

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

**ELECTRONIC APPLICATION OF)
KENTUCKY RURAL WATER)
ASSOCIATION AND STOLL KEENON) CASE NO. 2024-00300
OGDEN PLLC FOR ACCREDITATION)
APPROVAL OF A PROPOSED)
WATER DISTRICT MANAGEMENT)
TRAINING PROGRAM)**

APPLICATION

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

In support of their application, the Joint Applicants state:

1. 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.

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

3. 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 which serve no more than 25,000 customers, and other similar entities that provide water and wastewater utility services to rural Kentucky.

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

5. Stoll Keenon Ogden PLLC's mailing address is: 112 North Lincoln Boulevard, P.O. Box 150, Hodgenville, Kentucky 42748. Its email address for purposes of this Application is: tina.frederick@skofirm.com.

6. The Joint Applicants propose to sponsor and conduct a water management training program on October 24, 2024, at Holiday Inn University Plaza/Sloan Convention Center, 1021 Wilkinson Trace, Bowling Green, Kentucky. The program is entitled "Ninth Annual Water Law Series." A copy of the proposed agenda is attached to this Application as **Exhibit 1**.

7. The Joint Applicants intend to permit both in-person and virtual attendance (via alive Zoom feed) of the proposed water management training program.

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

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

b. Asset Management and Financing. This presentation discusses the different facets of Asset Management, including taking inventory of a utility's assets, determining the condition, reliability, and critical nature of the assets, and building an Asset Management Plan. In addition, the presenter will discuss a long-term funding strategy.

c. Hot Environmental Law Topics. This presentation focuses on bringing attendees up-to-date on environmental law issues that impact water and wastewater utilities. Topics that will be addressed include the evolving PFAS landscape, Waters of the U.S. and the scramble to revise the definition following the recent Sackett decision by the Supreme Court, and a new Supreme Court decision ending deference to federal agencies in interpreting statutes. The presenters will also provide status updates on EPA's Lead and Copper Rule, 401 water quality

certification, and the proposed rule to change aspects of the Risk Management Program.

d. Relations with the Public Service Commission: Best Practices for Maintaining Positive Interaction. This presentation focuses on the practices that utilities can undertake to ensure good and effective relations with the Commission and its Staff. The presentation will review the challenges that the Commission currently faces, common mistakes that utilities make when seeking relief from the Commission, the importance of carefully reviewing and complying with Commission orders, and the importance of compliance with regulatory filing deadlines. The presenter will also discuss how the Commission reviews applications for relief for compliance with filing requirements and what filers should generally expect.

e. Everything you wanted to know about Certificates of Public Convenience and Necessity and Debt Authorizations but were afraid to ask the Public Service Commission. This presentation reviews the statutory law surrounding the construction of utility facilities and the issuance of debt. It will focus on what utility actions require a certificate of public convenience and necessity and the exceptions to the general requirement for a certificate of public convenience and necessity. It will also identify those debt issuances and contractual obligations that require prior Commission authorization and exceptions to the requirement for prior

Commission authorization. The presenter will also provide practical suggestions on preparing applications for such relief to assist Commission review and minimize the time required to obtain Commission approval.

f. Legal Issues in the Operation & Management of Water Systems

Panel Discussion A panel of attorneys will entertain audience questions regarding frequently recurring legal issues faced by water utilities. Discussion is expected to address KRS Chapter 74 and its effects on the management and operation of water districts, as well as other highly relevant statutory provisions, such as the Claims against Local Government Act, Bidding Requirements provision of KRS Chapter 424, Eminent Domain, Local Model Procurement Law, Whistle Blowers Act, and general laws related to special districts. PSC regulatory requirements will also be discussed.

9. The proposed training program consists of six hours of instruction and should be accredited and approved as water management training satisfying the requirements set forth in KRS 74.020(7) to establish a water district commissioner's eligibility for a maximum annual salary of \$6,000. **Joint Applicants are not requesting that the proposed training program be accredited as a program of instruction for newly appointed commissioners.**

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

11. The written materials that each attendee will be provided are attached at **Exhibit 3**. These materials are of the same type and nature as those provided at accredited training programs that Stoll Keenon Ogden PLLC has previously sponsored.¹ Should any presenter revise or amend his or her presentation prior to the presentation or provide additional written materials to the attendees, the Joint Applicants will include a copy of the revised presentation with their sworn statement and report regarding the instruction.

12. The Joint Applicants have applied or will shortly apply for accreditation of the proposed training program to the Kentucky Bar Association; the Department of Local Government; and the Department of Environmental Protection (Division of Compliance).

13. The Joint Applicants have sent notice of the proposed training program by electronic mail to the water districts, water associations, and municipal utilities

¹ See *Electronic Application of Hardin County Water District No. 2 For Accreditation and Approval of A Proposed Water District Management Training Program*, Case No. 2019-00082 (Ky. PSC Mar. 27, 2019); *Application of Northern Kentucky Water District and Stoll Keenon Ogden PLLC For Accreditation and Approval of A Proposed Water District Management Training Program*, Case No. 2019-00081 (Ky. PSC Mar. 27, 2019); *Electronic Application of Hardin County Water District No. 2 For Accreditation and Approval of A Proposed Water District Management Training Program*, Case No. 2018-00110 (Ky. PSC May 9, 2018); *Electronic Application of Northern Kentucky Water District and Stoll Keenon Ogden PLLC For Accreditation and Approval of A Proposed Water District Management Training Program*, Case No. 2018-00091 (Ky. PSC May 9, 2018); *Application of Kentucky Rural Water Association Request For Approval of Commissioner Training And Continuing Education Credit*, Case No. 2017-00436 (Ky. Mar. 28, 2018); *Application of Northern Kentucky Water District For Accreditation and Approval of A Proposed Water District Management Training Program*, Case No. 2017-00144 (Ky. PSC March 23, 2017); *Application of Northern Kentucky Water District and Stoll Keenon Ogden PLLC For Accreditation and Approval of A Proposed Water District Management Training Program*, Case No. 2016-00146 (Ky. PSC May 5, 2016); *Application of Northern Kentucky Water District and Stoll Keenon Ogden PLLC For Accreditation and Approval of a Proposed Water District Management Training Program*, Case No. 2015-00147 (Ky. PSC May 18, 2015).

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

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

15. Within 30 days of the proposed training program's completion, the Joint Applicants will file with the Commission a sworn statement:

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

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

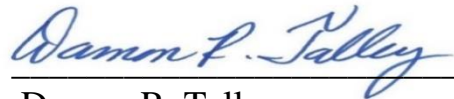
17. Joint Applicants will admit representatives of the Commission to the proposed training program at no charge to permit such representatives to assess the

quality of the program’s instruction, monitor the program’s compliance with Commission directives, regulations or other requirements, or perform any other supervisory functions that the Commission deems necessary. Since the proposed training program will be conducted both in person and virtually, the Joint Applicants will grant access to the online platform to representatives of the Public Service Commission upon request.

WHEREFORE, the Joint Applicants request that the Commission approve and accredit the proposed training program entitled “Ninth Annual Water Law Series” for six hours of annual water district management training.

Dated: September 18, 2024

Respectfully submitted,



Damon R. Talley
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/s/ Tina Frederick
Stoll Keenon Ogden PLLC
300 West Vine Street, Suite 2100
Lexington, Kentucky 40507
Telephone: (859) 231-3951
Fax: (859) 259-3517
tina.frederick@skofirm.com

*Counsel for Kentucky Rural Water
Association and Stoll Keenon Ogden PLLC*

CERTIFICATE OF SERVICE

In accordance with the Commission's Order of July 22, 2021 in Case No. 2020-00085 (Electronic Emergency Docket Related to the Novel Coronavirus COVID-19), this is to certify that the electronic filing has been transmitted to the Commission on September 18, 2024; and that there are currently no parties in this proceeding that the Commission has excused from participation by electronic means.


Damon R. Talley

Exhibit 1

Proposed Agenda

9th Annual Water Law Series

Presented by

Kentucky Rural Water Association • Utility Leadership Institute

Stoll Keenon Ogden PLLC

Holiday Inn University Plaza | Sloan Convention Center

Bowling Green, Kentucky

October 24, 2024

7:45 - 8:25 Registration and Refreshments

8:25 - 8:30 Welcome and Program Overview – Scott Young

8:30 - 9:30 Recent Developments in Utility Regulation – Damon Talley

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

9:30 - 9:45 BREAK

9:45 - 10:45 Asset Management and Financing – Robert K. Miller

This presentation discusses the different facets of Asset Management, including taking inventory of a utility's assets, determining the condition, reliability, and critical nature of the assets, and building an Asset Management Plan. In addition, a long-term funding strategy will be discussed.

10:45 - 11:00 BREAK

11:00 - 12:00 Hot Environmental Law Topics – Sarah Jarboe, and Joye Beth Spinks

This presentation focuses on bringing attendees up-to-date on environmental law issues that impact water and wastewater utilities. Topics that will be addressed include the evolving PFAS landscape, Waters of the U.S. and the scramble to revise the definition following the recent Sackett decision by the Supreme Court, and a new Supreme Court decision ending deference to federal agencies in interpreting statutes. We will also provide status updates on EPA's Lead and Copper Rule, 401 water quality certification, and the proposed rule to change aspects of the Risk Management Program.

12:00 - 1:00 LUNCH (Provided On-Site)

AFTERNOON AGENDA

1:00 - 2:00 Relations with the Public Service Commission: Best Practices for Maintaining Positive Interaction – Tina Frederick

This presentation focuses on the practices that utilities can undertake to ensure good and effective relations with the Commission. The presentation will review the challenges that the Commission currently faces, common mistakes that utilities make when seeking relief from the Commission, the importance of carefully reviewing and complying with Commission orders, and the importance of compliance with regulatory filing deadlines. It will also discuss how the Commission reviews applications for relief and what filers should generally expect.

2:00 - 2:15 BREAK

2:15 - 3:15 Everything you wanted to know about Certificates of Public Convenience and Necessity and Debt Authorizations but were afraid to ask the Public Service Commission – Gerald Wuetcher

This presentation reviews the statutory law surrounding the construction of utility facilities and the issuance of debt. It will focus on what utility actions require a certificate of public convenience and necessity and the exceptions to the general requirement for a certificate of public convenience and necessity. It will also identify those debt issuances and contractual obligations that require prior Commission authorization and exceptions to the requirement for prior Commission authorization. The presentation will also provide practical suggestions on preparing applications for such relief to assist Commission review and minimize the time required to obtain Commission approval.

3:15 - 3:25 BREAK

3:25 - 4:25 Legal Issues in the Operation & Management of Water Systems Panel Discussion – Damon Talley, Gerald Wuetcher, & Tina Frederick

A panel of attorneys will entertain audience questions regarding frequently recurring legal issues faced by water utilities. Discussion is expected to address KRS Chapter 74 and its effects on the management and operation of water districts, as well as other highly relevant statutory provisions, such as the Claims against Local Government Act, Bidding Requirements provision of KRS Chapter 424, Eminent Domain, Local Model Procurement Law, Whistle Blowers Act, and general laws related to special districts. PSC regulatory requirements will also be discussed.

4:25 - 4:30 Closing Remarks & Administrative Announcements – Scott Young

Exhibit 2
Speaker Qualifications and
Credentials



Damon R. Talley

Direct Phone: 270.358.3187

damon.talley@skofirm.com

BAR & COURT ADMISSIONS

Kentucky

U.S. District Court, Eastern District Of Kentucky

U.S. District Court, Western District Of Kentucky

United States Supreme Court

EDUCATION

University of Kentucky College of Law
1975, J.D.

University of Kentucky College of Engineering
1972, B.S.M.E.

RECOGNITION

Best Lawyers®, Lawyer of the Year (Lexington),
Utilities Law, 2023

Best Lawyers®, Utilities Law, 2021-present

Sullivan Medallion, presented to Outstanding
Graduating Student, University of Kentucky

Moot Court Board, President, University of
Kentucky College of Law

Outstanding Student, University of Kentucky
College of Engineering

Omicron Delta Kappa, President, University of
Kentucky

Kentucky Association of Future Farmers of
America, President

Outstanding Citizen Award, LaRue County
Chamber of Commerce, 1990

Outstanding Citizen Award, Cave City Chamber of
Commerce, 1981

Outstanding Citizen Award, Horse Cave Chambers
of Commerce, 1979

Damon R. Talley

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

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

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

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

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

Work Highlights

Damon serves as General Counsel of the Kentucky Rural Water Association and has served in this capacity since 1979.

Damon serves as General Counsel of the Kentucky Rural Water Finance Corporation and has served in this capacity since 1995.

QUALIFICATIONS

EDUCATION

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

YEARS OF EXPERIENCE: 38

SPECIALIZATION

Senior Executive in Drinking Water, Wastewater, and Stormwater Industry

PROFESSIONAL AFFILIATIONS

American Water Works Association QualServe Peer Reviewer

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

AWWA Utility Management Standards Committee Member (past)

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

AWWA Management Controls Sub-Committee Chair (past)

AWWA Research Foundation Project Participating Utility Member (past)

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

Professional Profile

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

Qualifications and Experience

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

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

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

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

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

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

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

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

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

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

This is an advertisement

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Sarah P. Jarboe

Partner;
Co-Chair, Environmental Law Practice Group

270.781.6500

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Sarah P. Jarboe

Partner;
Co-Chair, Environmental Law Practice Group

Sarah Jarboe primarily practices environmental law and civil litigation. She grew up in rural Kentucky near Owensboro, and the outdoors formed the fabric of her childhood. Sarah's enthusiasm for nature is reflected in her legal practice. For her undergraduate education, Sarah attended the University of Louisville where she double majored in psychology and philosophy and minored in history. The analytical reasoning that intertwined Sarah's college courses led to her general interest in the legal field.

During Sarah's challenging studies at Vanderbilt Law School, it became clear that finding an area of law that was meaningful to her was vital to academic, professional, and personal success. Environmental law was a perfect match for Sarah – it is a natural outgrowth of her upbringing in the countryside. Uniting her interest in nature with her legal practice gives Sarah the advantage enjoyed by those who truly love their work.

Sarah joined ELPO in 2013 after working as a law clerk for two years for Chief Justice John D. Minton of the Kentucky Supreme Court in his Bowling Green office.

As part of her practice with ELPO, Sarah has represented clients in permitting and policy issues and enforcement actions. She has advised clients on various environmental matters, including the Clean Water Act, the Clean Air Act, the Underground Injection Control Program under the Safe Drinking Water Act, the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund), Oil Pollution Act, and the Resource Conservation and Recovery Act, and the Nonindigenous Aquatic Nuisance Prevention and Control Act. Sarah is an experienced negotiator, having participated in negotiations in enforcement and permitting cases with the U.S. Environmental Protection Agency and the Kentucky Department for Environmental Protection.

“I concentrate on helping companies comply with the complex and often confusing web of environmental regulations without sacrificing their business objectives,” says Sarah. “My favorite days are when I get to wear work boots and a hard hat because it means I am in the field working side-by-side with my clients.”

In addition to her work at ELPO, Sarah is an active member and contributor to national and statewide environmental associations and boards. Sarah currently serves on the Board of the Friends of Mammoth Cave National Park and on the American Bar Association's Section of Environment, Energy, and Resources' (SEER) 2020 Fall Conference Planning Committee. Previously, she sat on the SEER 2016 and 2017 Fall Conference Planning Committees. Sarah was one of 12 participants selected nationwide for SEER's Leadership Development Program from 2014 to 2015. In addition, she devoted five years to the position of Newsletter Vice Chair for SEER's Smart Growth and Green Building Committee. Sarah also served as Chair of the Environment, Energy and Resources law section of the Kentucky Bar Association from 2016 to 2017, and previously served as Chair Elect and Vice Chair of that section.

Sarah is a frequent speaker at environmental conferences, presenting on topics such as environmental liability related to waste issues, federal and state environmental audit policies, green infrastructure and consent decrees for water and wastewater utilities, the value of water to the U.S. economy, cooperative federalism, brownfields, and environmental common law actions and remedies.

Sarah and her husband have two young children. Locals frequently can find their family enjoying Kereiakes Park or Mammoth Cave National Park with their Vizsla.

Attorney Practice Areas

- Environmental Law
- Civil Litigation

Education

- [Vanderbilt University Law School](#), Nashville, J.D., 2011
- [University of Louisville](#), Bachelor of Arts in Psychology and Philosophy, 2008

Bar Admissions

- [Kentucky](#), 2011
- U.S. District for the Eastern and Western Districts of Kentucky, 2013
- [U.S. Court of Appeals, Sixth Circuit](#), 2014

Published Works

- Co-author, 22nd chapter of the Fifth Edition of the American Bar Association's Environmental Aspects of Real Estate and Commercial Transactions: Acquisition, Development, and Liability Management

Professional Associations

- [Bowling Green-Warren County Bar Association](#), Member and past chair of Young Lawyers Committee, past member of the Board of Directors
- [Kentucky Bar Association](#), Member and Chair of the Environment, Energy and Resources law section, 2016-2017
- [American Bar Association](#), Member; Section of Environment, Energy, and Resources' (SEER) 2016 and 2017 Fall Conference Planning Committees Member; Leadership Development Program, 2014-2015; and Vice Chair of Newsletter, Smart Growth and Green Building Committee, 2010-2015
- 2020 Fall Conference Planning Committee

Awards

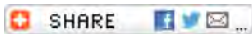
- Best Lawyers Ones to Watch, 2021
- SuperLawyers Rising Star, 2020-2021

Community Involvement

- Leadership Bowling Green, Class of 2015
- [Friends of Mammoth Cave](#), Board Member, 2019 - present
- [ELEVATE Kentucky](#), Class of 2019

Presentations

- - Leadership Bowling Green speaker, Summer 2012
 - CERCLA Secured Creditor Exemption, Bowling Green Area Chamber of Commerce, 2013
 - The Value of Water: Considering Regulatory Costs and Benefits...Never the Twain Shall Meet?, Third Annual Kentucky Energy Management Conference, 2013
 - In Concrete? . . .With Green Infrastructure Looming Large, Consent Agreements Aren't What They Used To Be, Kentucky Stormwater Association Conference, 2014
 - Getting and Complying with Your Stormwater Permit, Kentucky Chamber Environmental Permitting and Reporting Conference, 2015
 - Updates on Environmental Liability in Real Estate Transactions, Kentucky Law Update, 2015
 - Common Law Environmental Torts, Kentucky Bar Association Annual Meeting, 2016
 - Environmental Audits, Kentucky Chamber Environmental Permitting and Reporting Conference, 2016
 - [Clean Air Act: Risk Management Program Rule & Water Utilities](#), 2016 Water Law Series
 - Welcoming Remarks, Section News, and Conference Overview, Kentucky Bar Association Environment, Energy and Resources Law Section Annual Meeting, 2017
 - States' Rights, Federalism, and EPA: Who's Calling the Shots?, Environmental Practitioners' Workshop, 2018
 - Opportunities for Relief from Environmental Liability under the Kentucky Brownfields Redevelopment Program, Eyesore to Asset: Redeveloping Distressed Properties Program, 2018
 - Top 10 Legal Issues Facing Water and Wastewater Utilities, October 2018, Kentucky Rural Water Association's Water Law Conference
 - Regulatory Hokey-Pokey at EPA: What's In, What's Out, and What It's All About; 17th Annual Kentucky Chamber of Commerce Environmental Conference; March 15, 2019



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Biography
for
Joye Beth Spinks
English, Lucas, Priest & Owsley, LLP

Joye Beth Spinks is an Associate at English, Lucas, Priest & Owsley, LLP in Bowling Green, Kentucky, concentrating in the areas of environmental law and civil litigation.

As an environmental lawyer, Joye Beth represents corporate clients who vary in size and industry including water treatment, aluminum processing, scrap metal recycling, and food production. Joye Beth advises clients on permitting, compliance, and enforcement issues under the Clean Water Act; Clean Air Act; Resource Conservation and Recovery Act; Comprehensive Environmental Response, Compensation, and Liability Act or Superfund; and Pesticide Registration Improvement Act; as well as state environmental programs. Joye Beth also advises clients about the impact of new state and federal environmental legislation.

As a litigator, Joye Beth works with plaintiffs and defendants, with experience in pre-suit investigations and negotiations, discovery, motion practice, and appeals. Joye Beth works with clients in both state and federal court on civil issues including breach of contract, torts, qualified immunity, civil rights and professional malpractice.

Joye Beth is a native of Bowling Green, Kentucky. Prior to law school, Joye Beth spent four years teaching biology and environmental science to high school students in Beaver Dam, Kentucky.

TINA FREDERICK

TINA FREDERICK is Counsel to the Firm at Stoll Keenon Ogden PLLC and is a member of the firm's Utility and Energy Practice Group. She recently joined the firm after serving approximately five years with the Kentucky Public Service Commission ("Commission"), first as a Staff Attorney and then as an Assistant General Counsel. In those roles, she advised the Commission on various matters pending before the Commission involving the regulation of public utilities, including applications for rate adjustments, the construction of utility facilities, and the issuance of debt instruments. She represented Commission Staff in administrative hearings involving those issues as well those involving investigations of alleged violations of the Commonwealth's statutes and administrative regulations pertaining to utility service. Prior to her employment with the Commission, she maintained for five years a private practice that principally involved the representation of claimants asserting claims under the Social Security Act and Kentucky's Worker Compensation laws. Ms. Frederick is licensed to practice law in the Commonwealth of Kentucky. She holds a Juris Doctorate from Ohio Northern University College of Law, where she graduated *cum laude*, and a Bachelor of Science Degree in Family and Consumer Science from the University of Kentucky, where she graduated *summa cum laude*.



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

Presentations and Materials



9th ANNUAL WATER LAW SERIES

October 24, 2024



Sponsored by:



HOT LEGAL TOPICS

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

October 24, 2024



DISCUSSION TOPICS

1. PSC Filings
2. Comply with PSC Orders
3. Minutes
4. Notable PSC Cases



DISCUSSION TOPICS

5. Borrowing Money
6. 2024 General Assembly
7. Cases to Watch





DISCLAIMER



PSA for PSC



Reporting Requirements

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



Vacancy

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





E-Mail Address Regs.

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



E-Mail Address

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



Why Municipals?

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





Talley's Tips

Default Regulatory E-mail Address

- Send E-mail to PSC
 - psc.reports@ky.gov
 - PSCED@ky.gov
- Send Letter to PSC
 - Linda C. Bridwell,
Executive Director



PSC Case No. 2016 - 00310

Opened: 9-09-2016

Utility: Unlucky WD

Type: Show Cause Case

Issue: Ignored PSC Order &
Wrong Email Address

Settled: \$500 Fine



PSC Case No. 2023 - 00125

Opened: 6-07-2023

Utility: Uninformed WD

Type: Investigation Case

Issue: Board had no access to Email Account. Manager did not inform Board of Order.

Hearing: 1-18-24

Decided: 4-02-24



**Comply
With All
PSC
Orders**



“ . . . for allegedly failing to comply with the Commission’s March 10, 2020 Order in Case No. 2019-00458. The willful failure to comply presents prima facie evidence of incompetency, neglect of duty, gross immorality, or nonfeasance, misfeasance, or malfeasance in office sufficient to make [the District’s] officers and manager subject to the penalties of KRS 278.990 or removal pursuant to KRS 74.025. The Commission finds that a public hearing should be held on the merits of the allegations set forth in this Order.”



PSC Case No. 2022 - 228

Date: 08-22-2022

Type: Failure to Comply
with PSC Order

Issue: Did Not Timely File
Rate Application


Decided: 12-08-2022



PSC Case No. 2022 - 228

(cont.)

Facts:

- PWA Case 2 Penny 
- Must File Rate Case by 04-15-2022
(6 Months)
- Nothing Filed by 08-22-2022
- PSC Opened Case



PSC Case No. 2022 - 228

(cont.)

Manager's Defense:

- Honesty
- I Never Read the Order
- I Never Told the Board
- Fell on His Sword †



PSC Case No. 2022 - 228

(cont.)

Board's Defense:

- Ignorance is Bliss
- Manager Never Told Us
- Manager's Job to Tell Us
- Acknowledged Ultimate Responsibility



PSC Case No. 2022 - 228

(cont.)

Affirmative Steps to Mitigate:

- Adopt New Procedure
 - All PSC Orders Forwarded to Board Members
- Engaged Services of RCAP to File Rate Case



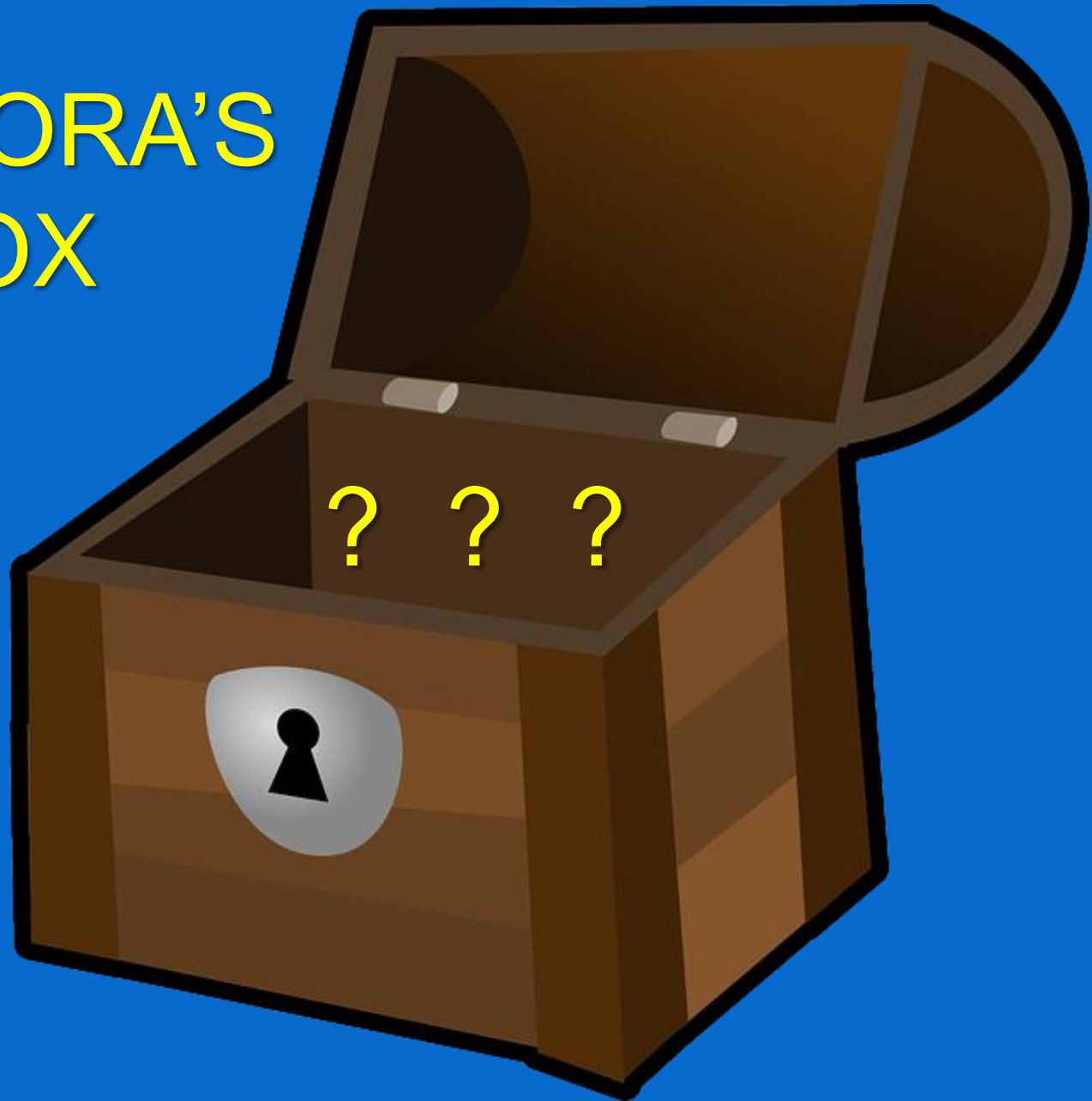
PSC Case No. 2022 - 228

Outcome:

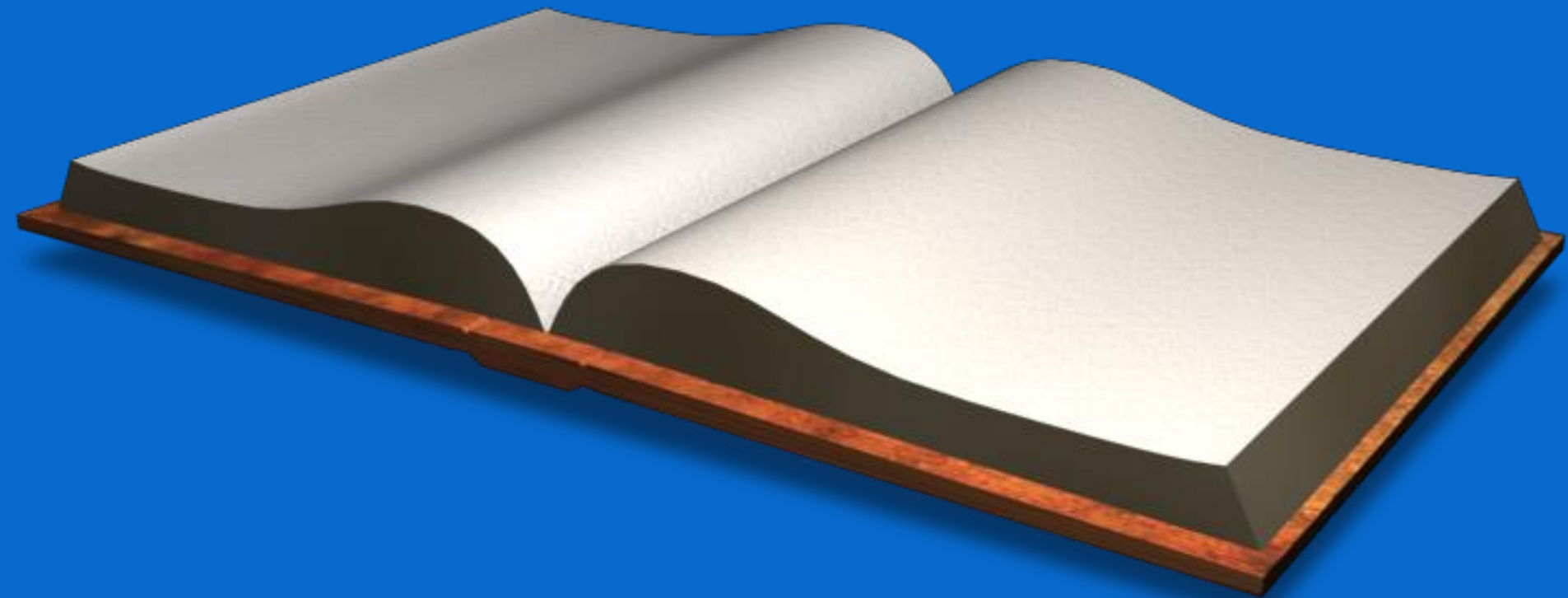
- No Hearing
- Commissioners & GM
 - Fined \$250
 - Waived
 - 12 Hours PSC Training
 - Good Behavior



PANDORA'S BOX



MINUTES



What Are MINUTES?

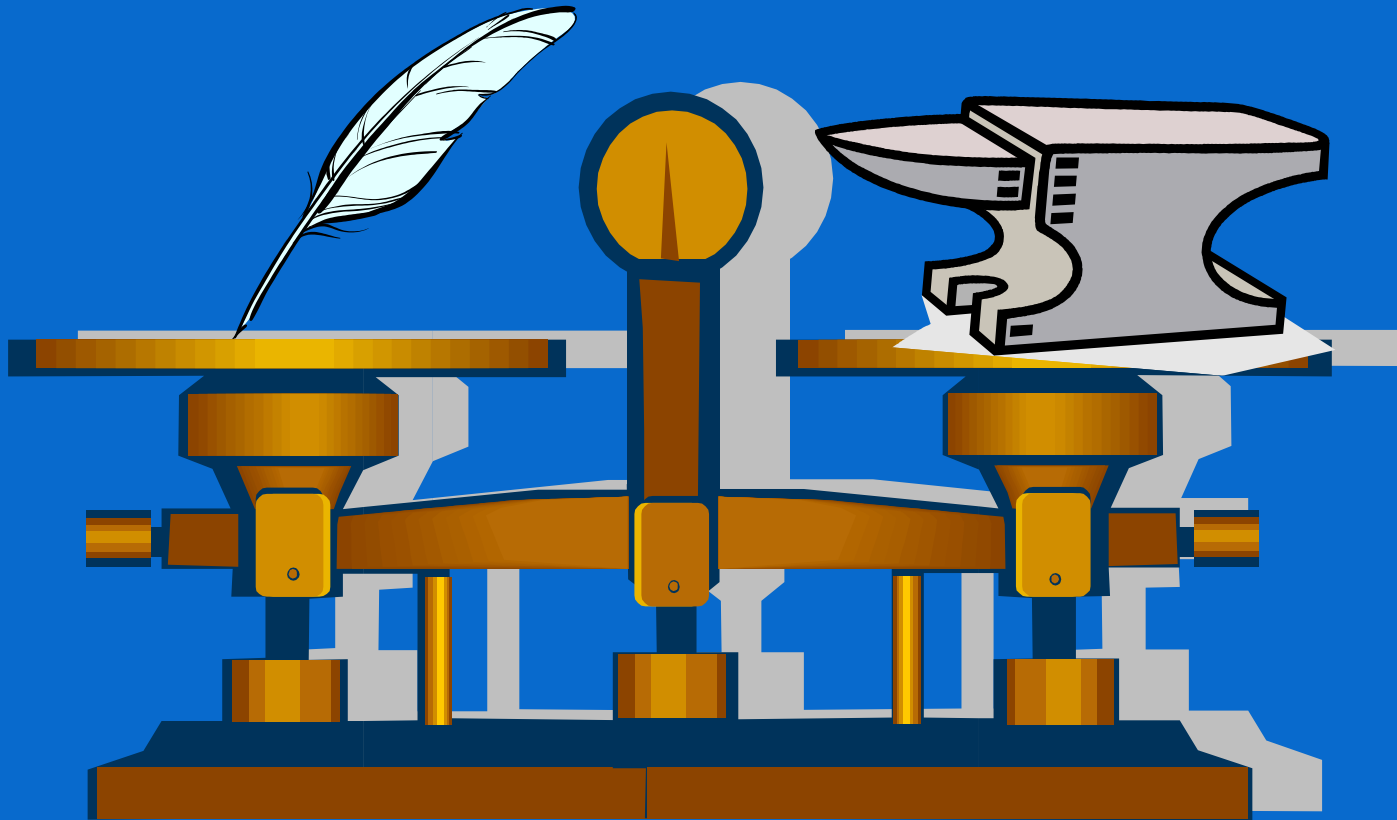
- Official Record
- Much, Much More . . .



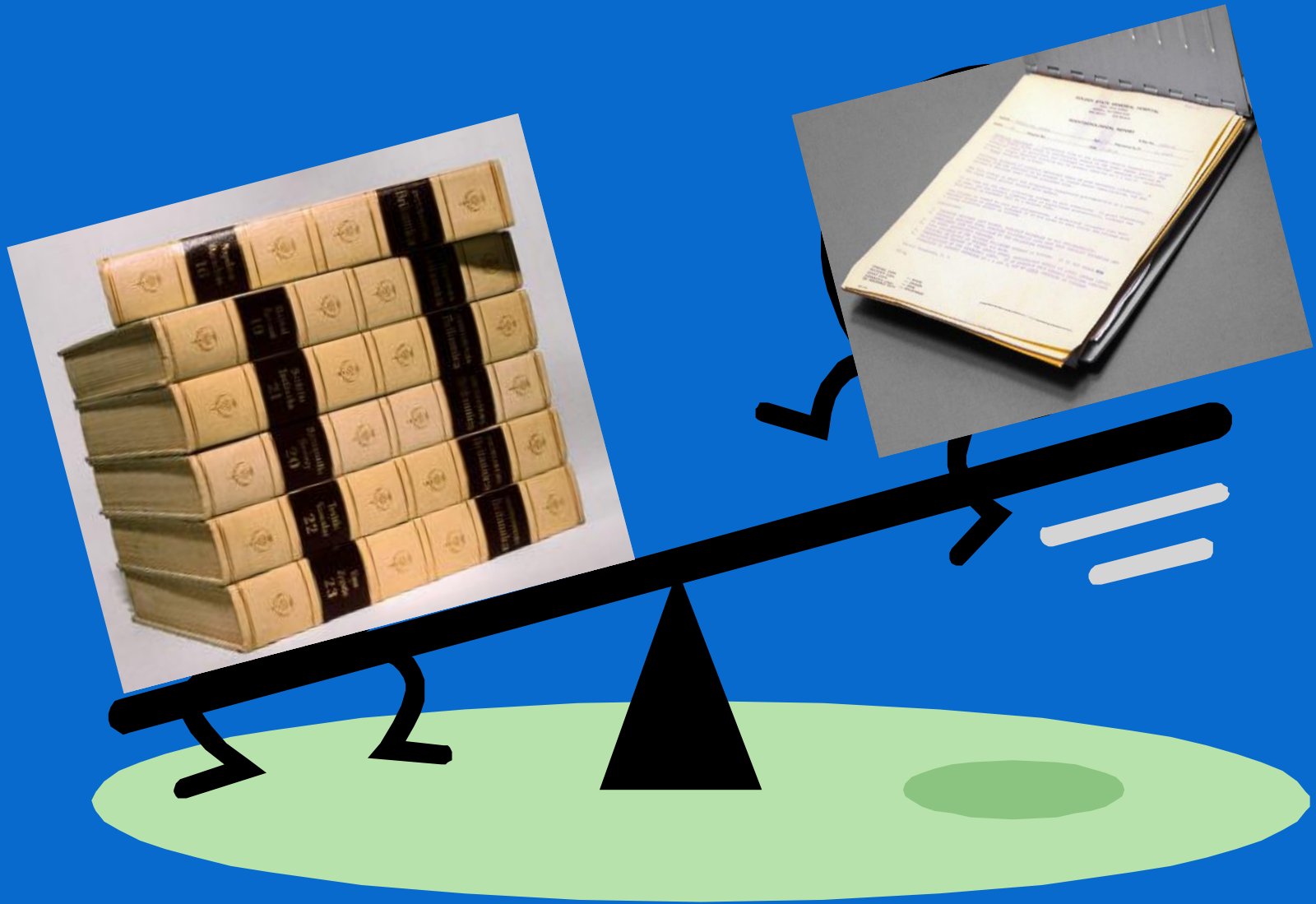
**AN OUNCE
OF
PREVENTION**

=

**A POUND
OF CURE**



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



Minutes

How MUCH is too MUCH?

- No definitive answer
- Art not a science

(cont . . .)



Minutes ...

How MUCH is too MUCH?

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



“Conversations are
NOT official actions of
the Board.”

Virginia W. Gregg

Former PSC Staff Attorney



WHY Include Summary of Conversations in Minutes?

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



TALLEY'S TIPS



Talley's Tips

Prepare Minutes for a Reader...

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



Notable PSC Orders



PSC Case No. 2023-306

Filed: 09-15-2023

Utility: Bullock Pen WD

Type: Declaratory Order

Issue: Is CPCN Needed
To Buy Land?

Decided: 10-06-2023

Answer: NO



Oldham County Water District

WHO? Oldham Co. W.D. (OCWD)
versus
PSC

WHERE? Franklin Circuit Court
Case No. 23-CI-00630

WHEN? 07-10-23

WHAT? Declaration of Rights



Oldham County Water District

WHY? OCWD Is Seeking a Court Ruling Whether It is Lawful or Unlawful to Pay Water District Commissioners Benefits (e.g. Health Insurance)



Oldham County Water District

Legal Issue:

- Whether “salary” limits of KRS 74.020 include the cost of “benefits” paid to water district commissioners
- Are Benefits Considered Salary?



Oldham County Water District

Not An Issue:

- Whether Cost of Commissioners' Benefits Can Be Recovered Through Rates
- PSC Decides This



Oldham County Water District

Oral Arguments: 03-10-24

Decision: 04-15-24

Holding:

- (1) Benefits are Not “Salary”
- (2) OK to Pay Benefits to
Water District Commissioners



Oldham County Water District

Not Decided: Can PSC Disallow Cost of Commissioners' Benefits in Rate Case?

Answer: Yes
(Read Page 8 of Order)





Talley's Tips

Caution !

1. Do Not Vote to Provide Benefits to Yourself !
 - KRS 74.020(3) Voting on Matter which Results in Direct Financial Benefits Is Grounds for Removal from Office
 - Delay Effective Date



Caution !

2. Commissioners' Benefits Should be same as Employees' Benefits
3. PSC May Disallow Recovery of Cost of Benefits in Rate Case
 - Is this Expenditure “Fair, Just, & Reasonable?”
 - PSC is Fact Finder



PSC Case No. 2023 - 252

Filed: 08-18-2023

Utility: Oldham Co. W.D.

Type: ARF Case

Issue: Full Recovery of Cost of
Employee Benefits

Hearing: 04-19-24

Decided: 06-18-24



Oldham Co. W.D. (OCWD)

PSC Order (50 Pages):

- Applied BLS Reduction %
- Disallowed Recovery of \$125,000 in Health Insurance Costs
(OCWD Pays 100%)

(continued . . .)



OCWD (continued)

PSC Order:

- OCWD Failed to Meet Its Burden of Proof
 - Proof Insufficient to Overcome PSC Precedents
 - 43 Cases Align with BLS National Average

(cont . . .)



OCWD (continued)

PSC Order:

- OCWD Has Appealed Decision
 - When? July 18, 2024
 - Where? Franklin Circuit Court
 - Case No: 24-CI-00725

(cont . . .)



PSC Case No. 2023 - 247

- Filed: 09-29-2023
- Utility: Hardin Co. W.D. No. 2
- Type: General Rate Case
- Issue: Full Recovery of Cost of
- Employee Benefits
 - Commissioners' Benefits

(cont. . .)



PSC Case No. 2023 - 247

Hearing: 01-11-2024

Brief: 02-16-2024

Decided: 07-29-2024



Hardin Co. W.D. No.2

- Holdings:
 - Denied All Commissioners' Benefits
 - No Mention of Unlawfulness
 - Oldham Declaratory Order
 - Allowed Full Recovery of Cost of Employee Benefits



Hardin Co. W.D. No.2

- Rationale:
 - HCWD Pays 94%
 - Blue Oval SK Plant
 - Found HCWD2 Package Reasonable



PSC Case No. 2023 - 257

Filed: 09-23-2023

Utility: Harrison Co. W. A.

Type: (1) Financing Approval
(2) CPCN – Rehab of 3 Tanks
or
(2A) Declaratory Order

Decided: 11-28-23



PSC Case No. 2023 - 257

Facts: Water Tank Maintenance Contract

- 3 Contracts with Utility Service
- Rehab 3 Tanks
- Cost: \$524,335
- Initial Term: 5 Years
- Level Payments for First 5 Years
- Auto Annual Renewal Thereafter
- Much Lower Annual Fee



PSC Case No. 2023 - 257

Issues:

1. Is the Tank Maintenance Contract an Evidence of Indebtedness ?

Answer: Yes

2. Is CPCN Needed ?

Answer: No



Evidence of Indebtedness

- Significant Work in Year 1 & 3
- Level Payment each Year for 5 Years
- Work Now; Pay Later
- If Terminated, Still Must Pay for 5 Years



Change the Facts

- Initial Term Still 5 Years
- Pay as Work is Performed
- No Longer an Evidence of Indebtedness



Is a CPCN Needed ?

- NO
- Why? Ordinary Extension in the usual course of Business
 - Looked at Each Tank Separately
 - Not a Sufficient Capital Outlay



PSC Case No. 2023 - 417

Filed: 12-18-2023

Utility: Breathitt Co. W.D.

Type: CPCN or Declaratory Order

Holding: No CPCN Needed

Decided: 03-13-24



PSC Case No. 2023 - 417

Facts:

- Construct 11 Miles of Waterline
- Install Pump Station
- 27,000 Gallon Storage Tank
- Cost: \$3.5 Million
- Grant: \$3.6 Million
Cleaner Water Grant



PSC Case No. 2023 - 417

Holding: No CPCN Needed

Rationale:

- Exempt Under KRS 278.020(1)(a)(3)(b)
- No Borrowed Money
- No Rate Increase
- Cleaner Water Grants



PSC Case No. 2022 - 065

Filed: 3-29-2022

Utility: Southeastern Water Assoc.

Type: CPCN – New Office Bldg.

Issue: Reasonable Alternatives
Considered

Decided: 8-30-22



PSC Case No. 2022-065

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



PSC Case No. 2022-065

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



PSC Case No. 2023 - 192

Filed: 6-09-2023

Utility: Ohio Co. WD

Type: CPCN – Raw Water
Intake Rehab

Issue: Reasonable Alternatives
Considered

Decided: 7-31-23



PSC Case No. 2023-192

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



PSC Case No. 2023-192

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



Borrowing

LOANS



Money

KRS 278.300(1)

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



Practical Effect

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





Violation

Show Cause Cases



Show Cause Cases Borrowing Money

First Case: 2022-197

Second Case: 2022-252

Third Case: 2023-344



Case # 1

Case No. 2022 - 197

Opened: 08-11-2022

Issues: Violated:

➤ KRS 278.300

➤ KRS 278.020

Hearing: 07-06-2023

Decided: 03-04-2024



Case # 1

Background Facts:

- 11-18-21: Purchased Office Bldg.
- 11-18-21: Financed Portion of Cost with a 7 year Loan
- 03-15-22: Applied for Retroactive Approval of Loan

(continued . . .)



Case # 1

Background Facts (continued):

- 05-13-22: PSC Issues DR
- 05-19-22: Bank Loan PIF
- 05-27-22: PSC Application
Withdrawn by Utility

(continued . . .)



Case # 1

Background Facts (continued):

- 06-20-22: PSC Dismisses Case & States Intent to File Show Cause Case
- 08-11-22: PSC Opens Show Cause Case



Case # 1

Utility's Defenses:

- Loan Paid Off
- No CPCN Needed Since Building was Purchased & Not Constructed
- Relied Upon Advice of Counsel
- Good, Honest & Decent People



Case # 1

Case Status:

- Multiple Rounds of DR
- Hearing: 07-06-2023
- Post Hearing Data Request
- Brief Filed: 09-08-2023
- Decided: 03-04-2024



Case # 1

Outcome:

- CPCN Needed to Buy & Remodel Office Building
- Cost \$206,000
(12% of Net Utility Plant)
- Headquarters Facilities
Closely Scrutinized

(continued . . .)



Case # 1

Outcome:

- Board Members
 - Fined \$500 (Waived)
 - 12 Hours of Training
- GM Retired
 - No Fine



Case # 2

Case No. 2022 - 252

Opened: 02-16-2023

Issue: KRS 278.300
(4 Violations)

Hearing: 08-01-2023

Decided: 10-17-2023



Case # 2

Facts: Leased 4 Trucks
4 & 5 Year Terms

Issue: Is Long Term Lease
An evidence of
Indebtedness ?

Holding: Yes



Case # 2

Outcome:

- GM & Directors (Water Assoc.)
 - Fined \$250 (Waived)
 - 12 Hours of Training
 - 6 More Hours Annually
- Future Directors
 - 6 Hours Training Annually



Case # 3

Case No. 2022 - 344

Opened: 04-14-2023

Issue: KRS 278.300
(4 Violations)

Hearing: 07-06-2023

Decided: 10-31-2023



Case # 3

Defenses:

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



Case # 3

Case Status:

- 3 Rounds of DR
- Hearing: 07-06-2023
- Very Interesting Hearing
- Post Hearing DR
- No Brief Filed



Case # 3

Outcome:

- Board Members
 - Fined \$250
 - Not Waived
 - 12 Hours of PSC
Conducted Training



2024 General Assembly



Notable Bills

- HB 1 Budget Bill
- HB 563 Funds for Capital
and Non-Capital
Expenses



HB 1 Budget Bill

Outcome:

- Water & Wastewater: \$ 340 Million
 - KIA: \$ 150 Million
 - Earmarks \$ 174 Million
 - DLG \$ 16 Million
 - Total \$ 340 Million



HB 563

- Ky. Water & Wastewater Assistance for Troubled or Economically Restrained Systems
- Ky. WWATERS Program



Ky. WWATERS Program

- Purposes:
 - Provide Funds to Assist “Troubled” Systems
 - Emergency Funds
- Both Non-Capital & Capital Expenses



Ky. WWATERS Program

- Application Process
- KIA Board Evaluates & Scores Each Applicant
- General Assembly Makes Final Decision



Ky. WWATERS Program

- Eligibility Criteria:
 - $MHI < Ky. MHI$
 - User Rates $> 1.0\%$ of MHI
 - Missing Audits
 - Negative Income
(2 of last 5 years)



Eligibility Criteria (continued)

- DSC Ratio < 1.1
(In 3 of Last 5 Years)
- High Accounts Receivable
(Greater Than 45 Days)
- NOV or Agreed Order
- Water Loss $> 30\%$



Eligibility Criteria (continued)

- Use Funds to Regionalize, Consolidate or Joint Management
- Funds Will Solve the Problem
- Other Criteria



Ky. WWATERS Program

- Not Necessary to Meet All Criteria
 - One Is Enough
 - More You Meet - Higher Your Score



Ky. WWATERS Program

- Funds:
 - Grants
 - Loan
 - No Interest Loans
 - Forgivable Loans



Cases To Watch



Oldham Co. W.D.
VS
Public Service Commission

What?

Appeal

Where?

Franklin Circuit Court

Case No:

24-CI-00725

(continued . . .)



Oldham Appeal (continued)

Filed: July 18, 2024

PSC Answer: Aug. 9, 2024

Briefing Schedule: Nov. 22, 2024
&
Jan. 10, 2025

Oral Arguments: ? ? ?

(continued . . .)



Oldham (continued)

Issues on Appeal:

- PSC Acted Unlawfully
- BLS Reduction Not Supported by Substantial Evidence
- Denied Due Process
- PSC Violated KRS 13A.100





QUESTIONS?

damon.talley@skofirm.com

270-358-3187



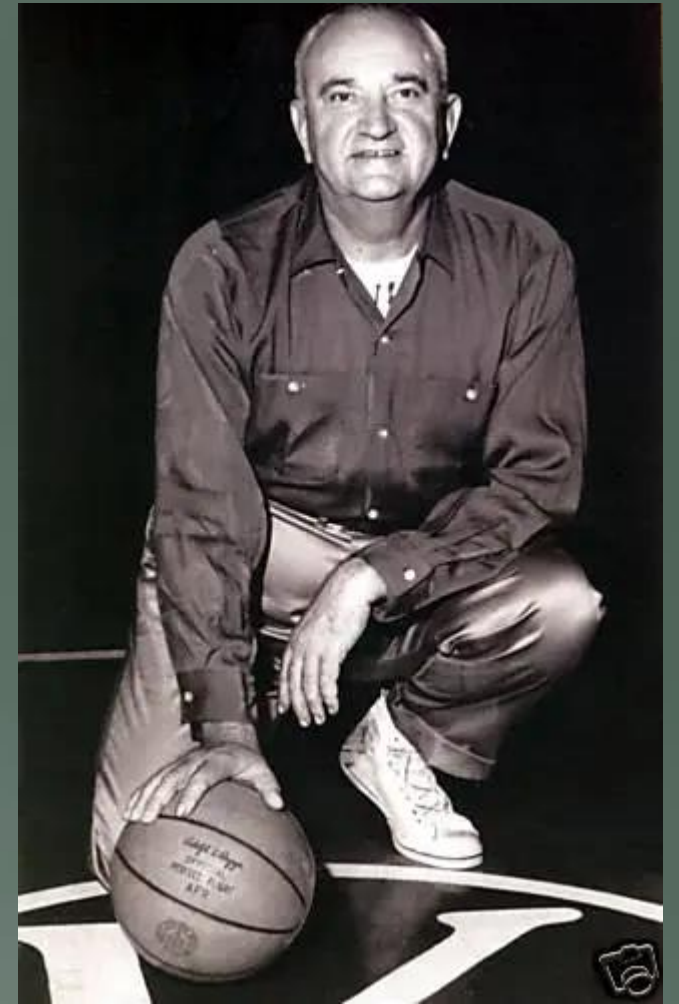
Asset Management and Financing



Kentucky Rural Water Association

Robert K. Miller

The Fundamentals of
Asset Management
and Financing using
a Notepad, a Pencil,
a Calculator, and Your
Own Judgment



Explaining Asset Management

Asset management is a process to make sure that:

- ✓ Planned maintenance can be conducted
- ✓ Assets can be repaired, rehabilitated, or replaced on time
- ✓ That there is enough money to pay for it.

Because assets installed while Adolph Rupp was coaching eventually need to be replaced.



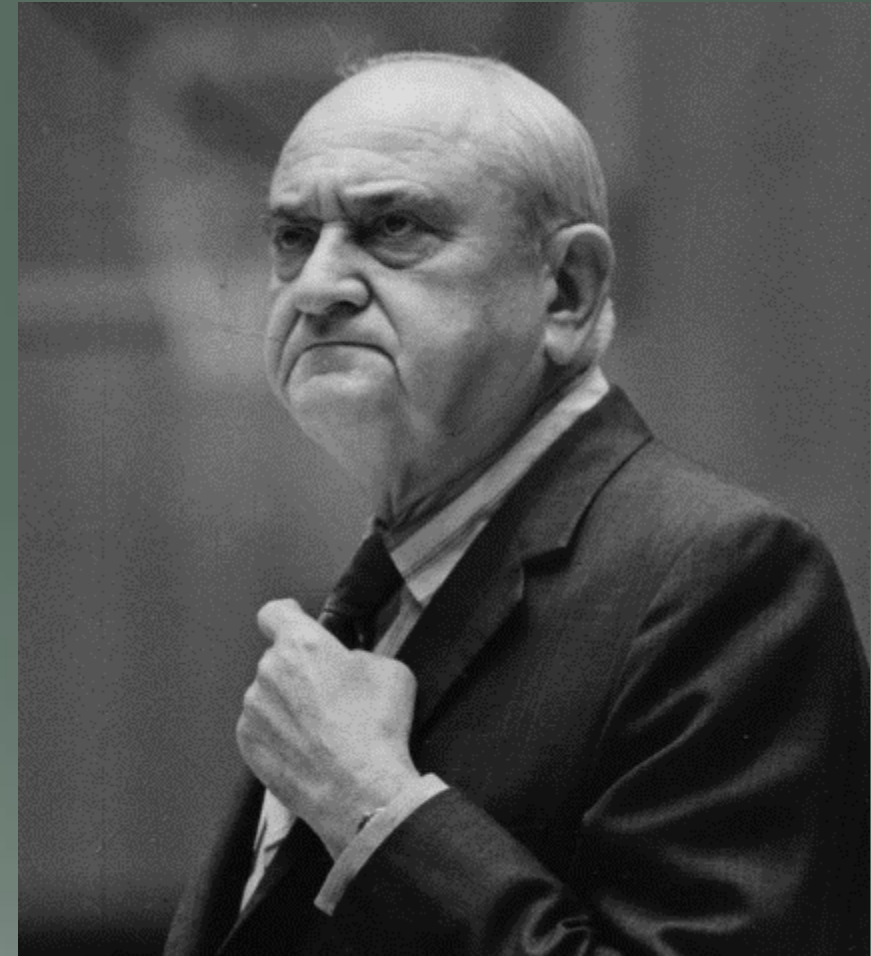
Selling the Benefits of Asset Management

- Prolonging asset life
- Improving decisions about asset rehabilitation and replacement
- Setting rates based on sound operational and financial planning
- Meeting regulatory requirements
- Improving responses to emergencies
- Reducing overall costs for both operations and capital



Five Core Questions

1. What is the current state of my assets?
2. What is required level of service?
3. Which assets are critical?
4. When to repair or rehabilitate or replace?
5. What is long-term funding strategy?



1. What is the current state of my assets?

- a. What do I own?
- b. Where is it?
- c. What condition is it in?
- d. What is its remaining useful life?

1. What is the current state of my assets?



Plan on multi-year effort to identify assets



Use what you already have: maps, accounting records, and as-built drawings



Focus on “what wakes you up at night”



Identify what will need attention during the next five years

1. What is the current state of my assets?

- Source of Supply
- Treatment Plant
- Pumping Plant
- Chemical Feeds
- Transmission Pipes
- Storage Tanks
- Booster Stations



1. What is the current state of my assets?



- Distribution Pipes
- Valves
- Hydrants
- Meters
- Vehicles and Equipment

1. What is the current state of my assets?

Don't forget your back-office assets.



- Telemetry System
- Mapping System
- Accounting System
- Billing System
- Communications System

1. What is the current state of my assets?

Don't attempt it alone.

Get advice and assistance from retirees and field personnel.



1. What is the current state of my assets?



Gather identifying information:

- ✓ Make
- ✓ Model
- ✓ Serial Number
- ✓ Location
- ✓ Take photos.

1. What is the current state of my assets?

Develop your own evaluation scale:

- ✓ Routine maintenance needed.
- ✓ Rehabilitation needed.
- ✓ Replacement needed.

2. What is required level of service?



What do my customers expect?



What do regulators require?



What is my actual performance?



2. What is required level of service?

Example: Water Main Break Frequency

- a. What do my customers expect?
- b. What do regulators require?
- c. What is my actual performance?

2. What is required level of service?

Example: Water Pressure

- a. What do my customers expect?
- b. What do regulators require?
- c. What is my actual performance?





2. What is required level of service?

Example: Fire Hydrants

- a. What do my customers expect?
- b. What do regulators require?
- c. What is my actual performance?

2. What is required level of service?

Example: Meter Accuracy

- a. What do my customers expect?
- b. What do regulators require?
- c. What is my actual performance?



3. Which assets are critical?



How does it fail?



What is the likelihood of failure?



How much advance notice is there of imminent failure?



What are the consequences of failure?

3. Which assets are critical?



How does it fail?

- ✓ It rusts.
- ✓ It just stops.
- ✓ Slowly at first, then rapidly.
- ✓ It bursts into flames.

3. Which assets are critical?

What is the likelihood of failure in next five years?

- ✓ Not Likely
- ✓ Possible
- ✓ Likely



3. Which assets are critical?



How much advance notice is there of imminent failure?

- ✓ Like a tornado, less than one hour
- ✓ Like a hurricane, three to five days
- ✓ Like climate change, several years

3. Which assets are critical?

What are the consequences of failure?

- ✓ Routine
- ✓ Emergency
- ✓ Extreme
- ✓ Catastrophic



4. When to repair, rehabilitate, or replace?



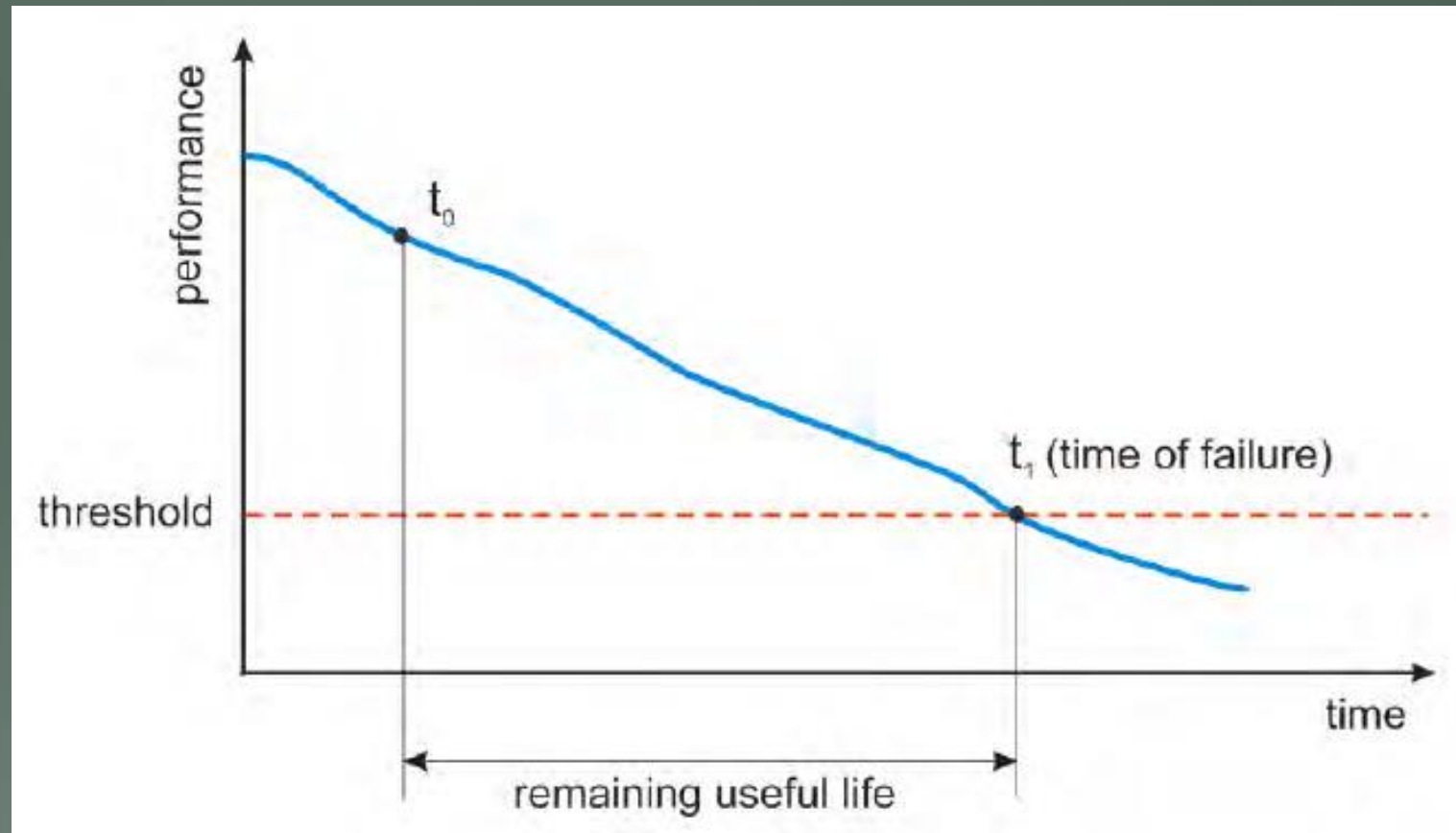
a. How much time and money does repair take?

b. How much time and money does rehabilitation take?

c. How much time and money does replacement take?

4. When to repair, rehabilitate, or replace?

- a. How long does repair last?
- b. How long does rehabilitation last?
- c. How long does replacement last?



Building an Asset Management Plan

Considering:

1. Current state of assets
2. Level of service required
3. Which assets are critical
4. When to repair, rehabilitate, or replace

Build a Five-Year Plan:

- ✓ What new maintenance needs to be scheduled
- ✓ What assets need to be rehabilitated
- ✓ What assets need to be replaced



5. What is long-term funding strategy?

- a. Transaction Approach: Lump as much as possible into a “capital project” for grants and loans and accompanying rate increase.
- b. Asset Management Approach: Look at revenues and requirements over multiple years using mix of debt and rates.

KY PSC Approach to Ratemaking

- Utilities are being ordered to perform rate studies.
- Rate studies compute revenues required to recover operating expenses, debt service, and depreciation.
- Current rates typically recover operating expenses and debt service.
- *New rates include depreciation.*
- Depreciation funds can be used reactively or proactively.



How to Use Depreciation Funds

Concept of Depreciation and Depreciation Reserve Fund

The concept of depreciation refers to the gradual decrease in the value of the capital stock either through the physical tear and wear, obsolescence or changes in demand for services of the capital.

Tutor's Tips



Proactive vs Reactive Strategies

More Information Online WWW.DIFFERENCEBETWEEN.COM

	Proactive Strategies	Reactive Strategies
DEFINITION	Proactive strategies are the strategies a company uses to anticipate possible challenges and threats	Reactive strategies are the strategies a company uses to respond to some unanticipated event only after it occurs
USE	Reacts to anticipated challenges	Helps to deal with unexpected situations
EFFORTS FOR CRISIS MANAGEMENT	Can reduce the effort a company makes for crisis management	Will not take any effort until a crisis happens
TIME PERIOD	Applicable for anticipated threats, challenges and future conditions	Applicable to the current situation

KY PSC Approach to Ratemaking

- New rates may also include a water loss reduction surcharge.
- Established during a rate case at request of utility.
- Cost of purchased water, power, and chemicals above 15% water loss excluded from rates.
- May be recovered via fixed amount per bill for 48 months.
- Use limited to certain projects.
- Expenditures subject to prior approval by KY PSC.



Recommended Approach

Build a five-year asset management financing plan using:

Sources and Uses of Funds	Maintenance Budget	Water Loss Surcharge *	Depreciation Funds	Loan Proceeds
Maintenance	✓	✓	✓	
Rehabilitation		✓	✓	✓
Replacement		✓		✓

* Subject to prior approval by KY PSC

5. What is long-term funding strategy?

- Start with the Income Statement from most recent PSC Annual Report.
- Make known and measurable adjustments to revenues and maintenance expenses.
- Project out for five years.



5. What is long-term funding strategy?

Determine Cash
Generated from
Operations for next
five years.



5. What is long-term funding strategy?

Identify and sequence planned capital improvements.



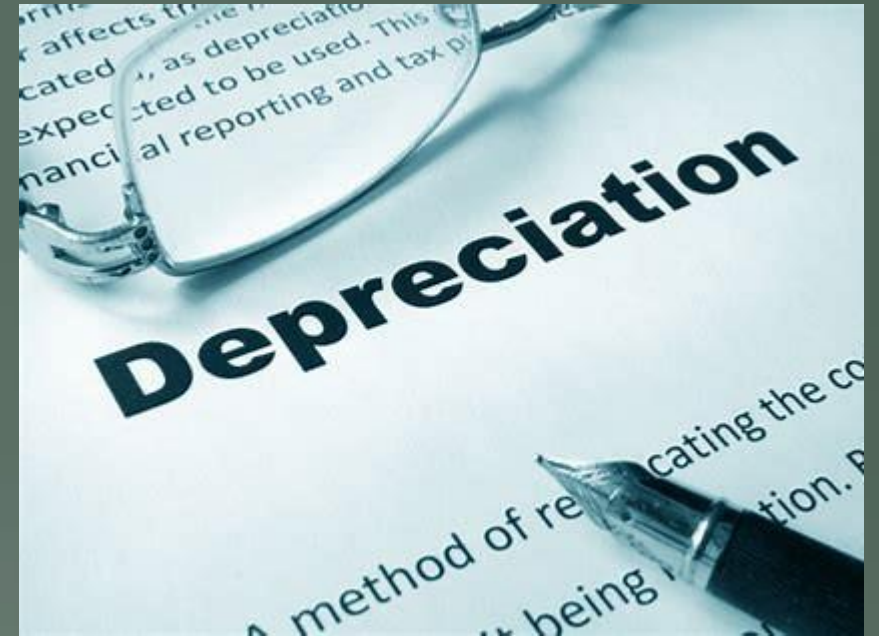
5. What is long-term funding strategy?

Assign to targeted year and increase for inflation.



5. What is long-term funding strategy?

- a. Assign useful lives and compute new depreciation.
- b. Link to Income Statement.



5. What is long-term funding strategy?

Pull it all together into a financial plan.



5. What is long-term funding strategy?

Determine how much borrowing is necessary to ensure funding of operating reserve with positive ending cash balance.

5. What is long-term funding strategy?

*Reduce size of capital program if necessary.
Plan on preparing multiple iterations of financial plan.*



Is There a Spreadsheet Model Available?

Beta version available from KRWA!

What Does KY PSC think of this?

- ✓ Commission supports asset management approach.
- ✓ Commission has not yet considered a rate case for a rural water utility based on asset management approach.
- ✓ *Discussions underway!*



Questions?

Environmental Law Hot Topics
Kentucky Rural Water Association October 2024 Seminar

Presenters: Sarah Jarboe
Joye Beth Spinks
English Lucas Priest & Owsley, LLP

1. Lead & Copper Rule

- a. On December 6, 2023, EPA published its National Primary Drinking Water Regulation: Lead and Copper Rule Improvements. This proposed rule:
 - i. Requires replacement of all lead service lines within 10 years;
 - ii. Lowers lead action level from 15 micrograms per liter to 10 micrograms per liter;
 - iii. Requires water systems to regularly update lead service line inventories;
 - iv. Changes tap sampling protocols;
 - v. Requires water systems with multiple lead action level exceedances to conduct additional outreach to consumers; and
 - vi. Prioritizes historically underserved communities.
- b. The Lead and Copper Rule Revisions require water systems to create and maintain an inventory of service line materials. Initial inventories were required to be submitted to state primacy agencies by October 16, 2024.

2. PFAS

- a. In January 2024, EPA finalized methods to better test PFAS in water:
 - i. Final EPA Method 1633, a method to test for 40 PFAS in wastewater, surface water, groundwater, soil, biosolids, sediment, landfill leachate, and fish tissue.
 - ii. Final EPA Method 1621, which can broadly screen for the presence of chemical substances that contain carbon-fluorine bonds, including PFAS, in wastewater.
- b. On April 8, 2024, EPA issued updated Interim Guidance on the Destruction and Disposal of Perfluoroalkyl and Polyfluoroalkyl Substances and Materials Containing Perfluoroalkyl and Polyfluoroalkyl Substances.
 - i. Builds on guidance issued in 2020.
 - ii. Although novel technologies for removing PFAS from drinking water sources and groundwater are being developed, current processes known to be effective are activated carbon, anion exchange resins, and high-pressure membranes (reverse osmosis and nanofiltration).
 - iii. EPA details destruction and disposal options for residuals from these processes that contain PFAS.

- iv. The guidance also provides a technology evaluation framework to help analyze the safety and effectiveness of new destruction and disposal technologies, and notes the need for innovation, research, and validation.
- c. On April 10, 2024, EPA released new Maximum Contaminant Levels (MCLs) for six PFAS related chemicals: PFOA, PFOS, PFHxS, PFNA, HFPO-DA (GenX Chemicals) and mixtures of two or more of PFHxS, PFNA, HFPO-DA and PFBS.
 - i. Public water systems must monitor for these PFAS and have three years to complete initial monitoring (by 2027), followed by ongoing compliance monitoring. Water systems must also provide the public with information on the levels of these PFAS in their drinking water beginning in 2027.
 - ii. Public water systems have five years (by 2029) to implement solutions that reduce these PFAS if monitoring shows that drinking water levels exceed these MCLs.
 - iii. Beginning in five years (2029), public water systems that have PFAS in drinking water which violates one or more of these MCLs must take action to reduce levels of these PFAS in their drinking water and must provide notification to the public of the violation.
- d. On July 8, 2024, EPA's final rule designating PFOA and PFOS as hazardous substances under CERCLA went into effect.
 - i. This designation allows EPA to use its CERCLA enforcement authorities, as appropriate and where relevant statutory elements are met, which could shift CERCLA response costs from the Superfund to PRPs.
 - ii. The rule requires entities to immediately report releases of PFOA and PFOS that meet or exceed the reportable quantity to the National Response Center, state emergency response commission, and the local emergency planning committee (local emergency responders).
 - 1. Owners or operators of the facility from which the reportable release occurred must provide reasonable notice to potential injured parties by publication in local newspapers serving the affected area.
 - iii. Facilities do not have to report past releases.
 - iv. EPA PFAS Enforcement Discretion Policy
 - 1. On April 19, 2024, EPA issued its PFAS Enforcement Discretion and Settlement Policy under CERCLA.
 - 2. EPA will focus on holding responsible entities who significantly contributed to the release of PFAS into the environment, including parties that manufactured PFAS or used PFAS in the manufacturing process, federal facilities, and other industrial parties.
 - 3. EPA does not intend to pursue entities where equitable factors do not support seeking response actions or costs under CERCLA, including, but not limited to, community water systems and publicly owned treatment works, municipal separate storm sewer systems, publicly owned/operated municipal solid waste landfills, publicly

- owned airports and local fire departments, and farms where biosolids are applied to the land.
4. EPA may extend enforcement discretion to additional parties even if they do not fall within the categories listed above, based on the equitable factors set forth in the policy.
 - v. A proposed rule regarding PFAS Requirements in NPDES Permit Applications is expected by June 2025.
3. Waters of the United States (WOTUS) Update
- a. *Sackett v. Environmental Protection Agency*, 143 S. Ct. 1322 (2023)
 - i. Update on EPA/US Army Corps of Engineers response to *Sackett*
 1. EPA Conforming Rule
 2. EPA and U.S. Army Corps of Engineers (USACE) joint coordination memorandum – September 27, 2023
 3. EPA and USACE joint coordination memorandum for the pre-2015 regulatory regime - September 27, 2023
 4. EPA and USACE Coordination Process Update – April 30, 2024
 5. EPA and USACE Extension of Joint Coordination Memoranda – June 25, 2024
 - ii. Updates on WOTUS Litigation in the aftermath of *Sackett*
 1. Eastern District of Kentucky
 2. Southern District of Texas
 3. District of North Dakota
 - b. Impact of *Sackett* and the WOTUS Conforming Rule on Kentucky Pollutant Discharge Elimination System (KPDES) Permitting
 - i. KRS 224.16-050(4)
 - ii. 401 KAR 5:055 § 2(1)
 - iii. 401 KAR 5:055 § 4(4)
4. CWA 401 Water Quality Certification Rule
- a. Went into effect on November 27, 2023
5. CWA 402 – NPDES/KPDES Permits
- a. *County of Maui, Hawaii v. Hawaii Wildlife Fund*, 140 S.Ct. 1462 (2020) – NPDES Permit required when there is a “functional equivalent” of a direct discharge from a point source to navigable waters.
 - b. On November 27, 2023, EPA issued Draft Guidance regarding application of *Maui* in the NPDES permit program.
 - i. Incorporates *Maui* Factors
 - ii. CWA is a strict liability statute – intent is not relevant.

- iii. Draft guidance urges facilities with discharges to groundwater to analyze whether those discharges reach WOTUS.

6. Risk Management Program Update

- a. On March 11, 2024, EPA published the Risk Management Program Safer Communities by Chemical Accident Prevention Final Rule.
- b. Overview of the Rule requirements
- c. There are many compliance deadlines under this rule between May 10, 2024, and May 10, 2028.
 - i. Next deadline: December 19, 2024 – complete first annual emergency response notification exercise.

7. *Loper Bright* – The end of *Chevron* Deference

- a. What is *Chevron* deference? In 1984, the Supreme Court ruled in *Chevron v. Natural Resources Defense Council* that courts should defer to a federal agency’s interpretation of an ambiguous statute if the interpretation is reasonable.
- b. *Loper Bright Enterprises v. Raimondo*, 467 U.S. 837 (2024).
 - i. In *Loper Bright*, a group of commercial fishing companies challenged a rule issued by the National Marine Fisheries Service. The companies asked the Supreme Court to either overrule *Chevron* or clarify that when a law does not address “controversial powers expressly but narrowly granted elsewhere in the statute,” there is no ambiguity in the statute, and therefore no deference is required.
 - ii. Supreme Court held it was the function of courts, not agencies, to interpret statutes.
 - 1. Where a statute is ambiguous, courts can give respect to an agency’s interpretation, but they are not required to defer to agency interpretations.
 - 2. Prior cases relying on *Chevron* remain lawful and are not called into question by this decision.
- c. Response to *Loper Bright* and potential impacts

Relations with the Public Service Commission

Best Practices for Maintaining Positive Interaction

October 24, 2024

**Tina Frederick
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Under Discussion

1. Challenges faced by Commission and Staff
2. The importance of reading, understanding, and following Commission Orders
3. Common Mistakes
4. When and how to request an expedited decision
5. What to expect once an application is filed
6. Compliance with regulatory filing deadlines





DISCLAIMER



Challenges Faced by PSC and Its Staff

1. The only licensed engineer at the PSC is the Executive Director.
2. Reduced Staff
 - 2003: 135 Employees
 - 2024: 94 Employees (Up from a low of 65 in 2018-2019)



Challenges Continued

3. Employee Turnover

- Institutional Memory Lost/Less Continuity
- Less Experienced Workforce
- New Division Leaders 2023 - 2024
 - New General Counsel
 - New Director of Financial Analysis
 - New Director of Division of Inspections

4. Tighter Budgets- fewer training opportunities, BUT

- Commission is addressing this
- Utilizing less expensive on-line training
- Bringing retired former staff back as consultants to facilitate training



Challenges Continued

5. Increase in Siting Board Cases
 - “Solar Farms” built by private industry not public utilities
6. Subject matter becoming more complex
7. Number of cases
 - Steady at greater than 400 cases filed every year.
8. **Adoption of KRS 278.019**
 - Imposed an 8-month statutory deadline



Read, Understand, and Follow All Commission Orders

- Even routine (PWA) Orders may contain provisions they have not contained in the past
- Make sure Utility management reads EVERY Order and sends it to ALL Commissioners
 - Not just the Chairman
 - Keep regulatory email address up to date and check it regularly
 - Consider automatically forwarding email coming to the regulatory email address to all Commissioners



Commission Orders Continued

- Make sure to read all the way to the end.
 - Does the Order require the utility to do something?
 - When?
 - Do you understand what is being asked of your utility?
 - Seek your attorney's input sooner rather than later

Most filings at the Commission must be made by an attorney. There are exceptions.



Commission Orders Continued

- Do what the Order requires, when it is required.
- If there is truly some extenuating circumstance making compliance by the deadline impossible, inform the Commission sooner, rather than later.
 - Ask your attorney to file a Motion for an Extension of Time.



Common Mistakes

- Failure to Read Applicable Statutes and Regulations
- Failure To Review And Follow Filings Checklists
- Failure to Review Past PSC Decisions
- Failure To Provide PSC With Adequate Time For Review
- Assuming PSC Knows Past History/Relevant Facts



Common Mistakes Continued

- Assuming Documents From Another PSC Case, the PSC's Division of Inspections, Or Another Agency Are In The Record Or Are Available To PSC Legal Staff
- Assuming the PSC Staff Is Aware of The Relevant Issues (Local/National/Industry)
- Failure To Give Proper Notice
- No Signature
- No Attorney/Unprepared Attorney

Common Mistakes Tariff Filings

- No Signature On Tariff Sheets
- No Effective Date
- Failure to Use Correct Tariff Format
- Failure To Give Proper Notice
- Failure to Adequately Explain Reasons for Proposed Rule Or Rate **AND** to Document Those Reasons **GOAL: AVOID SUSPENSION**



To Avoid Tariff Filing Mistakes

- Download/Use PSC Forms
- Provide Signature/**Effective Date**
- Notice – Timing (Provide at least 30 days Notice)
- Cover Letter Should Provide Lengthy Explanation for Rate/Rule
- Provide Supporting Documents (What Would Staff Want/Need To Know?)



Common Mistakes

Certificates of Public Convenience and Necessity

- Unsigned, undated plans and specs
- Timing – “We need an Order By Next Week!”
- Failure to Explain the Need for the Construction
 - Even with something like replacing AC waterline, don’t assume Staff will know why this is needed.
- Failure to Consider and Describe the Available Alternatives/Least Cost Alternative
- Failure to Explain Project’s Financing
- Compliance with Bidding Statutes



Avoid CPCN Delays/Denials

- Make sure your attorney reads and understands the **Statutes**,
 - KRS 278.020
 - Governs CPCN applications
 - Do the exceptions in KRS 278.020(1)(a)(3) apply?
 - KRS 278.300
 - Governs financing applications
- And the **Regulations**
 - 807 KAR 5:001, Section 15 (CPCN Applications)
 - 807 KAR 5:001, Section 18 (Financing Applications)



Avoid CPCN Delays/Denials

- Make sure engineering plans, specs and drawings are stamped, signed, and dated.
- Thoroughly explain the need for the project
 - What is the problem
 - Provide documentation of the problem
 - Consider filing testimony of Manager/Chairman



Avoid CPCN Delays/Denials

- MUST discuss alternatives considered
 - Describe the alternative.
 - Explain why the alternative you are pursuing is the best alternative.
 - Explain how the project will be financed even if you are not also applying for financing approval.
 - State the effect on rates.



Getting an Expedited Order

- Have realistic expectations
 - Orders in 30 days or less are usually just not possible unless filing under KRS 278.023 (federally funded projects)
 - Clearly state the date by which you need the Order on the first page of the application. Put the date in **Bold.**
 - Explain why the Order is needed by that date
 - Bids expiring?
 - Another reason?



Expedited Orders

- Restate the request for an Order by a certain date in the prayer for relief. Put the request in **Bold**.
- Once the application is filed and you get the “no deficiency” letter, consider contacting the Executive Director or the General Counsel and letting them know the application was filed with a request for an expedited Order



Application Processing Expectations

- Deficiency/No Deficiency Letter
 - Cure any filing deficiency as soon as possible
 - If you do not understand the stated reason for the deficiency, contact the Executive Director/General Counsel
- Procedural Schedule
 - Used more than in the past
- Data Requests
 - **Expect to get them!**



Application Processing Expectations

- Data Requests
 - Respond completely and on time.
 - If there is good reason why a response by the due date is not possible, have your attorney **file a motion** explaining why and requesting additional time.
 - If you have some responses ready to file but need more time for the rest, state that in the motion and file what you have ready.

Filing of Annual Reports

- Commission has become very strict regarding the March 31 deadline
 - Speak with your auditor/accountant or person responsible for filing. Just because they have always filed in June and not had a problem, does not mean that will be acceptable now.
 - Do not file blank reports
 - Request extensions in writing, addressed to the Executive Director.

Annual Reports

- If you have been ordered to file a rate case using a particular year's annual report, or by a date by which the annual report for the most recent calendar year is due:
 - Make EVERY effort to file the annual report by the regulatory deadline of March 31st
 - Do not assume an extension will be granted for the annual report or the rate case.



General Recommendations

- Know your utility's history at the Commission
- Before filing an application, check the Commission's recent decisions in similar cases
 - Processing timeline?
 - Amount and type of data requests?
 - Any language in the final Order that would guide you?



General Recommendations

- Be candid with staff and the Commission.
- Use the Filings Checklists on the Commission's website.
- Remember, the Commission is a regulatory agency, not your enemy





QUESTIONS?

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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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P.L.L.C.



QUESTIONS?



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