASED CHARGES TO CUSTOMERS

**897 KAR 5-091 SECTION 15 (3)**

**PSC CONSIDERATIONS FOR ISSUING CPCN**

- NEED for the Project
- Review of OTHER ALTERNATIVES
- Water Supply -Treatment Plant or Purchase?
- Line Sites
- Treatment Options
- Cost/Benefit Analysis- Preference for Least Cost

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## Financing

**KRS 278.300 – NO UTILITY CAN BORROW FUNDS WITHOUT COMMISSION APPROVAL**

- Exception: does not apply to notes/loans with terms of 2 years or less
- Commission has 60 days to act once application filed
- May be continued for good cause
- Standard: Proper purpose/ Effect on Utility's Financial Integrity

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## Financing

**WHAT IS EVIDENCE OF INDEBTEDNESS?**

- Note
- Bond
- Installment Purchase Contract
- Water Purchase Agreement (Maybe)
- Assumption of Other's Obligations/Debts

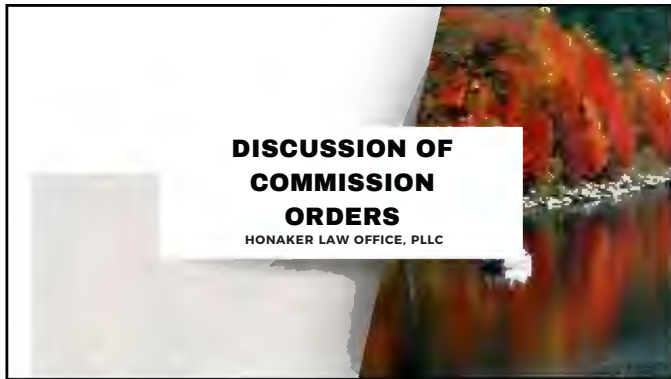
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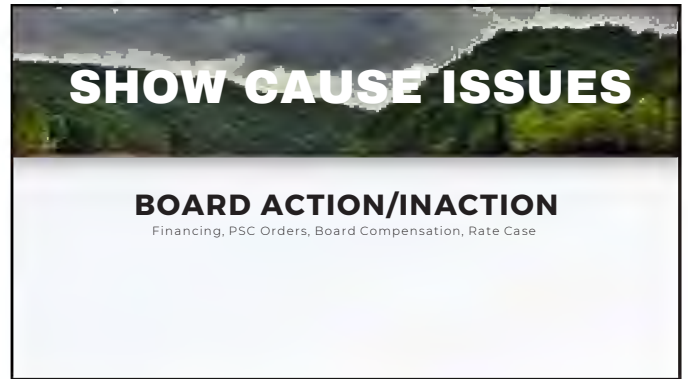
QUESTIONS?

Thank you.

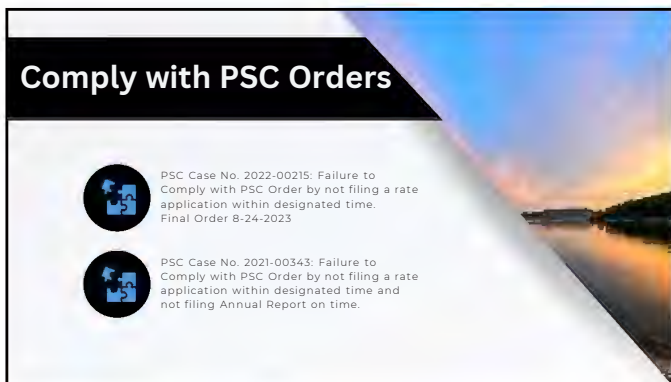
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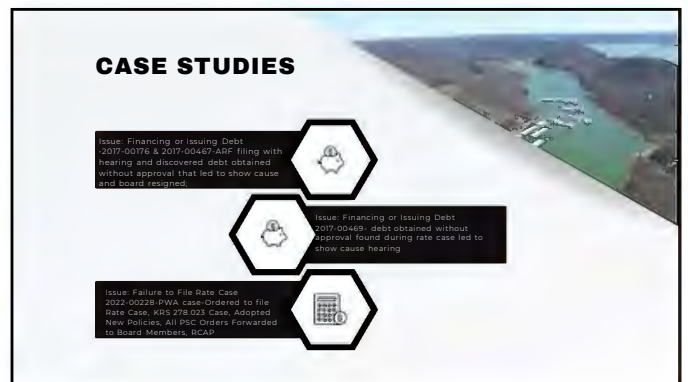
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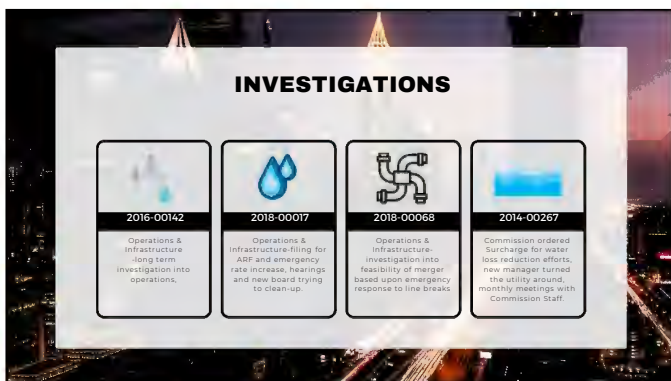
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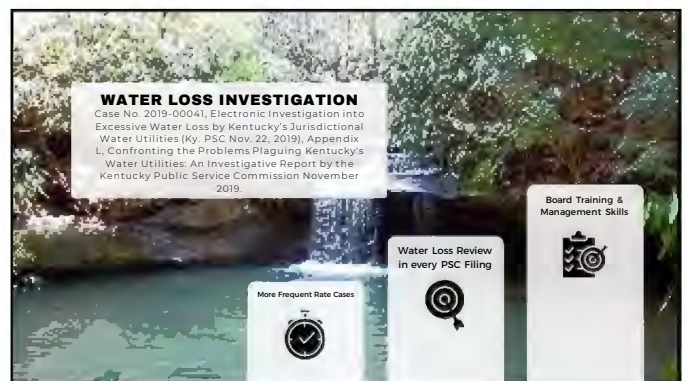
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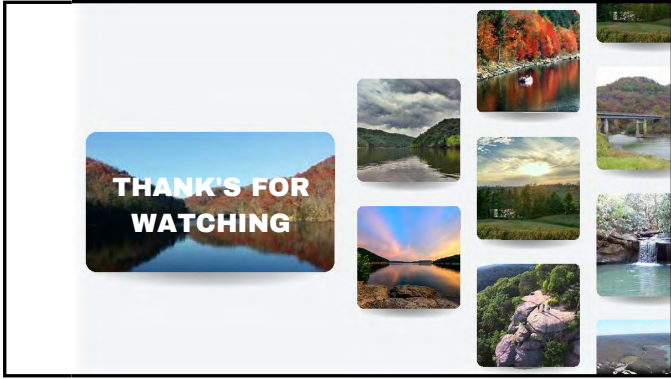
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# ROWAN WATER TRAINING NOTES

Brittany Hayes Koenig  
Honaker Law Office, PLLC




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## AGENDA

Notes for Regulatory Practice/Review

- Electronic Filing
- PSC Contacts
- Utility Contacts
- PSC Orders
- Annual Reports
- Financing Issues
- Resources



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## ELECTRONIC FILING

- Register to File on [psc.ky.gov](http://psc.ky.gov)
  - Commission Records Tab.
- 2-step process (1-2 days, so go ahead and get registered before your filing is due.)
- NO Paper Copies, so everything is filed through the electronic filing system.

Filings Branch  
E-Mail: [pscfilings@ky.gov](mailto:pscfilings@ky.gov)  
Phone: (502)564-3940  
Fax: (502)564-3460




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## PSC CONTACTS

Send Email to PSC

- [PSCED@ky.gov](mailto:PSCED@ky.gov)
- [psc.reports@ky.gov](mailto:psc.reports@ky.gov)

Send Letter to PSC  
Executive Director  
Linda C. Bridwell, P.E.  
Kentucky Public Service Commission  
Address: P.O. Box 615, [211 Sower Boulevard, Frankfort, Kentucky 40602-0615](#)  
Phone: (502) 564-3940, Fax: (502) 564-3460, Hotline: 1-800-772-4636  
Office Hours: Monday - Friday 8am - 5pm



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## UTILITY CONTACTS

807 Ky. Admin. Regs. 5:006 Section 3

Utility Contact Information shall be updated with the Commission within 10 days of the change.

(1) A utility shall notify the commission in writing of:  
(a) The address of its main corporate and Kentucky offices, including street address and post office box, city, state, and zip code;  
(b) The name, telephone number, facsimile number, and mailing address of the person who serves as its primary liaison with the commission regarding its operations; and  
(c) Its electronic mail address.

(2) The electronic mail address required in subsection (1) of this section shall be to an electronic mail account that the utility accesses at least once weekly and that is capable of receiving electronic mail from external sources and with attachments up to five (5) megabytes in size. Unless a utility otherwise advises the commission in writing, all electronic mail transmissions from the commission to the utility shall be sent to this address.

(3) A utility shall notify the commission in writing of a change in the information required in subsection (1) of this section within ten (10) days of the date of the change.

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## PSC ORDERS

KRS 278.990 authorizes the Commission to assess civil penalties not to exceed \$2,500 for each offense against a utility and against any officer, agent, or employee of a utility who willfully violates any provisions of KRS 278, Commission regulations, or Orders.



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## ANNUAL REPORTS




KRS 278.230(3) directs every utility, when required by the Commission, to file with it any report or other information that the Commission reasonably requires. Commission regulation 807 KAR 5.006, Section 4(2), requires every utility to file with the Commission, on or before March 31 of each year, a financial and statistical report of its utility operations for the preceding calendar year on forms furnished by the Commission.

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## FINANCING ISSUES

KRS 278.300(1) states that no utility shall issue any form of indebtedness unless it has been authorized to do so by an Order of the Commission.

KRS 278.300(8), grants an exception for loans with an initial term of not more than two years.



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## RESOURCES

Leaders have a duty to **engage and take responsibility for the utility.**

Leaders set the tone and culture of the organization. Know who is checking the designated email and who is reading the Orders.

- Kentucky PSC Website, Reminder Commission Staff can assist for ARFs, but a lot are new.
- Kentucky Rural Water Association
- Professional Assistance- Lawyer, Engineer, Accountants, Consultants
- Review policies, document the management of the utility and set policies to support rate sufficiency review, water loss monitoring, Good Business practices.

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## THANK YOU!

Brittany Hayes Koenig  
 brittany@hloky.com



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# ETHICS IN LEADERSHIP

Presented by: Brittany Hayes Koenig



## OVERVIEW

A discussion of ethics laws and statutory standards of conduct for water district commissioners and employees, including current issues involving water districts in show cause hearings and investigations.



## AGENDA



- Overview Hot Topics
- ETHICS Requirements
- FINANCING OR ISSUING DEBT
- INVESTIGATIONS: Operations & Infrastructure



- BOARD MEMBER COMPENSATION
- HEARINGS: ARF, Complaints, Tariffs



## COMMISSION INVESTIGATIONS

The Commission has broad authority to investigate utilities and utilities' officers, agents, and employees for violations of KRS Chapter 74, KRS Chapter 278, and Commission regulations.

KRS 278.250: Authorizes the Commission to initiate an investigation the condition of any utility subject to its jurisdiction.

KRS 278.260: Authorizes the Commission to initiate an investigation of the practices of any utility under its jurisdiction on its own motion.



## PENALTIES

KRS  
278.990(1):

Any officer, agent, or employee of a utility and any other person who willfully violates any of the provisions of this chapter or any regulation [promulgated by the commission] or fails to obey any order of the commission . . . or who procures, aids, or abets a violation by any utility, shall be subject to either a civil penalty to be assessed by the commission not to exceed two thousand five hundred dollars (\$2,500) for each offense.

KRS  
278.990(3):

Any utility that issues any securities or evidences of indebtedness, or assumes any obligation or liability in respect to the securities or evidences of indebtedness of any other person, or makes any sale or other disposition of securities or evidences of indebtedness, or the proceeds thereof, for purposes other than the purposes specified in the order of the commission made with respect thereto under KRS 278.300, shall be fined not more than ten thousand dollars (\$10,000).



## “ETHICS” IS MANDATORY

KRS 65.003

\*requires the governing body of each county to adopt, by ordinance, a code of ethics that applies to all elected officials. The boards, officers, and employees of special purpose governmental entities shall be subject to a code of ethics.

KRS 65A.070(2)

permits the governing body of a special purpose governmental entity to adopt ethics provisions that are more stringent than adopted by the establishing entity (the code of ethics of the county in which the principal business office is located).





## STATUTORY STANDARDS



KRS 11A.005

- Independent and impartial actions
- Policy and decision through established processes
- No use of position for private benefits
- Enforcement (KRS 11A.080)



KRS 65.003

- Disclosure of financial interests
- Operate with clear standards of conduct
- Have policy on employment of family members



## KRS 65.003

Code of Ethics adopted pursuant to KRS 65.003

- 01 Prohibits use of influence in any matter which involves a substantial conflict of interest between private interests and public duties
- 02 Prohibits use of position to obtain financial gain or creation of advantage or treatment in derogation of public duty
- 03 Generally prohibits acceptance of extra compensation for performance of official duties (and requires the establishment of policies and procedures for certain public servants falling under an exception).
- 04 Requires some individuals to file a financial disclosure statement



Nepotism

Gifts

(including travel and travel-related expenses)

Use of public property, equipment, and personnel

Post-employment restrictions

Misuse of confidential information

Honoraria (extra compensation)

Conflict of interest generally with emphasis on maintaining the proper discharge of public duties

Conflicts of interest, specifically, in contracts

Representation of interests before governmental unit

Code of Ethics

Addresses

## KRS 65A.070(2)

- Additional policy of water district includes, among other things, prohibitions against:
    - Gambling or money lending on site
    - Intoxication from alcohol or drugs
    - Sexual harassment of a fellow employee
- Note: While these seem to be the type of things covered by an employee handbook, it underscores that ethical behavior is not separate or distinct from correct performance of the job.



## BOARD MEMBERS



WATER DISTRICTS (GOVERNMENT)

- KRS Chapter 74 – KRS 74.020 specifies that the board will manage and control the affairs of the district.
- KRS 74.020 notes that inefficiency, neglect of duty, malfeasance, or conflict of interest are reasons for removal.



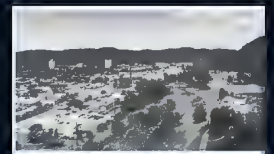
WATER ASSOCIATIONS (NOT GOVERNMENT)

- KRS Chapter 273 – KRS 273.215 contains standards for directors: good faith; informed basis; best interest of corporation.
- KRS 273.219 is the conflict of interest provision with focus on disclosure and fairness.



## Reminders

- Affirmatively review for conflicts of interest. (Board Member)
- When a conflict exists, there should be a documentation of the conflict. (Minutes)
- Abstain means to abstain. (Board) Err on the side of caution, non-involvement. Remember, if you have a fiduciary duty to another organization, then you need to be very careful. Do not assume that other board members will know that you have a conflict.
- Do not fail to inform the other party/entity of the conflict or potential conflict.
- Do not communicate "off-the-record" or otherwise do indirectly what is not appropriate.



## SELF DEALING



Board Members/Directors cannot use the utility to promote private gain and personal enrichment.



When the action involves the personal interest or private gain of a commissioner, an officer or director, there is a conflict of interest.



Both the members of the boards and boards as bodies must be diligent to prevent conflicts of interest from interfering with the management of the utility.

KRS 74.020(6): Each commissioner shall receive an annual salary of not more than thirty-six hundred dollars (\$3,600), which shall be paid out of the water district fund. Except that . . . each commissioner who completes . . . a minimum of six (6) instructional hours of water district management training . . . may receive an annual salary of not more than six thousand dollars (\$6,000) to be paid out of the water district fund . . . the salary shall be fixed by the county judges/executive with the approval of the fiscal court.

## Board Member Compensation

KRS 74.050: In addition to the compensation for commissioners as set out in KRS 74.020, as compensation for his or her services the treasurer shall receive an amount fixed by the [Water District Board], not to exceed two hundred dollars (\$200) per year.

KRS 74.020(3): A commissioner who participates in any official action by the water district board of commissioners which results in a direct financial benefit to him may be removed from office . . .

## BOARD MEMBER COMPENATION

### Case No. 2019-00268: FACTS

- Water District with about 3,000 customers filed for a rate increase pursuant to the alternative rate filing procedure in 807 KAR 5:076.
- Water Commissioners were receiving \$6,000 pursuant to KRS 74.020(6) and were being offered health, dental, vision, and life insurance benefits at the same level as the districts fulltime employees.
- The total compensation for water commissioners was \$71,023.84, \$80,714.42, and \$68,740.44 in 2017, 2018, and 2019.
- The Commission found that the water commissioners had voted to approve the healthcare for themselves.

### Case No. 2019-00268: DECISION & RESOLUTION

- The Commission held that any board member who voted to provide themselves insurance violated KRS 74.030 by participating in an official act that result in their direct financial benefit and that they could be removed from office.
- The Commission also held that the KRS Chapter 74 intended to specifically limit the compensation of water Commissioners to the amounts specifically authorized by KRS Chapter 74 i.e. \$6,000 for commissioners and an additional \$200.00 for the treasurer.
- The Commission ordered the district to cease offering compensation to the board beyond those amounts.
- The board members who voted to provide themselves the health insurance and other benefits resigned from the board.

## FINANCING

### KRS 278.300

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

Exception: does not apply to notes/bonds with terms of 2 years or less, renewable and/or fixed in years.

- Commission has 60 days to act once application filed.
  - May be continued for good cause.
- Standard: Proper purpose/Effect on Utility's Financial Integrity
- Representative cases, discussion of recent decisions and liability.

## FINANCING

What is evidence of indebtedness?



- Note
- Bond
- Installment Purchase Contract
- Water Purchase Agreement (Maybe)
- Assumption of Other's Obligations/Debt

## SHOW CAUSE: FINANCING OR ISSUING DEBT

- Case Studies -
- 2017-00176 & 2017-00467-ARF filing with hearing and discovered debt obtained without approval that led to show cause and board resigned;
- 2017-00469- debt obtained without approval found during rate case led to show cause hearing





## FINANCING

### Duty

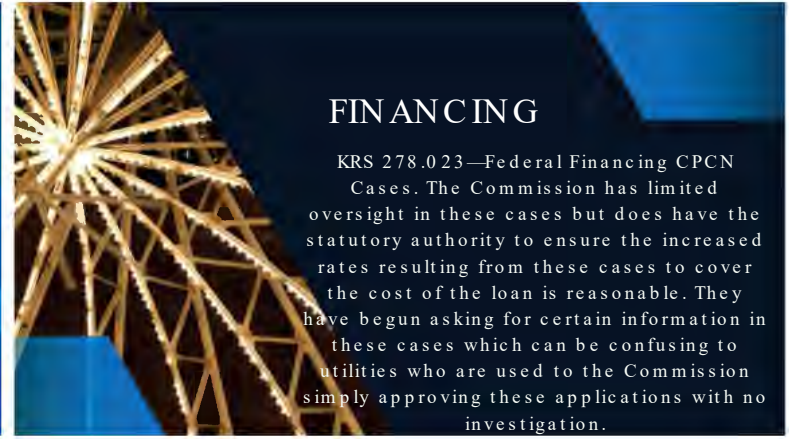
Utility Commissioners and Managers have a duty to comply with the law as part of their fiduciary duty.

### Read Statutes & Regulations

In a couple recent cases, the attorney for the water district has admitted to not reviewing the statutes and so not advising the utility they need PSC approval before assuming more debt. The Commission held the utility responsible.


### Ignorance is no defense

In another case, the Utility Commissioners told the Commission the unauthorized debt was assumed on the advice of a bank executive. The Commission rejected that claim as well.




## FINANCING


KRS 278.023—Federal Financing CPCN Cases. The Commission has limited oversight in these cases but does have the statutory authority to ensure the increased rates resulting from these cases to cover the cost of the loan is reasonable. They have begun asking for certain information in these cases which can be confusing to utilities who are used to the Commission simply approving these applications with no investigation.




## INVESTIGATIONS



Operations and infrastructure



- 2016-0042 & 2018-0017- long term investigation into operations, filing for ARF and emergency rate increase, hearings and new board trying to clean-up.
- 2018-00068- investigation into feasibility of merger based upon emergency response to line breaks



## Rate Cases

- There needs to be a reasonable nexus between the spending (expense) and the provision of reasonable service. Read the most recent rate case Order from the Commission and see if there were any expenses disallowed.
- The presentation to the board concerning the budget and expenditures should contain sufficient information to describe and detail the use of funds.
  - Candid with Attorneys and Provide the Most Information to Support your Position for Commission Staff
  - Utility should make their case for the rate they are asking for. PSC doesn't "give money" ratepayers pay.
    - PSC Staff required to get evidence in the record.
- Utilities should have policies that promote clear record keeping to hold the utility accountable to its customers.
- Be prepared to spell out procedures and intent very clearly because there is a lot of new Commission Staff with little experience in utility law.
- •Commissioners
  - •"That is the way we've always done it"= NO Excuse.
  - •Educate yourself on decisions. Ask questions.
  - •If you employ attorneys, understand that the utility/ratepayers are responsible for paying the fee and you are responsible for managing the direction of litigation costs.

- Directors/ Commissioners need policies that
  - Address the unpopular/ political problems.
  - Address periodic rate increases.
  - Address periodic infrastructure assessments.
  - New York Times Rule: "Don't do anything you wouldn't want to have on the front page of the New York Times."
  - On the record disclosure to the board
  - Advice of counsel and/ or (where available) advisory opinion by ethics board
  - On the record removal (recusal) from the matter
  - Local Paper Rule: Would a reasonable, informed customer agree that it is fair?




## • HEARINGS: ARF, COMPLAINTS, TARRIFS

- 2017-00316- Complaint case that went to "Formal Conference" and ended up settling.
- 2017-00417- Tarriff Filing- Back way of rate increase on regulated utility via municipality
  - Way the utility presents evidence to PSC.
    - Fees were excessive.

Questions?  
Thank you.

# **Exhibit 3**

Attendance December 13, 2023	Rowan County Water Director Training I	
<i>NAME</i>	<i>TITLE</i>	<i>Hours</i>
Larry Johnson	Chairperson	3
Enoch Blair	Vice-Chair	3
Mike Collins	Secretary/Treasurer	3
Randall Cox	Board Member	3
Duane Dehart	Board Member	3
Jerry Patrick	Manager	3