

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF)	
KENTUCKY RURAL WATER ASSOCIATION)	
FOR ACCREDITATION AND APPROVAL OF)	CASE NO. 2024-00230
COMMISSIONER TRAINING AND)	
CONTINUING EDUCATION CREDIT)	

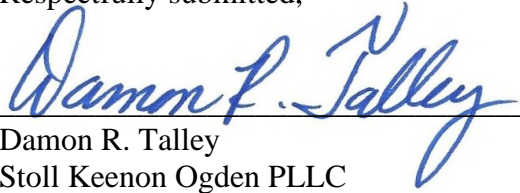
NOTICE OF FILING

Pursuant to the Public Service Commission’s Order of August 12, 2024, Kentucky Rural Water Association gives notice of the filing of the following documents concerning the water district management training program that is the subject of their application in this proceeding:

1. A sworn statement attesting that the proposed course of instruction entitled “Water Commissioner Training” was conducted on August 26, 2024 at the Central Bank Center in Lexington, Kentucky, and describing the materials provided to each attendee of that program (**Tab 1**);
2. A description of all changes in the presenters and the proposed curriculum that occurred after the submission of the application for accreditation (**Tab 2**);
3. The name of each attending water district commissioner, his or her water district, and the number of hours that he or she attended (**Tab 3**); and,
4. The materials provided to each program attendee not previously provided to the Commission (**Tab 4**).

Dated: September 25, 2024

Respectfully submitted,



Damon R. Talley
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Counsel for 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 September 25, 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

TAB 1

COMMONWEALTH OF KENTUCKY)

) ss

COUNTY OF WARREN)

AFFIDAVIT

Jason Pennell, being duly sworn, states that:

1. He is a Compliance Specialist for Kentucky Rural Water Association, and served as the organizer of the water management training program entitled “Water Commissioner Training” (“the Program”).

2. The Program was held on August 26, 2024, at the Central Bank Center in Lexington, Kentucky.

3. Except as noted in “Description of Program Changes,” which is found at Tab 2 of this Notice of Filing, the presentations listed in the proposed program agenda submitted to the Kentucky Public Service Commission were conducted at the Training Seminar for the length of the time specified and by the listed presenters.

4. The materials previously provided in the Applicants’ Application were provided to all Training Seminar attendees except for the presentation “Everything You Wanted to Know about Certificates of Public Convenience and Necessity and Debt Authorizations But Were Afraid to Ask,” which was substituted for the presentation entitled “Basic Procurement Law for Governmental Water Utilities.” A copy of the substituted presentation, which is found at Tab 4 of this Notice of Filing, was distributed to Training Seminar attendees.



Jason Pennell
Kentucky Rural Water Association
1151 Old Porter Pike
Bowling Green, Kentucky 42103

Subscribed and sworn to before me by Jason Pennell, on this 25th day of September, 2024.

Bobbie S. Shanahan

Notary Public

Name Bobbie S Shanahan

No. KY NP5377D

My Commission expires 7/12/2026

TAB 2

DESCRIPTION OF PROGRAM CHANGES

All presentations listed in the application, except the presentation entitled “Basic Procurement Law for Governmental Water Utilities,” were made. In lieu of “Basic Procurement Law for Governmental Water Utilities,” the presentation entitled “Everything You Wanted to Know About Certificates of Public Convenience and Necessity and Debt Authorizations But Were Afraid to Ask” was made. This presentation is the same presentation that the Commission accredited for one hour of water management credit in its Order of February 23, 2024 in Case No. 2024-00029. The presenter substituted this presentation for “Basic Procurement Law for Governmental Water Utilities” because a family emergency prevented him from finalizing the planned presentation. A copy of the delivered presentation is found at Tab 4 of this Notice.

Due to illness, Ms. Tina Fredrick was unable to deliver the presentation entitled “Unaccounted-For Water Loss.” Mr. Damon Talley delivered the presentation in her place.

TAB 3

Water District Commissioners in Attendance
 Kentucky Rural Water Association Annual Conference
 Water Commissioner Training Program
 August 26, 2024
 Central Bank Center
 Lexington, Kentucky

Last Name	First Name	Water District	Number of Hours Attended
Ingram	David	Breathitt Co. Water District	6
Spicer-Campbell	Cheryl	Breathitt Co. Water District	6
Thorpe	Bobby	Breathitt Co. Water District	6
Conn	Stanley	Daviess Co. Water District	6
Fiefhaus	Harry	East Clark Co. Water District	6
Morphew	Rhonda	East Clark Co. Water District	6
Segress	Kenny	East Clark Co. Water District	6
Vaughn	Craig	East Clark Co. Water District	6
Minton	Dennis	East Laurel Water District	3
Dockins	Harris	East Logan Water District	6
Taylor	Tim	East Logan Water District	6
Click	Daniel	Estill Co. Water District #1	6
Johnson	Robert	Estill Co. Water District #1	6
Stickney	Jack	Estill Co. Water District #1	6
Harrod	Ed	Farmdale Water District	6
Wooldridge	Scottie	Farmdale Water District	6
Brooks	Keith	Grayson Co. Water District	6
Cain	Nancy	Grayson Co. Water District	5
Fowler	Debbie	Green River Valley Water District	6
Glass	Leland	Green River Valley Water District	6
Eastridge	Pat	Larue Co. Water District #1	4
Rakes	Cody	Marion Co. Water District	6
Cleaver	Silas	Nicholas Co. Water District	5
McDonald	Phillip	Nicholas Co. Water District	5
Tincher	David	Nicholas Co. Water District	5
Hume	Ronnie	South Anderson Water District	6
Neat	Ollie	South Anderson Water District	6

TAB 4


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

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

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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 commence providing utility service or . . . **begin the construction of any plant, equipment, property**, or facility for furnishing to the public any of the services enumerated in KRS 278.010 . . . 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 RoR Regulation That Encourage Inefficient Investment
- Avoid Wasteful Duplication
- Prevent Water District Mistakes
- Ensure Project's Technically Feasibility

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WHAT REQUIRES A CERTIFICATE?

- Construction of Any Plant, Facility, Equipment, or Property
- Commencing Service
- Purchase/Acquisition of Non-PSC regulated facilities

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WHAT IS CONSTRUCTION?

- Constructing Building/Structure
- Remodeling or Repurposing Existing Structure
- Construction of Equipment (e.g. Turbine)
- Purchase & Installation of Equipment

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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
- **Purchase of Building + Remodeling**

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KRS 278.020(1): EXCEPTIONS

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

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“WATER DISTRICT EXCEPTION”

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

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“WATER DISTRICT EXCEPTION”

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

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“WATER DISTRICT EXCEPTION”

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

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“WATER DISTRICT EXCEPTION”

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

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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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**GOVERNMENT GRANTS AND
"MATERIAL EFFECT"**

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

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

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

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**ALWAYS CONSIDERED
NOT IN THE ORDINARY COURSE**

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

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

- Emergency 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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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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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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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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PREPARING AN APPLICATION FOR CERTIFICATE

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CONTENTS OF APPLICATION

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

807 KAR 5:001, § 15

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DEMONSTRATING NECESSITY

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

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DEMONSTRATING NECESSITY

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

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PERMITS

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

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PROCEDURE

- Application
- Discovery
- Interested Parties May Intervene, But Generally No Intervenors
- Hearing on Application Seldom Held
- Final Order: 90 – 120 Days from filing of Application

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TIMING

- Obtain PSC Approval Prior to Executing Construction/Materials Contract
- File Application after selecting winning bid if possible
- Alert PSC to Timing Requirements for Final Decision (Remind Frequently)
- If Selecting Contract Prior to Final PSC Order, Make Contract Contingent on Grant of Certificate

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OBTAINING PSC APPROVAL

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EXPEDITING PSC REVIEW

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

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EXPEDITING PSC REVIEW


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

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RURAL DEVELOPMENT FINANCED CONSTRUCTION PROJECTS


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RURAL DEVELOPMENT FUNDING: LIMITED PSC REVIEW

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

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RURAL DEVELOPMENT FUNDING: LIMITED PSC REVIEW

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

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**RURAL DEVELOPMENT FUNDING:
PSC CRITICISMS**

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

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**DEBT AUTHORIZATION:
THE BASICS**


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KRS 278.300

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


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WHAT IS AN EVIDENCE OF INDEBTEDNESS?

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


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EXCEPTIONS TO REQUIREMENT

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

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GENERAL CONSIDERATIONS

- Amount of Loan Not Relevant
- Violation Occurs Upon Execution
- Violation No Affected by Satisfying Obligation within 2 Years of Creation
- High Priority In PSC Review

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CONSEQUENCE OF NON-COMPLIANCE

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

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PREPARING AN APPLICATION FOR DEBT AUTHORIZATION

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CONTENTS OF APPLICATION

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


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CONTENTS OF APPLICATION

- Maps/Plans of Property to be Acquired or Constructed
- Estimates of the Cost of Property/Improvements
- Application must be signed under oath by utility officer


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APPLICANT MUST SHOW

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

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PROCEDURE

- Application
- Discovery
- Generally No Intervenor
- Hearing on Application Seldom Held
- Matter to Go to Front of PSC Docket
- Final Order: 60 Days from filing of Application but application may be continued beyond 60 days

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QUESTIONS?



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