

**COMMONWEALTH OF KENTUCKY**

**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

**ELECTRONIC APPLICATION OF )  
KENTUCKY RURAL WATER )  
ASSOCIATION AND OLDHAM COUNTY )  
WATER DISTRICT FOR ) CASE NO. 2024-00029  
ACCREDITATION AND APPROVAL OF )  
A WATER DISTRICT MANAGEMENT )  
TRAINING PROGRAM )**

**APPLICATION**

Kentucky Rural Water Association (“KRWA”) and Oldham County Water District (“Oldham District”) (“collectively Joint Applicants”) jointly apply for an Order from the Public Service Commission accrediting and approving a proposed water district management training program pursuant to KRS 74.020(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 KRWA is: Kentucky Rural Water Association, 1151 Old Porter Pike, Bowling Green, Kentucky 42103. Its electronic mail address is j.cole@krwa.org.

2. The full name and post office address of Oldham District is: Oldham County Water District, 2160 Spencer Court, LaGrange, Kentucky 40031. Its electronic mail address is rrose@oldhamcountywater.com.

3. 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:

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

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

Janet Cole  
Kentucky Rural Water Association  
1151 Old Porter Pike  
Bowling Green, KY 42103  
(270) 843-2291  
j.cole@krwa.org

4. KRWA is a non-profit corporation incorporated in the Commonwealth of Kentucky pursuant to KRS Chapter 273 on March 19, 1979 and is currently in good standing.

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<sup>1</sup> On February 12, 2024, the Joint Applicants gave notice pursuant to 807 KAR 5:001, Section 8, of their intent to file this application and of their use of electronic filing procedures.

5. KRWA's mailing address is: 1151 Old Porter Pike, Bowling Green, Kentucky 42103. Its email address is: j.cole@krwa.org.

6. KRWA was organized to foster professionalism in the water and wastewater industry through non-regulatory training, technical assistance programs, and advocacy. Its membership consists of water districts, water associations, municipalities with populations of 10,000 persons or less, and other similar entities that provide water and wastewater utility services to rural Kentucky.

7. Oldham District is not a corporation, limited liability company, or limited partnership. It has no articles of incorporation or partnership agreements.

8. Oldham District is a water district organized pursuant to KRS Chapter 74.

9. Oldham District's territory includes all of Oldham County, Kentucky, except for the city of LaGrange and the far western portion of Oldham County.

10. Joint Applicants propose to sponsor and conduct a water management training program on March 19, 2024 at Oldham District's office in LaGrange, Kentucky. The program is entitled "Oldham County Water Commissioner Training Seminar." A copy of the proposed agenda is attached to this Application as **Exhibit 1**.

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

a. A review of all aspects of certificates of public convenience and necessity, including when such certificate is needed, extensions in the ordinary course of business, preparing an application for a certificate, tips for obtaining an expedited review of such application, and when a water district must obtain Commission approval before issuing any securities or evidence of indebtedness;

b. The statutory and regulatory requirements for water utility tariffs and the rate and conditions of service that a water utility should consider placing in its tariff;

c. A general overview of cybersecurity for water utilities, including recent trends in cybersecurity, real world cybersecurity attacks encountered by businesses, appropriate responses to such attacks and approaches to minimize a water utility's risk to cybersecurity attacks; and

d. An overview of the "Underground Facility Damage Prevention Act of 1994," including a water utility's obligation to timely respond to requests for locating its underground facilities, the marking of underground facilities, the legal consequences for failing to respond to locate requests, and the Public Service Commission's role in the enforcement of the Act.

12. 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.**

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

14. 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.

15. Oldham District's management staff and commissioners will attend the proposed training.

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

17. 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.

18. 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.

19. 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 Commission approve and accredit the proposed training program entitled "Oldham County Water Commissioner Training Seminar" for six hours of water district management training.

Dated: February 13, 2024

Respectfully submitted,



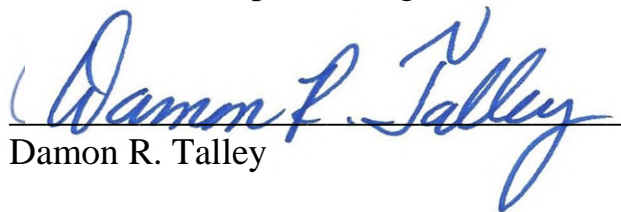
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*Counsel for Oldham County Water District  
and Kentucky Rural Water Association*

### **CERTIFICATE OF SERVICE**

In accordance with 807 KAR 5:001, Section 8, and the Public Service Commission's Order of July 22, 2021 in Case No. 2020-00085, I certify that this document was transmitted to the Public Service Commission on February 13, 2024 and that there are currently no parties that the Public Service Commission has excused from participation by electronic means in this proceeding



Damon R. Talley

# **EXHIBIT 1**



**Oldham County Water Commissioner Training Seminar**  
**Presented by Kentucky Rural Water Association**  
**March 19, 2024**  
**2160 Spencer Court**  
**LaGrange, Kentucky**

7:45 – 8:00 **Program Overview and Welcome**

8:00 – 9:00 **Water Utility Tariffs: Practical Considerations – Gerald Wuetcher**

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

9:00 – 10:00 **Break**

10:00 – 11:00 **Everything You Wanted to Know About Certificates of Public Convenience and Necessity and Debt Authorizations But Were Afraid to Ask – Gerald Wuetcher**

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

11:00 – 11:30 **Lunch**

11:30 – 1:30 **CyberSecurity for Water Utilities – Matthew Folker, ISTT**

This presentation provides a general overview of cybersecurity for water utilities, including recent trends in cybersecurity, real world cybersecurity attacks encountered by businesses, appropriate responses to such attacks and approaches to minimize a water utility's risk to cybersecurity attacks.

1:30 – 1:45 **Break**

1:45 – 3:45 **Call Before You Dig: Kentucky 811 – Patrick Donoghue, Kentucky 811**

Water and wastewater utilities are affected by "call before you dig" rules in a number of ways. They may be doing the digging themselves and thus need to know where buried utilities are located or may be responding to a locate request to protect their own facilities from damage. This presentation provides an overview of the "Underground Facility Damage Prevention Act of 1994," including a water utility's obligation to timely respond to requests for locating its underground facilities, the marking of underground facilities, the legal consequences for failing to respond to locate requests, and the Public Service Commission's role in the enforcement of the Act.

# **EXHIBIT 2**

## **Patrick Donoghue**

**Patrick Donoghue** is a Public Awareness and Damage Prevention Manager for Kentucky 811. In this role he serves as a liaison for members, non-members, the one call center, excavators, contractors, locators, and homeowners. Additionally, Patrick focuses on education and outreach, providing training sessions, presentations, and attending community events to educate people on the dig laws. Prior to joining Kentucky 811, Patrick spent time as a high school substitute teacher and has over 17 years of experience in law enforcement where he served as a patrol officer, training officer, school resource officer, and a member of his agency's professional standards division and training unit.

## **Matt Folker**

**Matt Folker** is the Chief Information Officer for ISTT, Inc. For the last 12 years, he has been working with businesses and government agencies in education, training and empowering others with the tools needed to keep personal data safe and the knowledge to keep cyber criminals out. His passion is to keep the state of Kentucky informed on the current regulations and technologies available to keep business moving forward.



## Gerald E. Wuetcher

Direct Phone: 859.231.3017

gerald.wuetcher@skofirm.com

### BAR & COURT ADMISSIONS

Kentucky

U.S. Court Of Appeals For The Armed Forces

U.S. District Court, Eastern District Of Kentucky

U.S. District Court, Western District Of Kentucky

### EDUCATION

Emory University  
1984, J.D.

Johns Hopkins University  
1981, B.A.

### RECOGNITION

Best Lawyers®, Utilities Law, 2021-present

## Gerald E. Wuetcher

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

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

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

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

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

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


### Work Highlights

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

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

Adjunct Professor of Law, University of Louisville (2011)

# **EXHIBIT 3**

STOLL KEENON OGDEN   
PLLC

**EVERYTHING YOU WANTED TO  
KNOW ABOUT CERTIFICATES OF  
PUBLIC CONVENIENCE AND  
NECESSITY AND DEBT  
AUTHORIZATIONS\***

**\*BUT WERE AFRAID TO ASK THE PSC**

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

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PLLC

**ORDER OF PRESENTATION**

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

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**CERTIFICATES OF PUBLIC  
CONVENIENCE AND NECESSITY:  
THE BASICS**

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**KRS 278.020(1)**

**No person**, partnership, public or private corporation, or combination thereof shall . . . **begin the construction of any plant, equipment, property**, or facility for furnishing to the public any of the services enumerated in KRS 278.010 . . . until that person has obtained from the Public Service Commission a certificate that public convenience and necessity require the service or construction.

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**PURPOSE OF STATUTE**

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

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**WHAT REQUIRES A CERTIFICATE?**

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

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**DOES NOT REQUIRE A CERTIFICATE**

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

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**KRS 278.020(1): EXCEPTIONS**

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

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**EXTENSIONS IN THE ORDINARY COURSE**

"A certificate of public convenience and necessity shall not be required for extensions that do not create wasteful duplication of plant, equipment, property or facilities, or conflict with the existing certificates or service of other utilities operating in the same area and under the jurisdiction of the commission that are in the general or contiguous area in which the utility renders service, and that do not involve sufficient capital outlay to materially affect the existing financial condition of the utility involved, or will not result in increased charges to its customers."

807 KAR 5:001, §16(3)

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**EXTENSIONS IN THE ORDINARY COURSE:  
THE FACTORS**

- No **Wasteful** Duplication of Plant or Facilities
- **No Conflict** With Existing Certificates or Service of Other Utilities
- Capital Outlay Is Insufficient to **Materially Affect** Existing Financial Condition of Utility
- Will Not Result In **Increased Charges** to Customers

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**EXTENSIONS IN THE ORDINARY COURSE:  
WASTEFUL DUPLICATION**

- "Excess of Capacity Over Need"
- "Excessive Investment In Relation To Productivity" – Investment's Cost-effectiveness
- Unnecessary Multiplicity of Physical Properties
- Premature Replacement
- Thorough Review of **ALL ALTERNATIVES**
- **Any Duplication Requires Formal Review**

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**EXTENSIONS IN THE ORDINARY COURSE:  
"MATERIALLY AFFECT" - TESTS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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**PROJECTS FINANCED WITH OTHERS' FUNDS: GOVERNMENT GRANTS**

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

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**GOVERNMENT GRANTS AND "MATERIAL EFFECT"**

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

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

- Implications for projects funded with American Recovery and Reinvestment Act/Bipartisan Infrastructure Law
- Totally Funded: **No Certificate Required**
- Partially Funded: Certificate **Possibly Not Required** – Grant funded portion not considered in percentage of utility plant test?

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STOLL KEENON OGDEN PLLC 

**ALWAYS CONSIDERED  
NOT IN THE ORDINARY COURSE**

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

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

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

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PLLC

**“WATER DISTRICT EXCEPTION”**

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

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PLLC

**“WATER DISTRICT EXCEPTION”**

- PSC Initially Limited Applicability To Construction of Water Mains
- Case No. 2016-00255: “[T]he proposed installation of the new metering system is not a ‘waterline extension or improvement project,’ as it **does not extend or improve an existing waterline”**
- Adopts PSC Staff Opinion No. 2012-024

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**“WATER DISTRICT EXCEPTION”**

- PSC Staff Opinion No. 2017-002
- Water Association proposes to construct water booster station, including 300 feet of 2” water line, & install pressure reducing valve
- PSC Staff: “[T]he project improves existing water lines and qualifies as a ‘water line extension or improvement project.’”
- Project involving non-mains may qualify if beneficial effect on existing water mains

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**“WATER DISTRICT EXCEPTION”**

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

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**ANALYTICAL FRAMEWORK**

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

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**WHEN IN DOUBT**

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

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P.L.L.C.

**CONSTRUCTING WITHOUT CERTIFICATE: CONSEQUENCES**

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

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P.L.L.C.

**ADVANTAGES/DISADVANTAGES OF NO CERTIFICATE**

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

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STOLL KEENON OGDEN  
P.L.L.C.

**PREPARING AN APPLICATION FOR CERTIFICATE**

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STOLL KEENON OGDEN  
P.L.L.C.



## CONTENTS OF APPLICATION

- Facts to Show Public Convenience & Necessity Require Project
- Franchises/Permits
- Full Description of Proposed Location/Route of Facilities
- Description of Manner of Construction
- Maps/Drawings/Specifications
- Method For Financing the Proposed Project

807 KAR 5:001, § 15

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STOLL KEENON OGDEN  
P.L.L.C.



## DEMONSTRATING NECESSITY

- Condition of Existing Facilities
- Ability to Meet Existing Demand/Future Demand
  - Adequate Service: Sufficient Capacity to meet the maximum estimated requirements during the year
- Availability of Other Sources
- Technical Feasibility
- Economic Feasibility
  - Least Cost vs. Most Reasonable
  - Duplication of Facilities Not Necessarily Fatal

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STOLL KEENON OGDEN  
P.L.L.C.



## DEMONSTRATING NECESSITY

- Full and Complete Narrative in Application
- Preliminary/Final Engineering Reports
- Written Testimony
  - Historical Background
  - Opportunity to Address Critical Issues
  - Explain Engineering Aspects of Application
  - Best Opportunity to Present Case for Certificate
- Other Studies (e.g. hydraulic studies)

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P.L.L.C.



## PERMITS

- List /Provide Evidence of Required Permits
  - Division of Water Approval of Plans & Specifications
  - Discharge Permits
  - Army Corp of Engineer Permits
  - Highway Encroachment Permits
  - Historical/Preservation Permits
- Note Status of Obtaining Easements
- PSC is **Last Stop**: Request Deviation from Filing Requirements if Any Permits Not Yet Obtained

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P.L.L.C.



## PROCEDURE

- Application
- Discovery
- Interested Parties May Intervene – Not Common
- Hearing – Not Common
- Final Order: 60 – 90 Days

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P.L.L.C.



## TIMING

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

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P.L.L.C.



## OBTAINING PSC APPROVAL

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STOLL KEENON OGDEN  
P.L.L.C.



## EXPEDITING PSC REVIEW

- Pre-Filing Conference with PSC Staff
- Confer with AG re: Application
- Advise PSC of Critical Dates
- Advise PSC Staff of Willingness to Accept Informal Discovery Procedures
- Post-Filing Conference

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P.L.L.C.



## EXPEDITING PSC REVIEW

- Use Filing Checklists
- Include Written Testimony with Application
- Ensure Any Document Prepared By Professional Engineer Are Stamped/Signed
- Periodic Inquiries to PSC Staff/Executive Director

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P.L.L.C.



## RURAL DEVELOPMENT FINANCED CONSTRUCTION PROJECTS

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P.L.L.C.



### RURAL DEVELOPMENT FUNDING: LIMITED PSC REVIEW

- KRS 278.023 requires expedited review of RD-funded Projects
- Legislature Assumes RD has adequately reviewed project – Two reviews unnecessary
- Project must be part of Financing Agreement between RD or HUD and WD or WA
- Utility Files Limited Documentation

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### RURAL DEVELOPMENT FUNDING: LIMITED PSC REVIEW

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

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STOLL KEENON OGDEN PLLC 

### RURAL DEVELOPMENT FUNDING: PSC CRITICISMS

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

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STOLL KEENON OGDEN PLLC 

### DEBT AUTHORIZATION: THE BASICS

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STOLL KEENON OGDEN PLLC 

### KRS 278.300

“No utility shall issue any securities or evidences of indebtedness or assume any obligation or liability in respect to the securities or evidences of indebtedness of any other person **until it has been authorized so to do by order of the commission.**”

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STOLL KEENON OGDEN PLLC 

**WHAT IS AN EVIDENCE OF INDEBTEDNESS?**

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

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STOLL KEENON OGDEN PLLC 

**EXCEPTIONS TO REQUIREMENT**

- Notes that are not payable for periods of more than two years
- Limit: Note may not be renewed for an aggregate period to exceed six year

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STOLL KEENON OGDEN PLLC 

**CONSEQUENCE OF NON-COMPLIANCE**

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

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STOLL KEENON OGDEN  
P.L.L.C.



## PREPARING AN APPLICATION FOR DEBT AUTHORIZATION

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P.L.L.C.



## CONTENTS OF APPLICATION

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

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P.L.L.C.



## CONTENTS OF APPLICATION

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

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### APPLICANT MUST SHOW

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

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STOLL KEENON OGDEN PLLC 

### PROCEDURE

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

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STOLL KEENON OGDEN PLLC 

# QUESTIONS?



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

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**WATER UTILITY TARIFFS:  
PRACTICAL  
CONSIDERATIONS**

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

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**ORDER OF PRESENTATION**

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

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**LEGAL FRAMEWORK**

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### 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.

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### 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**.

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### 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)

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## EXAMPLES OF A "RATE"

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

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## WHAT IS A CONDITION OF SERVICE?

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

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## EXAMPLES OF A "CONDITION OF SERVICE"

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

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## 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

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## FAILURE TO COMPLY WITH KRS 278.160

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

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## REVISING TARIFFS: PROCEDURE

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## 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

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## GENERAL PROCEDURES

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

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## 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

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## 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

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## 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.

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## EXAMPLES OF NONRECURRING CHARGES

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

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## NONRECURRING CHARGES

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

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## TARIFF PROVISIONS TO CONSIDER

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## REQUIRED PROVISIONS

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

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## 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

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## 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

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## APPLICATION: CUSTOMER INFO

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

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**APPLICATION:  
CUSTOMER INFO**

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

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**APPLICATION:  
CUSTOMER INFO**

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

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**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

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## APPLICATION: CONDITIONS FOR SERVICE

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

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## DEPOSITS

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

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## 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**

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## PAYMENT

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

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## LATE PAYMENT FEES

- 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

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## LEAK ADJUSTMENTS

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

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**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

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**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\*\*

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**REFUSING SERVICE: ADDITIONAL GROUNDS**

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

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### REFUSING SERVICE FOR NONPAYMENT

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

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### 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**

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### 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

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### 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

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### 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

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### BILLING FOR OTHER SERVICES

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

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**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

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**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

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**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

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## 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

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## MISCELLANEOUS

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

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## MANAGING YOUR TARIFF

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## 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

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## 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

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## 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

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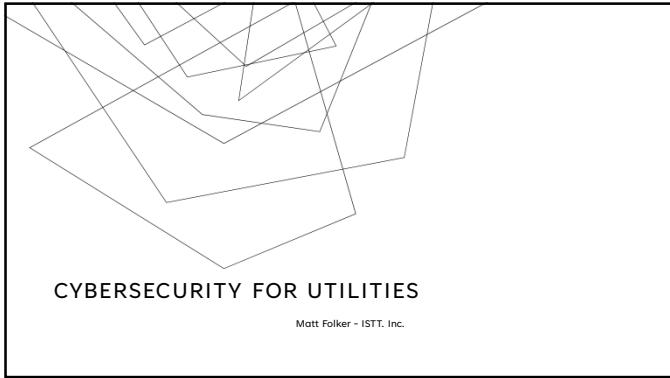
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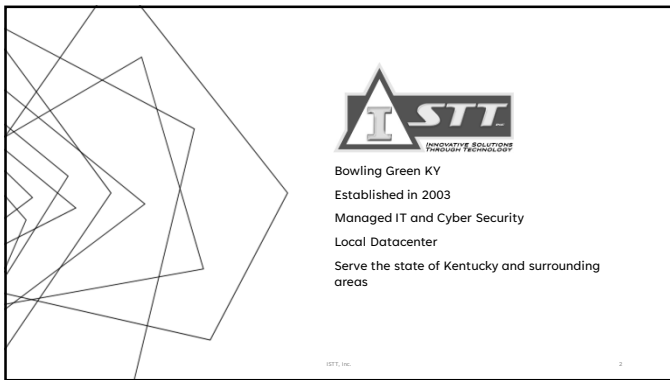
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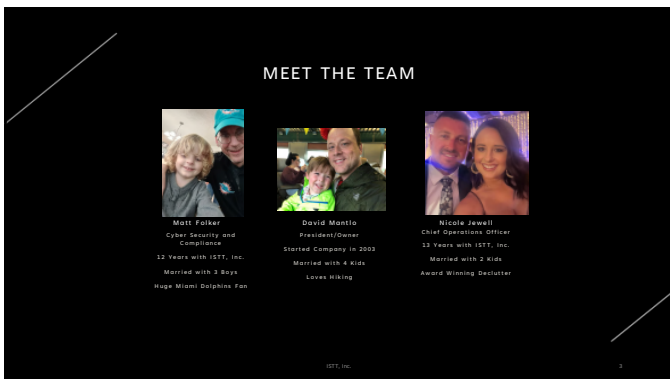
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**TODAY'S TARGET COMPANY X**

**Manufacturing Plant in Bowling Green KY**  
This story is real.  
Cyber Security Event in 2021  
Staff names have been changed to protect their privacy  
"Bill" - Company President who is about to retire  
"Sarah" - Incoming company President  
"Tom" - CFO  
"Eric" - On Site IT Guy

ISTE, Inc. 4

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**DAY ZERO - FRIDAY AUGUST 20<sup>TH</sup>, 2021**



Windows 7 End of Life Date:  
January 14, 2020

ISTE, Inc. 5

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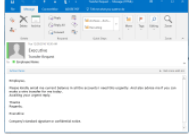

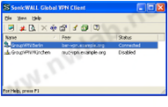
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**DAY ZERO - FRIDAY AUGUST 20<sup>TH</sup>, 2021**



ISTE, Inc. 6

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**PROBLEMS – DAY 0**

- OUT OF DATE WINDOWS VERSION** — Older versions of Windows no longer get security updates. Known issues do not get fixed.
- EMAIL PHISHING** — Attackers steal your passwords by tricking you to "log in" to fake web sites.
- MISSING 2FA ON REMOTE ACCESS** — Remote access without 2FA is now required for most cyber security insurance policies and state and federal regulations (CJIS, HIPAA, SOCC, FedRAMP, etc.)
- OUT OF DATE APPLICATIONS** — Similar to Windows, applications can have security flaws that require patching. These are much more difficult to manage and can require yearly purchases.

ISTT, Inc. 7

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**DAY ONE – SATURDAY AUGUST 21<sup>ST</sup>, 2021**

ISTT, Inc. 8

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- INTERNET?** Down.
- EMAIL?** Down.
- PRODUCTION?** Down.
- SHIPPING?** Down.
- RECEIVING?** Down.
- PAYROLL?** Down.

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HELP?

**NO.**

NO CONTRACT  
3<sup>RD</sup> PARTY IT  
No Answer

**NO.**

BACKUP VENDOR  
No Answer

**YES!**

ISTT, INC  
Help is on the way!

ISTT, Inc. 10

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**PROBLEMS – DAY 1**

- NO BACKUPS \_\_\_\_\_ Improperly configured backups means the on-site backups were also destroyed.
- NO MONITORING \_\_\_\_\_ The bad guys were on the network and no one noticed.
- NO DOCUMENTATION \_\_\_\_\_ Network and Server infrastructure were not documented.
- NO PLAN \_\_\_\_\_ No disaster and response plan in place.

ISTT, Inc. 11

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**DAY TWO – SUNDAY AUGUST 22, 2021**

Cyber Security and Business Interruption Insurance

\$1 Million in Cyber Insurance

\$3 Million in Business Interruption

How long will it take to burn through \$4 Million?

ISTT, Inc. 12

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**COSTS**

New Servers	\$152,124.84
New Network Equipment	\$137,397.76
New Computers	\$110,280.64
Install Labor	\$158,725.00
<b>Total</b>	<b>\$558,528.24</b>

ITTE, Inc. 13

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ATTORNEY FEES	\$\$\$
FORENSIC INVESTIGATION	\$\$\$
LOST ORDERS	\$\$\$
LOST CUSTOMERS	\$\$\$
CUSTOMER TRUST	\$\$\$
DATA LOSS FINES	\$\$\$

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**DAY THREE – MONDAY AUGUST 23, 2021**

Not your usual Monday morning...

Leadership Team decides to send production workers back home	Shipping Team is to send out pending orders then go home when they run out of orders
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No ETA is given to employees on when they can return to work, all because the backups are slow downloading.

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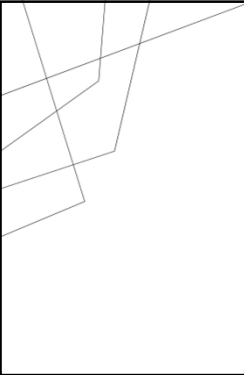
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**So, What happened?**

Bill, the outgoing president, was phished.  
 His Windows 7 computer was then compromised  
 Since the old Windows 7 computer was connected via VPN, the  
 attackers were able to connect to the main site  
 Attackers were able to brute force the password for the user  
 "backup" which had admin rights  
 Attackers uploaded data to offsite servers  
 Attackers encrypted files on their way out

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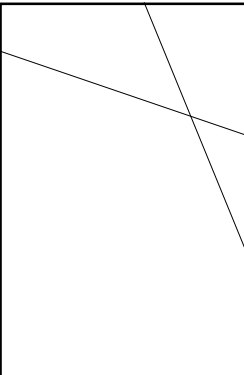
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**TIME TO THINK**

**Phishing**  
 What is Phishing?

- Phishing is a way to have a user type in their passwords to a fake web site.
- Users click on an email link that takes them to a malicious site.
- The malicious site sends user's input back to the criminal.
- Most people use the same password for multiple sites.

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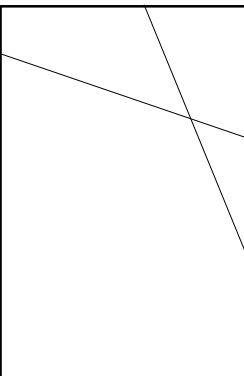
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**TIME TO THINK**

**Outdated Windows/Software**  
 Why is updating software so important?

- Microsoft gives out date's years in advance on when an OS will no longer receive security updates
- Cyber Security teams look for vulnerabilities in 3<sup>rd</sup> party software and Windows
- Old versions of Office support micros which can be used to get remote access from an attacker

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**TIME TO THINK**

**Ransomware**  
What is Ransomware?

- Once an attacker is inside your network, they steal data.
- Once data is stolen, the attacker destroys the data on your network and/or servers.
- You must restore from backup or pay the ransom to get your data back.

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**TIME TO THINK**

**Ransomware**  
How do I prevent ransomware?

- Email Spam Filters
- Up to date AV
- Zero Trust Application Controls
- Next Generation Firewalls (NGFW)
- End User Training

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**TIME TO THINK**

**Secure Remote Access**  
2FA and VPN

- Who has access to what remotely?
- 2FA – something you know and something you have
- VPN connects to a remote network, but that doesn't mean its secure

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**TIME TO THINK**

**Backups**  
Aren't all backups the same?

- Did you purchase a backup or a recovery plan?
- What is the recovery time objective?
- What is the recovery point objective?

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**THE AFTERMATH**

Restoration of all off-site backups took one month  
Production resumed 3 weeks after the attack  
Company X is now under attack every day since they were breached once before.  
Insurance Costs are now 10x what they were before.  
Revenue was down for the next 2 years

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**THANK YOU**

Matt Folker  
mfolker@isttinc.com  
270.781.5096  
www.isttinc.com

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**Kentucky 811**  
SAFETY IS IN YOUR HANDS.  
EVERY DIG. EVERY TIME.

**REGULATIONS & NECESSITIES**  
THE LAW IS HOW SAFETY IS WHY

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**BUT FIRST, A DISCLAIMER...**

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For general informational purposes only; it is strongly recommended to obtain legal advice from a qualified professional

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No legal advice is being provided and any interpretation of the law should not be derived from this information. It is highly suggested to find expert assistance for any specific queries

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**WHO DOES KENTUCKY 811 REPRESENT?**

Natural gas distributors    Electric (distribution and transmission)    Transmission Pipelines (natural gas and petroleum)    Water and Sewer    Telecommunications and Cable    Government and Municipal

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### KENTUCKY 811 COMPANY UPDATE

- Addition of two Damage Prevention Managers
- Membership has grown 14% (still voluntary)
- 100% Virtual Operation
- New website and webstore
- Improvements to the magazine, safety summit, and a greater social media presence.

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### TRANSITION UPDATE

- Transition to  took place Oct. 1, 2022
- ITICnxt Software has improved efficiency and reduced costs
- Almost 80% of inbound tickets are web tickets
- Speed of Answer ~30 seconds
- >1% Tickets returned for correction

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### TICKET VOLUME UPDATE

- Over 10% increase of inbound volume (2023 v. 2022)
- The largest increase of all SOCS (Southeastern One-Call Systems) states.
- Outbound ticket ratio has gone from 5:1 down to 4:1
- This has resulted in over \$500,000 less in billing costs to members

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## UNDERGROUND FACILITY DAMAGE PREVENTION ACT OF 1994

KRS 367.4901 - 367.4917



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## BRIEF HISTORY OF THE LAW

- CREATED IN 1994
- LAW EFFECTIVE JANUARY 1, 1995
- THE LAW HAS BEEN AMENDED SEVEN TIMES
- KENTUCKY IS THE ONLY STATE OF THE 48 CONTIGUOUS STATE THAT DOES NOT HAVE MANDATORY MEMBERSHIP



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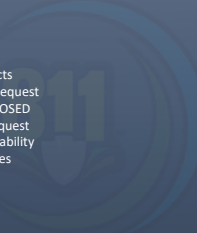
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## 2022 LAW CHANGES HB - 303

- Positive Response
- Working Day Definition
- Tolerance Zone
- Work Site Contact
- Utility Locate Response Time
- Unmapped or Unlocatable
- Large Projects
- 2<sup>nd</sup> Notice Request
- On-Site EXPOSED FACILITY Request
- Waiver of Liability
- Civil Penalties



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## 2022 LAW CHANGES



"Positive response" is an automated or written communication system provided by each member operator which facilitates the identification of underground facilities by excavators, locators, operators, etc. and obliges operators and excavators to respond and verify to satisfy their respective requirements of the Underground Facility Damage Prevention Act of 1994



"Working Day" is everyday, except weekends and holidays established by federal or state statute. A locate request must be made two days prior to commencement of digging. (ie. Locate request is submitted on Monday, work may not begin until Thursday (after positive response is obtained)



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## 2022 LAW CHANGES



Work site contact – means an individual that will be present at the excavation site when the excavation will occur

367.4911 (3) (c) – Name and phone number of work site contact

**\*\*\*MUST BE A PERSON PRESENT AT THE WORKSITE\*\*\***

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## 2022 LAW CHANGES


"Tolerance Zone" is a strip of land at least four (4) feet wide but not wider than the width of the underground facility plus two (2) feet on either side of the outer limits of the facility

**\*\*\*Nonintrusive excavating methods may be used\*\*\***



**SAVE TIME. GO ONLINE!**

Whether you're a homeowner or a professional excavator, Kentucky811.org is the quickest way to submit your dig request.



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## 2022 LAW CHANGES

\*\*\*Penalties – CIVIL\*\*\*



A violation shall be considered a first if more than one year has lapsed since the last incident

If a person commits a violation in the course and scope of employment, the penalties are imposed on the employer

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### DEFINITIONS KRS 367.4903

(5) "Operator" means any entity or individual owning or operating underground facilities to serve the public, but does not include any entity or individual owning or operating underground storage tanks

(8) "Protection Notification Center" means an operator-provided notification center through which an excavator can contact the operator to enable the operator to provide the excavator with the approximate location of underground facilities.

(9) "Kentucky Contact Center" means Kentucky Underground Protection, Inc., (KY 811) organized as a nonprofit corporation and a multimember protection notification center providing a single telephone contact number and designated by the Kentucky Public Service Commission to be the sole recipient of 811 dialed calls through which an excavator may contact all Kentucky Contact Center members and all affected member operators may receive information to enable them to provide the excavator with the approximate location of underground facilities.

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## OPERATOR COMPLIANCE

Per KRS 367.4909

(1) Each operator shall provide protection notification center access to excavators.

(2) Voluntary operator membership in the Kentucky Contact Center shall satisfy the requirement of subsection (1) in this section.



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**DUTIES OF PROTECTION NOTIFICATION CENTER**

**KRS 367.4913 (1)** – All protection notification centers **SHALL:**

- (a) Provide locate request services during working days and provide an emergency contact number for incidents occurring outside the working day
- (b) Provide a positive response system to all parties to determine the status of locating an underground facility
- (c) Provide any excavation request with an identification number and the names of the facility owners or operators who will be notified
- (g) Define and adopt policies and procedures for processing design information requests
- (h) Provide the person making a design information request a list of identified operators that will receive notification

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**DUTIES OF PROTECTION NOTIFICATION CENTER**

**KRS 367.4913 (1)** – All protection notification centers **SHALL:**

- (i) Maintain the following information provided by excavators for all requests to locate facilities for at least five (5) years from the date of the request:
  1. Name and phone number of the excavator or person requesting the underground facility locate;
  2. Location and type of work being performed by the excavator;
  3. Name and phone number of work site contact;
  4. Name, address, and phone number of underground facility operators; and
  5. Estimated start date and start time of excavation;

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**DUTIES OF PROTECTION NOTIFICATION CENTER**

**KRS 367.4913 (1)** – All protection notification centers **SHALL:**

- (j) Provide contact information for the protection notification center on its Web site or pursuant to paragraph (e) of this subsection;
- (k) Provide public awareness education and damage prevention programs in the manner and amount determined by each protection notification center.




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### ENFORCEMENT AND PENALTIES

Per KRS 367.4917

- (2) A protection notification center that fails to comply with any provision of KRS 367.4913 shall be subject to a civil penalty of \$1,000 for each violation.
- (6) (7) (8) The commission (PSC) shall have statewide authority to enforce and assess civil penalties...and to seek injunctive relief for any violation that results in damage to an underground facility used to transport gas or hazardous liquid subject to the federal pipeline safety laws. Commission shall make available on its website a written agreement form for an operator and an excavator to agree to a date or series of dates by which time the locate request must be completed if different from dates established by KRS 367.4909. The commission may promulgate administrative regulations in accordance with KRS Chapter 13A to enforce the Underground Facility Damage Prevention Act of 1994.

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### ENFORCEMENT AND PENALTIES

Per KRS 367.4917

- (5)(c) Failure to comply with the provisions of the Underground Facility Damage Prevention Act of 1994 (KRS 367.4901 – 367.4917), may be determined at the conclusion of an investigation and shall be based on evidence available to state, county, or city officials, law enforcement, or fire protection agencies which issue the citation.

*What does this mean?*

State, County, and City law enforcement or fire protection agencies can initiate investigations or take enforcement action or violations, unless the PSC has already initiated an investigation or undertakes enforcement action.

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CGA BEST PRACTICES GUIDE VER. 19.0



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KENTUCKY 811 MAGAZINE



Read or download all editions at [www.kentucky811.org](http://www.kentucky811.org)

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**KENTUCKY** **811**  
**damage prevention**  
**Summit**  
A CGA REGIONAL PARTNER EVENT

June 25-27, 2024  
Embassy Suites, Lexington

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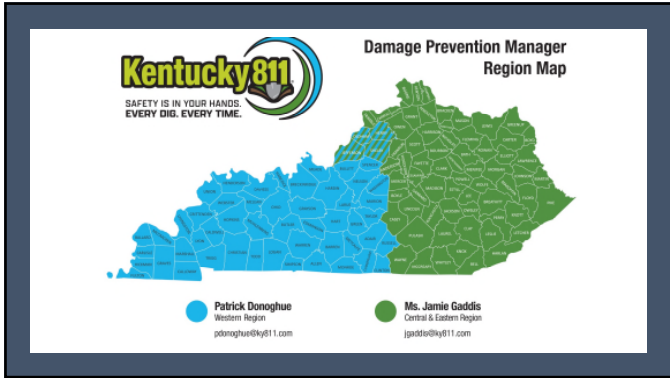
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**QUESTIONS?**

• RESOURCES:

- [WWW.KENTUCKY811.ORG](http://WWW.KENTUCKY811.ORG)
- [HTTPS://COMMONGROUNDALLIANCE.COM](https://COMMONGROUNDALLIANCE.COM)
- [HTTPS://WWW.YOUTUBE.COM/@OCCINVIDEOS/VIDEOS](https://WWW.YOUTUBE.COM/@OCCINVIDEOS/VIDEOS)

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**THANK YOU FOR YOUR TIME!**

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 Jamie Gaddis – Damage Prevention Manager (Central & Eastern Region) – [jgaddis@ky811.com](mailto:jgaddis@ky811.com)  
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 502-266-5677

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