

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF)
KENTUCKY RURAL WATER)
ASSOCIATION FOR ACCREDITATION) CASE NO. 2025-00008
APPROVAL OF COMMISSIONER)
TRAINING AND CONTINUING)
EDUCATION CREDIT)

APPLICATION

Kentucky Rural Water Association (“KRWA” or the “Applicant”) applies for an Order from the Public Service Commission accrediting and approving a proposed water district commissioner training program for continuing education credit pursuant to KRS 74.020(6) and (7) and 807 KAR 5:070.

In support of its application, KRWA states:

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

25,000 or less service connections, or other similar entities that provide water and wastewater utility services to rural Kentucky.

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

Damon Talley
Stoll Keenon Ogden PLLC
112 North Lincoln Boulevard
PO Box 150
Hodgenville, Kentucky 42748
Telephone: (270) 358-3187
Fax: (270) 358-9560
damon.talley@skofirm.com

Janet Cole
Kentucky Rural Water Association
1151 Old Porter Pike
Bowling Green, KY 42103
(270) 843-2291
Fax: (270) 796-8623
j.cole@krwa.org

5. KRWA proposes to sponsor and conduct an in-person only water management training program on February 19, 2025, as part of our Management Conference at the Sloan Convention Center located at 1021 Wilkinson Trace, Bowling Green, Kentucky. The Program is entitled “Water District Commissioner Training.” A copy of the proposed agenda is attached to this Application at **Exhibit 1**.

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

¹ On January 13, 2025, KRWA gave notice pursuant to 807 KAR 5:001, Section 8, of its intent to file this application and of its use of electronic filing procedures.

a. **Board Members' Duties and Responsibilities.** This presentation will provide general and specific duties of a Board Member and their role in governing the affairs of their utility. Discussion will include paying bills, budgets, Board meetings and meeting minute-keeping practices, and oversight roles of both the General Manager and the Board;

b. **Municipal Wholesale Rates.** This presentation will provide insight into PSC decisions involving municipal wholesale rates to water districts and associations. Topics will include historical background, rules and procedures governing whole rate adjustments, and costs involved;

c. **Relations with the Public Service Commission: Best Practices for Maintaining Positive Interaction.** This presentation will provide best practices for utilities to undertake to ensure effective relations with the Commission. Topics will include challenges currently faced by the Commission, review and compliance with Commission orders, common mistakes, what to expect once an application is filed, and compliance with regulatory filing deadlines;

d. **What to expect During a PSC Inspection.** This presentation will provide an overview of the Kentucky Public Service Commission periodic inspections. Presenter will include an overview of the inspection process; common issues that may be identified during an inspection, and ways to improve inspection outcomes;

e. **Questions That Water and Wastewater Utility Boards Should Ask About Their Utility's Finances.** This presentation will provide practical tools and

recommended practices for utility boards and management to prepare and present utility financial information. Topics will cover timelines and accuracy of information, financial objectives, billing of accounts according to tariffs in place, banking access, clarity and reliability of financial statements, internal controls, and audit reports;

f. **Basic Procurement Law for Governmental Water Utilities.** This presentation will provide requirements PSC governed utilities must comply with when making purchases. Topics will include the bidding statute, including a discussion of professional services and the requirements for professional services versus other utility purchases, cooperative purchasing, statutory preferences, and procurement issues with state and federally funded projects.

7. 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. **KRWA is not requesting that the proposed training program be accredited as a program of instruction for newly appointed commissioners.**

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

9. The written materials that will be provided are attached at **Exhibit 3**. Should a presenter revise or amend his or her presentation prior to their scheduled session or provide additional written materials for the attendees, KRWA will include a

copy of the revised presentation with their sworn statement and report regarding the instruction.

10. KRWA will apply or will shortly apply for accreditation of the proposed training program to the Department of Environmental Protection (Operator Certification and Licensing Program).

11. KRWA has sent notice of the proposed training program by electronic mail to the water districts, water associations, and municipal utilities that are under Commission jurisdiction as well as representatives of investor-owned utilities, county judge/executives, and others who are believed to have an interest in the proposed program's subject matter.

12. KRWA will retain a record of all water district commissioners attending the proposed training program.

13. Within the Ordered number of days of the proposed training program's completion, KRWA will file with the Public Service Commission a sworn statement:

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

14. KRWA will include with the sworn statement documentary evidence of the program's certification by certifying authorities and a copy of any written

material given to the attendees that has not been previously provided to the Public Service Commission.

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

WHEREFORE, KRWA requests that the Commission approve and accredit the proposed training program entitled "Water Commissioner Training" for six hours of water district management training.

Dated: January 16, 2025

Respectfully submitted,



Damon R. Talley
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Counsel for Kentucky Rural Water
Association and Stoll Keenon Odgen
PLLC

CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, I certify that this document was submitted electronically to the Public Service Commission on January 16, 2025, and that there are currently no parties that the Public Service Commission has excused from participation by electronic means in this proceeding.


Damon R. Talley

EXHIBIT 1

Proposed Agenda

Water District Commissioner Training

Sloan Convention Center

1021 Wilkinson Trace
Bowling Green, Kentucky

Presented by

Kentucky Rural Water Association

February 19, 2025

Wednesday, February 19, 2025

Morning Sessions

7:55 – 8:00 **Welcome and Program Overview – Scott Young, Executive Director, Kentucky Rural Water Association**

8:00 – 9:00 **Board Members' Duties and Responsibilities**
Damon Talley, Stoll Keenon Ogden, PLLC
Learn the general and specific duties of a board member and their role in governing the affairs of the utility. The presenter will discuss what the Board should expect from its General Manager and what the General Manager should expect from the Board. Tips for avoiding conflicts of interest, keeping minutes of Board meetings, the need to adopt and comply with Board policies, and compliance with PSC Orders will also be explained.

9:00 – 9:15 **BREAK**

9:15 – 10:15 **Municipal Wholesale Rates**
Damon Talley and Tina Frederick, Stoll, Keenon, Ogden, PLLC
This session will provide insight into significant PSC decisions involving municipal wholesale rates to water districts and associations. Presenters will outline rules and procedures governing wholesale rate adjustments and will provide suggestions for expediting this process. Learn which tactics produce successful results and which ones should be avoided.

10:15 – 10:30 **BREAK**

10:30 – 11:30 **Relations with the Public Service Commission: Best Practices for Maintaining Positive Interaction**
Tina Frederick, Stoll Keenon Ogden, PLLC
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.

11:30 – 1:00 **LUNCH BREAK**

Wednesday, February 19, 2025

Afternoon Sessions

- 1:00 – 2:00** **What to Expect During a PSC Inspection**
Jason Pennell, Kentucky Rural Water Association
PSC inspections are one of the primary ways utilities interact with the Public Service Commission. This session will provide an overview of the Kentucky Public Service Commission periodic inspections. Discussion will include an overview of the inspection process; common issues that may be identified during an inspection; and how the utility can improve inspection outcomes.
- 2:00 – 2:15** **BREAK**
- 2:15 – 3:15** **Questions That Water and Wastewater Utility Boards Should Ask About Their Utility's Finances**
Robert K. Miller, StraightLine Kentucky
Johnnie Baum, Lebanon Water Works Company
Water utility board meeting agendas typically include a review of the utility's finances. This may include an income statement and a list of invoices paid during the previous month. While this information is necessary and appropriate for staff to prepare in anticipation of the annual audit and financial report, it may not provide sufficient information for commissioners and elected officials to assess the financial health of the utility. This presentation is intended to provide practical tools and recommended practices for water utility boards and management to prepare and present utility financial information.
- 3:15 – 3:30** **BREAK**
- 3:30 – 4:30** **Basic Procurement Law for Governmental Water Utilities**
Gerald Wuetcher, Stoll Keenon Ogden, PLLC
Utilities governed by the PSC have rules they must follow when purchasing goods and services. This session will explain the requirements utilities have to comply with when making purchases. Topics covered in this presentation will include the bidding statute, a discussion of professional services and the requirements for professional services versus other utility purchases, cooperative purchasing, statutory preferences, and procurement issues with state and federally funded projects.
- 4:30 – 4:35** **Closing Remarks – Scott Young, Executive Director, Kentucky Rural Water Association**

EXHIBIT 2

Speaker Qualifications and Credentials

Johnnie Baum is the Chief Financial Officer at Lebanon Water Works Company and Springfield Water and Sewer Commission, where he manages financial planning and reporting in addition to other duties. With over 13 years of finance experience in the water industry, Johnnie works to ensure financial data is presented clearly in order to make proper business decisions. He holds bachelor's degrees in accounting and finance from Indiana University and is a Certified Public Accountant (CPA).



Tina Frederick

Stoll Keenon Ogden PLLC

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[859.231.3951](tel:859.231.3951)

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.



Robert K. Miller

StraightLine Kentucky

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 Bachelor and Master degrees in business management and finance.

Qualifications and Experience

StraightLine Kentucky, Louisville, KY

2021 – Present Consultant

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

City of Jackson, Mississippi

2017 – 2020 Director of Public Works

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

Sewerage and Water Board of New Orleans, Louisiana

2009 – 2017 Deputy Director / Interim Executive Director

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

Municipal and Financial Services Group, Maryland

2008 – 2009 Senior Manager

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

Louisville Water Company, Kentucky

1991 – 2008 Vice President

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



BIOGRAPHY

Jason Pennell **Kentucky Rural Water** **Association**

Jason Pennell joined the Kentucky Rural Water Association staff in August, 2017, as a project specialist. Jason's primary duties are focused on the Energy Program but he also assists on other training and technical assistance programs. Jason's experience in the water and wastewater business began in Whitesburg (Veolia Water) in 2005. There he worked as a meter reader, water treatment plant operator, laboratory manager, operations manager and from 2012-2014 he served as the Chief Operator. Most recently (2014-2017), Jason was a Utility and Regulatory Investigator for the Kentucky Public Service Commission. He holds Kentucky certifications/licenses as follows: Class IIIA Water Treatment Operator, Class II Water Distribution Operator, Class II Wastewater Treatment Operator, Class II Collection System Operator, and is certified in Pipeline and Manhole Assessment by NASSCO.

Jason resides in Georgetown, Kentucky, with his wife, Bridget, and two sons, Bryson and Colton.



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

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

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

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

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

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



Gerald E. Wuetcher
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Emory University, J.D.
Johns Hopkins University, B.A.

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

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

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

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

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

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

EXHIBIT 3

Presentations and Materials

**2025 Management Conference
February 19, 2025**

**Jason Pennell
Kentucky Rural Water Association**

What to Expect During a PSC Inspection



Today's Topics

- Division of Inspections
- Inspection Process
- Areas of Concern
- Water Loss

PSC Mission Statement

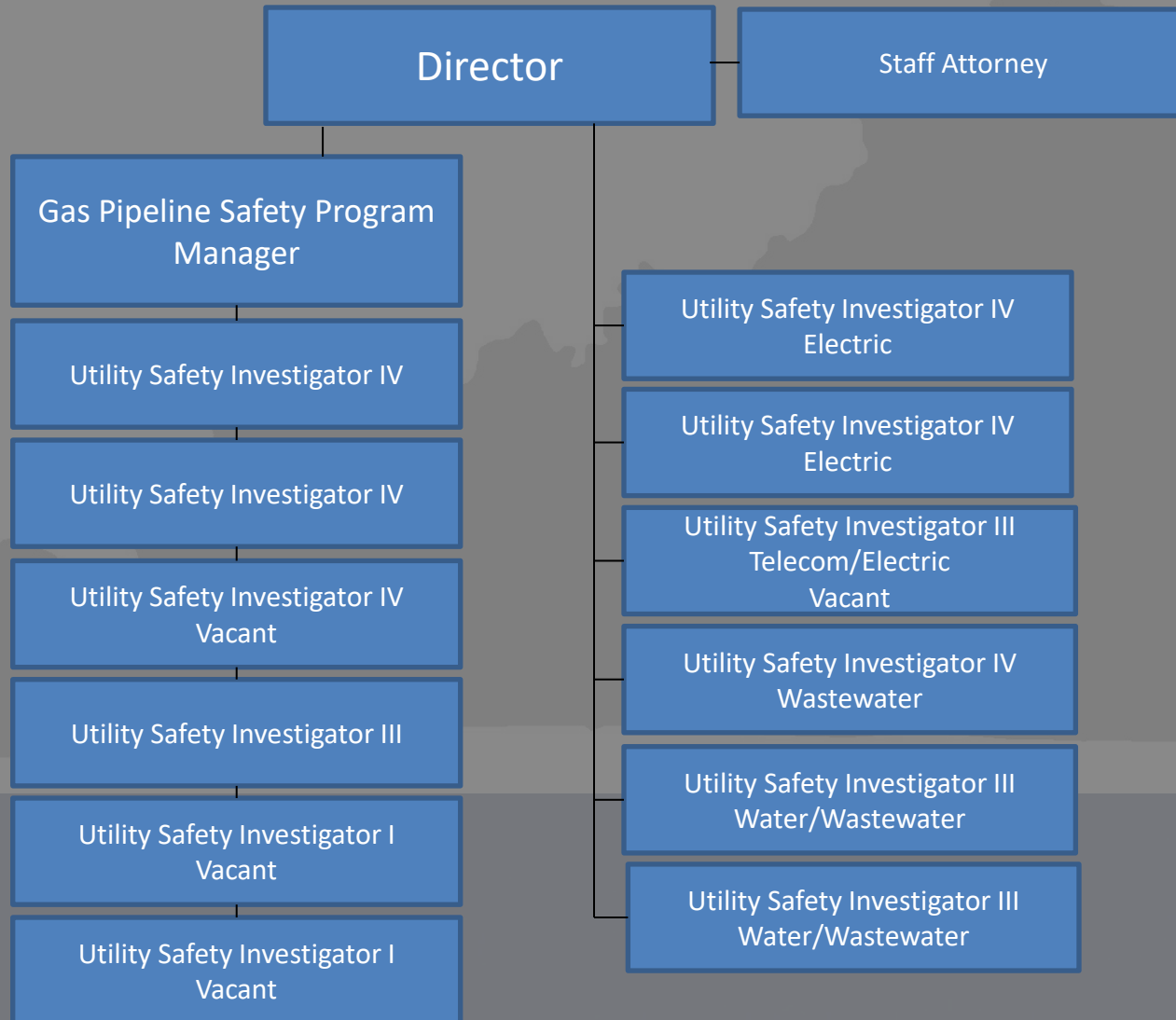
- To foster the provision of safe and reliable service at a reasonable price to the customers of jurisdictional utilities while providing for the financial stability of those utilities by setting fair and just rates, and supporting their operational competence by overseeing regulated activities.

Water and Wastewater Utilities Under PSC Jurisdiction

- Investor-owned utilities
- Water districts
- Water associations
- Municipal water utilities BUT only the wholesale rates for water sold to a utility under full PSC jurisdiction
- Wastewater utilities – No municipalities*

* KRS 278.010(3) excludes “a city” from the definition of a “Utility”

Division Of Inspections



Regulated Water Utilities

- In 2023, the PSC received annual reports from 116 of 138 drinking water utilities throughout the state serving residential, commercial and industrial customers:
 - 5 Investor-Owned – AMB \$ 65.97
 - 17 of 20 Water Associations – AMB \$ 43.85
 - 94 of 112 Water Districts – AMB \$ 51.57
 - 731,206 Customers
- \$ 471,384,883 Total Revenues
- 632,349,509,000 gallons sold

* Source - 2023 annual reports submitted to the Kentucky Public Service Commission



Regulated Wastewater Utilities

- In 2023, the PSC received annual reports from 32 of 53 wastewater utilities throughout the state serving residential, commercial and industrial customers
- 36,644 Customers
- Total Revenues \$ 26,062,601
 - Residential AMB - \$ 44.87
 - Commercial AMB - \$ 97.32
 - Industrial AMB - \$ 3,214.60

Improving The Inspection Process

- Three investigators for the water and wastewater sectors
- IRS database
- Standard Operating Procedures
- Inspection cycle
- As of January 2019, now scheduled annually
- **Risk Assessment (Water Utilities)**
- Now collaborating with the Division of Water
 - Drinking Water and Wastewater Advisory Councils
 - Data sharing – Boil Water Advisories

Risk Assessment

- Seven Metrics
 - Number of deficiencies last inspection
 - Unresolved deficiencies
 - Excessive water loss %
 - Management/employee turnover
 - Inspector's subjective knowledge
 - Construction activity
 - Elapsed time since last inspection
- Higher point value will warrant more attention

Inspection Process

- Contact utility to set inspection date(s)
- Utility is provided a document list and inspection checklist
- Internal records review
 - Case history
 - Annual Reports/Water Produced/Purchased/Loss
 - Previous Inspections
- Go through inspections checklist, reviewing utility documentation at office
 - Line break logs
 - Fire Dept. usage
 - Pressure charts
 - Facility self-inspections (plant, tanks, manholes, etc.)

Inspection Process cont.

- Field Review
 - Plant
 - Tanks
 - Pump/lift stations
 - Construction projects
 - Safety/Security
- Exit Interview
- Inspection provided to utility approximately 30 days later

Inspection Process cont.

- Full internal review of inspections by executive staff and the commissioners
- Frequent internal discussion on cited deficiencies
- Utility given 30 days to respond to deficiencies
- Failure to respond or to correct deficiencies will result in initiation of formal action
 - Informal Conference
 - Show Cause Hearing

Areas of Concern

- **Water loss***

- Water Districts – 34.54% or 103 billion gallons
- Water Associations – 22.16% or 31 billion gallons
- Investor-Owned – 18.12% or 3 billion gallons

- Abandonment of Utilities

- Infrastructure

- Written documentation of facility inspection procedures and other required records

*Source - 2023 annual report statistics compiled by the Kentucky Public Service Commission

Water Loss

- Excessive water loss will be a primary focus of PSC interactions with water utilities
 - PSC's position is that excessive water loss poses a threat to the utility's financial and operational stability & viability
 - Point of emphasis at PSC training seminars
 - Water loss exceeding 15% will be cited as a deficiency by water system inspectors
 - Rate cases, purchased water adjustments, CPCNs and water financing cases will all include language on water loss in excess of 15%
 - A utility's inability or continued inaction to reduce water loss will lead to greater PSC attention

Water Loss

- Annual Reports are being reviewed to identify utilities with water loss in excess of 15% (61 systems reported > 15%)
- Deficient utilities will:
 - Be cited with 5:066, Section 7 – Standards of Construction
 - Receive letter copying water commissioners and where applicable, the County Judge Executive/Magistrates

Water Loss

“**Water loss**” means the sum of all water purchased and produced by the utility less the volume of water:

(a) Sold;

(b) Provided to customers without charge as authorized by the utility’s tariff; and

(c) Used by the utility to conduct the daily operation and maintenance of its treatment, transmission, and distribution systems.

807 KAR 5:095

Section 9. A utility that permits a fire department to withdraw water from its water distribution system for fire protection and training purposes at no charge or at reduced rates shall:

- (1) Require a fire department to submit quarterly reports demonstrating its water usage for the quarter; and
- (2) State in its tariff the penalty to be assessed for failure to submit the reports required by subsection (1) of this section.

Commission Orders

- The Commission is placing greater emphasis on monitoring utilities that consistently exceed the fifteen (15) percent water loss threshold and strongly encourages *Subject Utility* to pursue reasonable actions to reduce its water loss. Failure by *Subject utility* to make significant progress towards reducing water loss may cause the Commission to pursue additional action with the utility.

Suggestions

- Ensure accurate reporting
- Review and document water loss reduction efforts
- PSC will consider utility requests for surcharges to assist in financing water loss reduction efforts

Contact Information

Jason Pennell

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270-843-2291



Relations with the Public Service Commission

Best Practices for Maintaining Positive Interaction

February 19, 2025

**Tina Frederick
Stoll Keenon Ogden PLLC
tina.frederick@skofirm.com**

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?

Tina.frederick@skofirm.com



Questions that Water Utility Boards Should Ask About their Utility Finances

Bob Miller

Kentucky Rural Water
Association

Johnnie Baum

Lebanon Water Works
Company

Questions to Ask at Monthly Meeting with Management

What Expectations Should a Board Have for Financial Information?

- ✓ Timely enough to be relevant,
- ✓ accurate enough to be relied upon,
- ✓ interpreted enough to understand what has happened, and
- ✓ accompanied by recommendations for action.

**Is the Information Timely
Enough to Be Relevant?**

**Is the Information
Accurate Enough to Be
Relied Upon?**

**Is the Information
Interpreted Enough to
Understand What Has
Happened?**

**Does Management Provide
Recommendations for
Necessary Actions?**

Financial results should be considered in terms of financial objectives.

1. *Are We Reading All of Our Meters?*

**2. Are We Billing All of Our
Accounts According to
Tariff?**

3. Are We Collecting What We Are Billing?

4. How Much Money Do We Have Unrestricted Access to In the Bank?

**5. How Much Money
Did We Take In Versus
How Much Did We Spend
Last Month?**

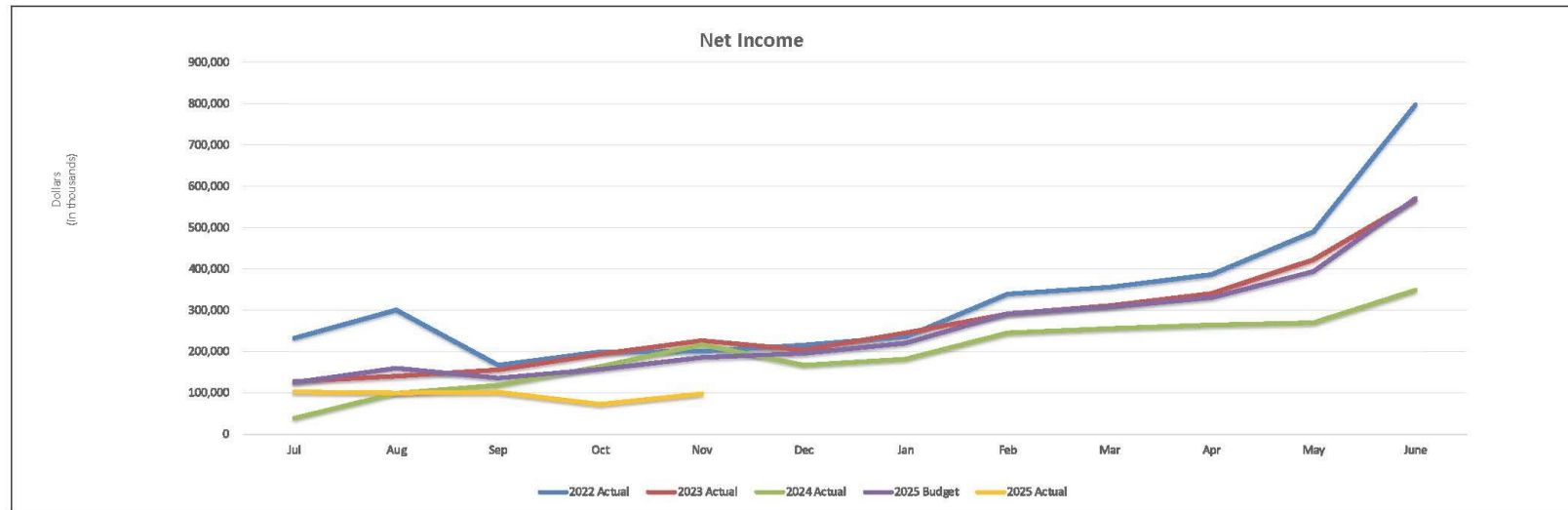
Practical Examples of Financial Information Presentation

ABC Water Company

Key Performance Indicators

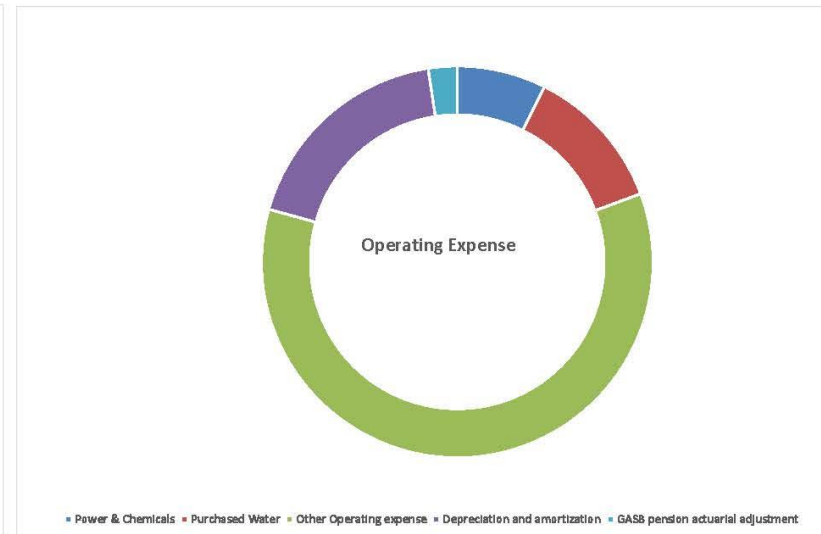
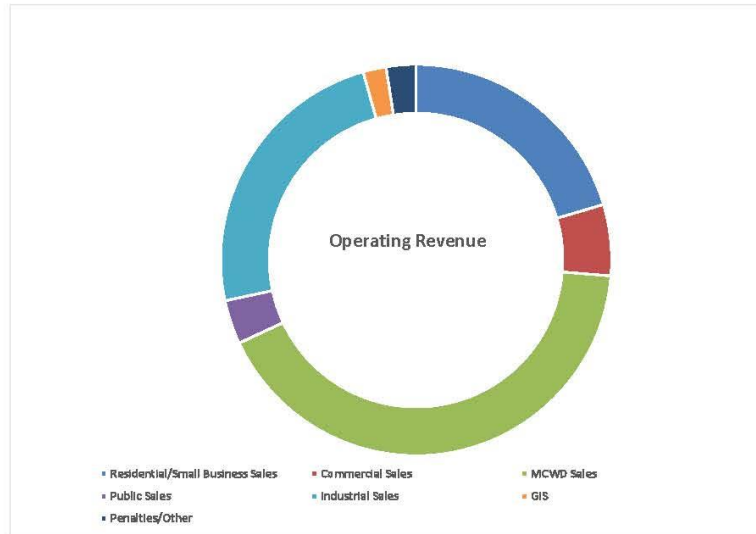
	11/30/2024	11/30/2023		
Net Op Rev YTD	\$ 97,926	\$ 216,995	↓	\$ (119,069)
Net Op Rev MTD	\$ 25,512	\$ 52,970	↓	\$ (27,458)
Net Profit Margin	10.50%	12.47%	↓	-1.97%
Capital Assets	\$ 40,799,649	\$ 39,828,457	↑	\$ 971,192
% Capital Depreciated	43.8%	43.2%	↓	0.62%
Debt Ratio	44.2%	45.3%	↑	-1.09%
Debt Service Coverage	160%	164%	↓	-4.00%
Cash EOP	\$ 3,233,649	\$ 2,939,681	↑	\$ 293,968
Days Cash	108	98	↑	\$ 10
Depreciation Funded variance	(73,545)	(30,823)	↓	\$ (42,722)
Deprecation Funded %	69.9%	86.2%	↓	-16.28%

ABC Water Company



	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	June
2022 Actual	232,941	301,216	167,699	199,300	201,062	216,319	235,771	339,346	356,195	386,794	489,930	798,036
2023 Actual	127,764	140,606	155,867	193,737	226,773	203,901	245,528	291,707	311,402	340,932	422,961	566,915
2024 Actual	38,752	99,408	118,407	164,025	216,995	167,568	182,223	245,386	256,423	264,732	269,819	348,885
2025 Actual	102,519	100,255	101,891	72,414	97,926							
2025 Budget	125,494	160,371	135,966	157,369	185,689	195,929	221,174	292,146	308,007	330,819	394,237	571,279

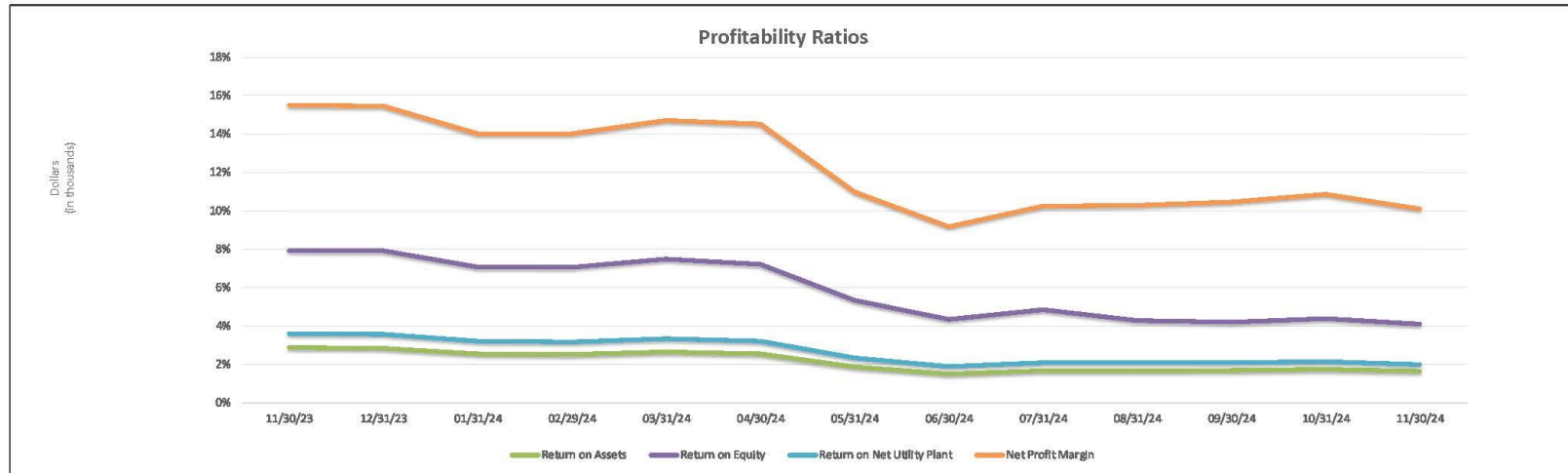
ABC Water Company



	11/30/2024	11/30/2023		
Residential/Small Business Sales	76,280	70,836	5,444	7.69%
Commercial Sales	21,951	16,160	5,791	35.84%
MCWD Sales	155,830	167,773	(11,943)	-7.12%
Public Sales	13,650	8,452	5,198	61.50%
Industrial Sales	89,562	87,289	2,273	2.60%
GIS	7,138	6,857	281	4.10%
Penalties/Other	9,173	12,062	(2,889)	-23.95%
Total	373,584	369,429	4,155	1.12%

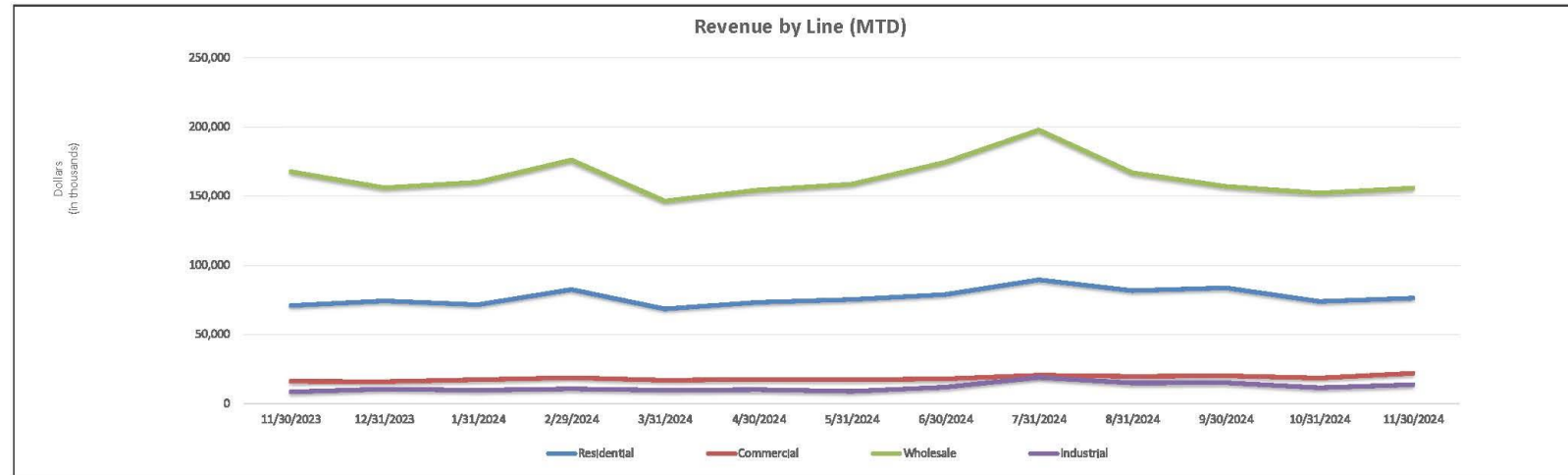
	11/30/2024	11/30/2023		
Power & Chemicals	25,594	23,366	2,228	9.54%
Purchased Water	41,690	36,312	5,378	14.81%
Other Operating expense	208,879	195,731	13,148	6.72%
Depreciation and amortization	63,575	50,781	12,794	25.19%
GASB pension actuarial adjustment	8,333	10,269	(1,936)	-18.85%
Total	348,071	316,459	31,612	9.99%

ABC Water Company



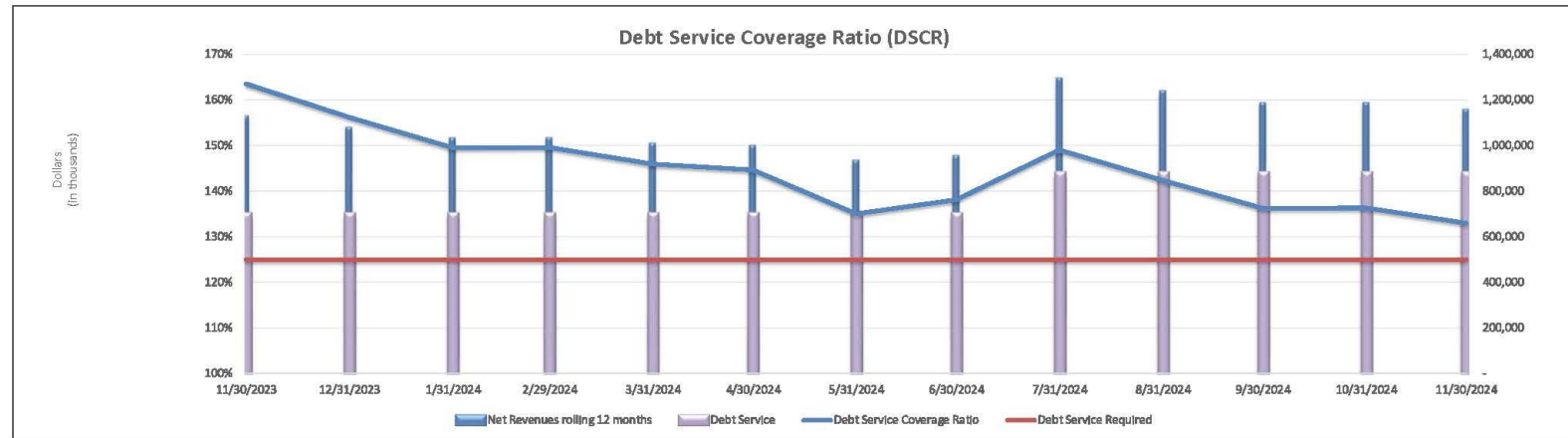
	11/30/23	12/31/23	01/31/24	02/29/24	03/31/24	04/30/24	05/31/24	06/30/24	07/31/24	08/31/24	09/30/24	10/31/24	11/30/24
Return on Assets	2.88%	2.85%	2.55%	2.52%	2.65%	2.55%	1.87%	1.51%	1.68%	1.67%	1.69%	1.74%	1.65%
Return on Assets - Industry Median	2.80%	2.80%	2.80%	2.80%	2.80%	2.80%	2.80%	2.80%	2.80%	2.80%	2.80%	2.80%	2.80%
Return on Equity	7.93%	7.92%	7.08%	7.07%	7.49%	7.21%	5.34%	4.35%	4.85%	4.29%	4.20%	4.40%	4.10%
Return on Net Utility Plant	3.60%	3.58%	3.21%	3.17%	3.34%	3.21%	2.34%	1.89%	2.09%	2.09%	2.09%	2.15%	1.99%
Net Profit Margin	15.50%	15.47%	14.02%	14.02%	14.72%	14.53%	10.99%	9.18%	10.25%	10.30%	10.47%	10.87%	10.10%

ABC Water Company



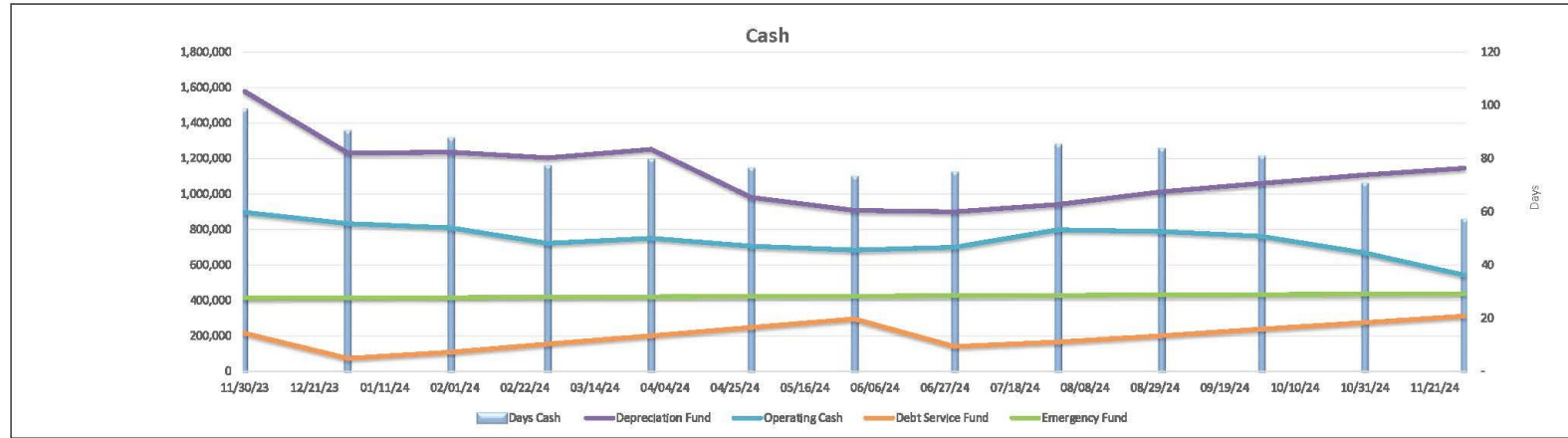
	11/30/2023	12/31/2023	1/31/2024	2/29/2024	3/31/2024	4/30/2024	5/31/2024	6/30/2024	7/31/2024	8/31/2024	9/30/2024	10/31/2024	11/30/2024
Residential	70,836	74,237	71,437	82,538	68,535	73,298	75,291	78,891	89,521	81,728	83,622	73,878	76,280
Commercial	16,160	15,958	17,222	18,771	16,865	17,444	17,313	17,841	20,613	19,643	20,156	18,573	21,951
Wholesale	167,773	156,022	160,096	176,004	146,507	154,453	158,672	174,559	197,817	166,842	157,099	152,164	155,830
Industrial	8,452	10,490	9,665	10,699	9,711	10,024	8,765	11,926	18,886	14,855	15,203	11,410	13,650

ABC Water Company



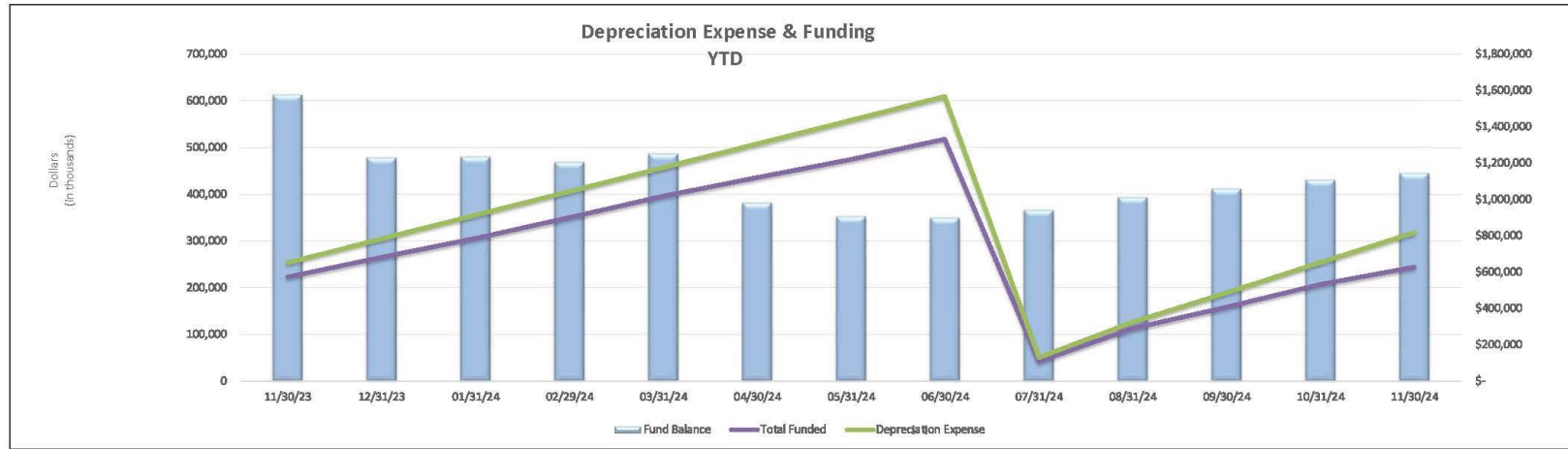
Capitalization and Coverage Ratios	11/30/23	12/31/23	01/31/24	02/29/24	03/31/24	04/30/24	05/31/24	06/30/24	07/31/24	08/31/24	09/30/24	10/31/24	11/30/24
Measurement of Capacity to Make Debt Service Payments													
Debt Service Coverage Ratio	164%	156%	149%	150%	146%	145%	135%	138%	149%	142%	136%	136%	133%
Debt Service Required	125%	125%	125%	125%	125%	125%	125%	125%	125%	125%	125%	125%	125%
Net Revenues rolling 12 months	1,119,520	1,069,487	1,023,512	1,024,278	999,332	990,274	924,575	945,627	1,287,448	1,229,910	1,177,039	1,177,920	1,149,231
Debt Service	\$ 684,637	\$ 684,637	\$ 684,637	\$ 684,637	\$ 684,637	\$ 684,637	\$ 684,637	\$ 684,637	\$ 863,956	\$ 863,956	\$ 863,956	\$ 863,956	\$ 863,956

ABC Water Company



	11/30/23	12/31/23	01/31/24	02/29/24	03/31/24	04/30/24	05/31/24	06/30/24	07/31/24	08/31/24	09/30/24	10/31/24	11/30/24
Operating Cash	897,411	833,863	810,597	722,617	751,706	707,532	684,344	700,560	798,747	789,623	763,473	668,765	543,450
Days Cash	98	90	87	77	79	76	73	74	85	83	80	70	57
Days Cash - Target	200	200	200	200	200	200	200	200	200	200	200	200	200
Depreciation Fund	1,578,822	1,231,083	1,236,130	1,206,111	1,252,933	981,787	907,486	899,979	942,454	1,012,736	1,060,107	1,108,780	1,145,683
Emergency Fund	413,236	413,306	417,377	419,443	421,514	423,584	425,655	427,726	429,798	431,871	433,942	436,016	438,088
Debt Service Fund	216,110	74,192	109,059	155,661	202,292	248,938	295,610	140,794	165,696	202,334	238,984	275,652	312,334

ABC Water Company



	11/30/23	12/31/23	01/31/24	02/29/24	03/31/24	04/30/24	05/31/24	06/30/24	07/31/24	08/31/24	09/30/24	10/31/24	11/30/24
Monthly Funded	42,858	41,856	40,818	44,435	45,627	40,178	38,964	43,282	42,434	70,242	46,168	48,628	36,859
Total Funded	223,081	264,937	305,755	350,190	395,817	435,995	474,959	518,241	42,434	112,676	158,844	207,472	244,331
Depreciation Expense	253,904	304,685	355,466	406,247	457,027	507,808	558,589	609,370	50,400	125,087	189,130	254,301	317,876
Fund Balance	\$ 1,578,822	\$ 1,231,083	\$ 1,236,130	\$ 1,206,111	\$ 1,252,933	\$ 981,787	\$ 907,486	\$ 899,979	\$ 942,454	\$ 1,012,736	\$ 1,060,107	\$ 1,108,780	\$ 1,145,683
Excess	798,822	451,083	456,130	426,111	472,933	201,787	127,486	119,979	162,454	232,736	280,107	328,780	365,683

ABC Water Company



	11/30/23	12/31/23	01/31/24	02/29/24	03/31/24	04/30/24	05/31/24	06/30/24	07/31/24	08/31/24	09/30/24	10/31/24	11/30/24
Accounts Receivable	475,398	467,942	450,435	502,692	436,683	450,357	460,964	480,871	516,550	499,043	514,508	466,971	551,499

Questions to Ask at Annual Meeting with Auditors

Focus on Internal Controls

A process designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

- ✓ effectiveness and efficiency of operations
- ✓ reliability of financial reporting
- ✓ compliance with applicable laws and regulations.

1. Can You Explain the Audit Process?

2. Were There Any Changes in Accounting Policies?

**3. Were There Any
Difficulties Encountered
During the Audit?**

4. Did You Identify Any Areas of Concern?

**5. What Weaknesses Did
You Identify in Our
Financial Reporting and
Controls?**

**6. Were There Any
Adjustments Made to the
Financial Statements?**

7. What Regulations Did You Review For Compliance?

8. What is Your Opinion of Our Cash Flow?

**9. Are There Any Changes
in Practice That We Should
Consider Adopting?**

Questions?

Duties & Responsibilities of Board Members

February 19, 2025



Duties & Responsibilities of Board Members

**Damon R. Talley, General Counsel
Kentucky Rural Water Association, Inc.**

Stoll Keenon Ogden PLLC

damon.talley@skofirm.com

270-358-3187





DISCUSSION TOPICS

1. Paying Bills
2. Budget
3. Board Meeting
4. Indemnification
5. Oversight Role
6. Specific Duties



DISCLAIMER



Paying Bills



Paying Bills

- KRS 74.050
- Board Adopts Policy
- Minimum Requirement
 - Treasurer and
 - One Other Commissioner

Paying Bills

- Who Signs Checks?
 - KRS Is Silent
 - Board Has Discretion
- One or Two Signatures?
- Review by Full Board

Budget

Budget

- Required by KRS 65A.080(1)
- Post on DLG Website
- Periodic Review of Budget
- Amend as Necessary
- Post Amended Budget on DLG Website

Budget

“No moneys shall be expended from any source except as provided in the originally adopted or subsequently amended budget.”

KRS 65A.080(1)

Budget

- Review Actual \$ to Budget \$
- Amend Budget if Needed
- When?
 - October Meeting
 - December Meeting
- Upload to DLG Website

Board Meetings



Board Meetings

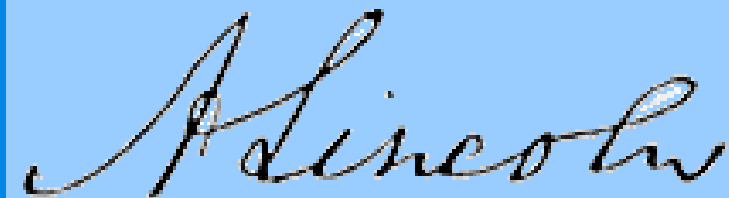
- Preparing for . . .
- Conducting . . .
- Documenting . . .
(Minutes)

Regular Meetings

- Adopt a regular meeting schedule
 - Set time, date and location
- Inform the Media (radio, print, television)
- Inform the Public (bills, website, newsletter)

Preparing for Meetings

“Give me six hours to chop
down a tree and I will spend
the first four sharpening the
axe.”

A handwritten signature in cursive script, reading "A. Lincoln", set against a light blue rectangular background.

Preparing for Meetings

- Develop an Agenda
 - Chairman
 - Manager
- Prepare an Information Packet for Board Members
 - Delivered in advance (between two days and one week)

Board Packet

■ Contents

- Meeting Agenda
- Minutes of prior meeting
- Operational, Managerial & Financial Reports
- Other information

Conduct of Meetings

- Follow the Agenda
- Use Parliamentary Procedure
- Voting by Chairman or President
- Abstaining from Voting
- Public Comments
- Closed (Executive) Session

**ABSTAINING
FROM
VOTING**

WHY Abstain?

- Avoid conflict of interest
- Avoid being removed from office for violating KRS 74.020(3)
(Participating in official action which results in direct financial benefit to Commissioner)
- Avoid appearance of impropriety

HOW to Abstain

1. Alert Chairman or Presiding Officer in advance
2. Announce intent to abstain and a brief reason as soon as Chairman announces the agenda item [**Disclose Conflict**]
3. Leave the room before discussion starts

Cont.

HOW to Abstain ...

4. Stay out of the room until **AFTER** vote has been taken and announced
5. Follow-up with Secretary to ensure that Minutes disclose your conflict and document your abstention

Duties of a Board

1. Specific
2. General

Example of Specific Duties

- Adopt Budget
- Periodically Review Budget
- Amend Budget as Necessary

General Duties of a Board

1. Oversight
2. Oversight
3. Oversight

Oversight

- Method

- Stay Informed
- Adopt Policies
- Require Reports

Reports

- Different Types
- Tailored to Fit
- Board Action Required?

Types of Reports

- Financial
- Operational
- Managerial
- Other

Financial Reports

- Check Register
- Monthly Income & Expense
 - Debt Service Transfer
 - Depreciation Transfer
- Comparisons & Trends
 - Prior Year
 - Budget
- Balance Sheet

Operational Reports

- Water Production (Purchases)
- Line Loss
- New Customers
- Turn-Offs
- Others

Managerial Reports

- Safety
- Human Resources
- Special Projects
- Policy Implementation
- Others (e.g. Overtime Hours)

Reports Tailored to Fit

- Line Loss

 - Actual Cost in \$

- Specific Needs

- Understandable

- You Are The Boss

Board Action Required?

- Usually Not

- Manager Presented
- Board Received

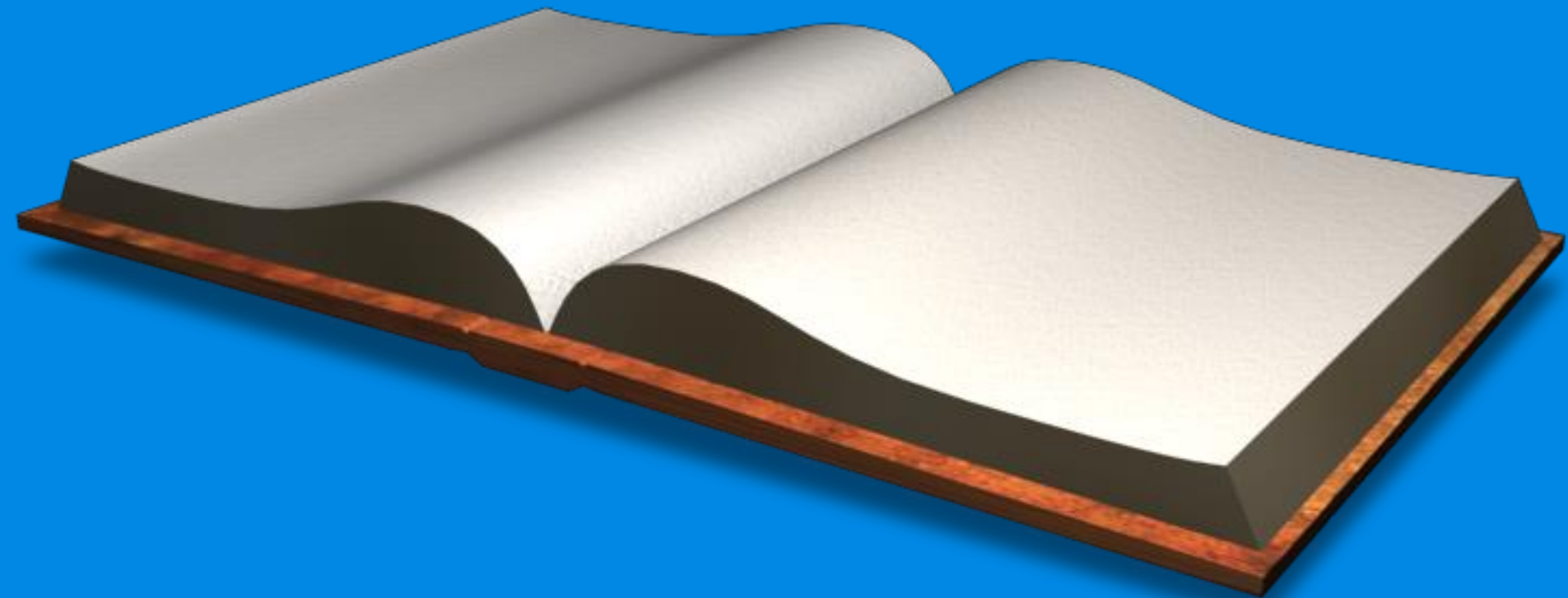
- Sometimes Yes

- Audit
- Committee Report

Special Meetings

- Who calls a special meeting?
- Notice of meeting
 - Board Members, Media, General Public
- Agenda – action limited to agenda items
- How much advance notice is required?

MINUTES



What Are MINUTES?

- Official Record
- Much, Much More . . .

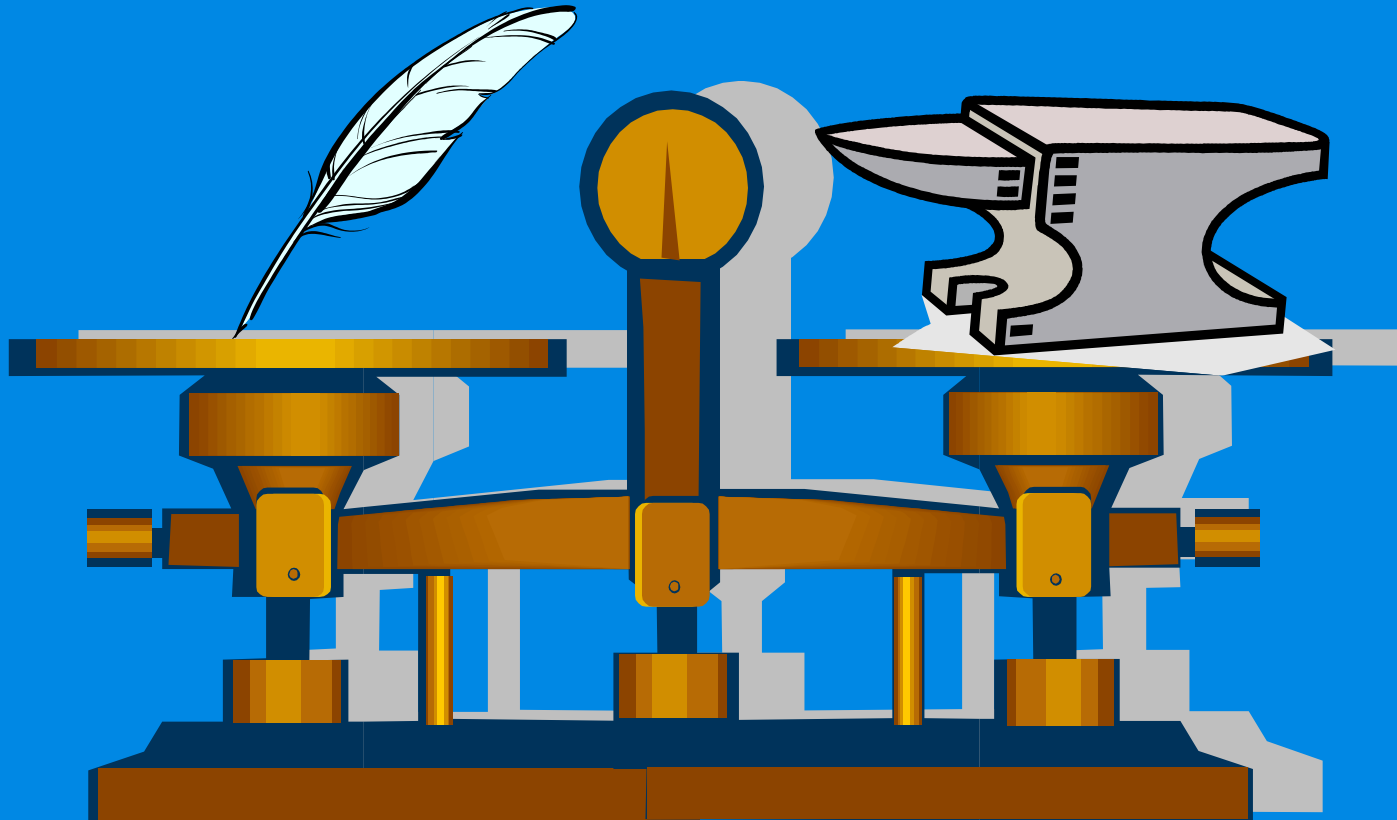
Excerpt From Minutes

“Motion was made by Commissioner X and seconded by Commissioner Y to hire Commissioner Z to perform water line inspections on the Knob Hill Project at an hourly rate of \$20.”

**AN OUNCE
of
PREVENTION**

=

**A POUND
of CURE**



Board Minutes

- A Board “speaks only through its minutes.”
- War Stories:
 - Ownership of water line and service of disputed territory
 - Careless Conversations

Preparation of Minutes

- Who prepares minutes?
 - Board Secretary or Staff
- Who edits minutes?
 - Staff or legal counsel
- Are meetings recorded on audio and/or video?
- Signing of Minutes
- Approval of Minutes

ADJOURNMENT

There being no further business to come before the meeting, motion was made by Commissioner Steven Douglas and seconded by Commissioner Henry Clay to adjourn the meeting. Motion carried unanimously.

Respectfully submitted,

BY: _____

Henry Clay, Secretary

**ABRAHAM LINCOLN WATER
DISTRICT**

DATE APPROVED: _____

BY: _____

Jefferson Davis, Chairman

Approval Of Minutes

I hereby certify that the foregoing Minutes were duly approved by the Board of Commissioners of the Abraham Lincoln Water District at a meeting held on the date shown below:

ABRAHAM LINCOLN WATER DISTRICT

BY: _____

JEFFERSON DAVIS, CHAIRMAN

DATE APPROVED: _____

Board Minutes

A complete set of APPROVED Minutes SHALL be maintained at the utility office for inspection by the general public, regulators, customers, and the media.

Board Minutes

When are the Minutes considered in “**final form**” and available for public inspection?

**After Approval at
Next Meeting**

Resolution

- Resolution vs. Minutes
 - Time is of Essence
 - Bond Resolution
 - Rate Increase
 - 3rd Party Needs Copy

Minutes

What **MUST** Be Included?

- Board Member Attendance
- Official Actions

Minutes

What **SHOULD** Be Included?

- Board Member Attendance
- Acknowledge Guests (Visitors)
- Official Actions
- Acknowledge Receipt of Reports
 - PSC Inspection Report

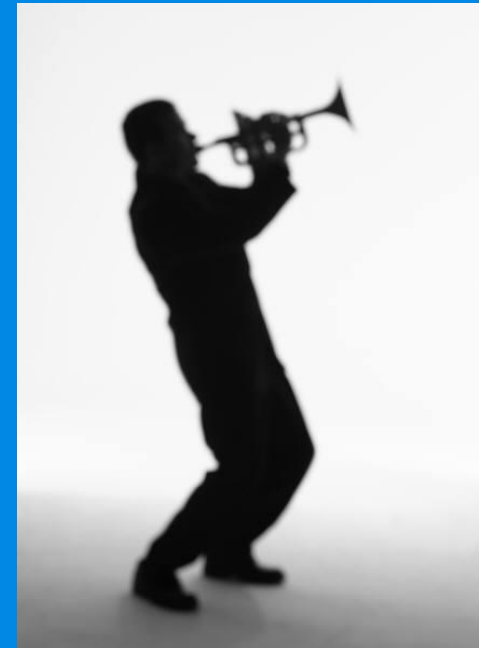
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Minutes

What **SHOULD** Be Included?

- Summarize Some Discussions

- Toot Your Own Horn

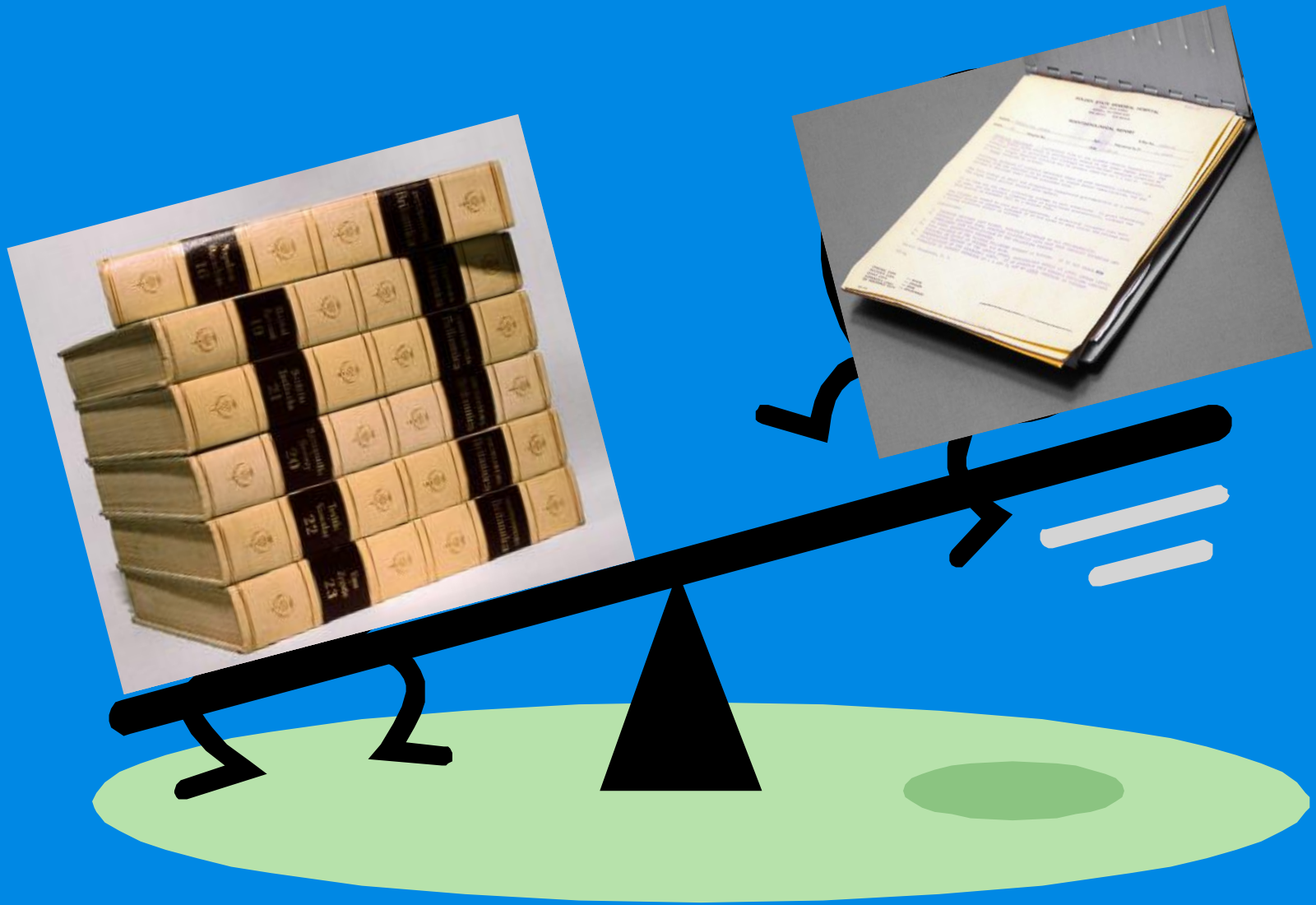


Minutes

Tooting Your Own Horn

- Give Yourself Credit
 - “Best Tasting Water”
 - Wooden Bucket Award
 - AWOP Award
 - Governor’s Safety Award

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. Use of safety equipment; Training of Staff re confined space entry)
- Document Board's Oversight Role (e.g. Implementation of ID Theft Prevention Program)
- 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.

Indemnification

KRS 411.200 Immunity

Any person who serves as a director, officer, volunteer or trustee of a nonprofit organization . . . , and who is **not compensated** for such services on a salary or prorated equivalent basis, shall be **immune from civil liability** for any act or omission resulting in damage or injury . . . , if such person was acting in **good faith** and **within the scope** of his official functions and duties, **unless** such damage or injury was caused by the **willful or wanton misconduct** of such person.

Indemnification

- Adopt Resolution
- Hold Harmless
 - Legal Fees
 - Judgments
 - Fines
 - Court Costs

Indemnification

- Requirements
 - Good Faith
 - Best Interests of District
- Exceptions
 - Willful Misconduct
 - Wanton Misconduct

Oversight Role

To Govern...

not

...Manage

General Duties of a Board

1. Oversight
2. Oversight
3. Oversight

Oversight

- Good Board Members
 - Do **Not** Run the District
 - **See** That It Is Well Run
 - Avoid Making Day-to-Day Decisions
 - Give Friendly Counsel & Advice to Manager (CEO)

Role of Commissioners



Specific Duties of a Board

- Hire, evaluate and compensate a Manager (CEO)
- Adopt Policies
- Adopt and Amend Budgets
- Adopt Long-range Plans
- Adopt Rates, Rules & Regulations (Tariffs)

Individual Board Members . . .

**... act in the best
interest of the utility.**

Specific Duties of Board Members

- Stay informed
- Attend meetings regularly
- Perform tasks assigned by Board
- Support decisions of the Board
- Keep Board matters confidential
- Avoid Conflict of Interest

Board Officers

Offices of a Water District

KRS 74.020(5)

- Chairman
- Vice Chairman
- Secretary
- Treasurer
- Others



Duties of Officers

Chairman

- Preside over meetings
- Prepare meeting agendas
- Call special meetings
- Execute documents approved by Board
- Perform other duties assigned by Board
- Approve Disbursements (KRS 74.050)
- Perform other duties specified in Bylaws

Duties of Officers

Vice Chairman

- No statutory duties (Water District)
- Preside over meetings in absence of Chairman
- Perform other duties assigned by Board
- Approve Disbursements (KRS 74.050)
- Perform other duties specified in Bylaws

Duties of Officers

Secretary

- Cause the Minutes of all meetings to be prepared
- Act as custodian of official records
- Authenticate official records
- Perform other duties assigned by Board
- Approve Disbursements (KRS 74.050)
- Perform other duties specified in Bylaws

Duties of Officers

Treasurer

- Cause all funds to be disbursed according to law and procedures adopted by Board (KRS 74.050)
- Perform other duties assigned by Board
- Perform other duties specified in Bylaws

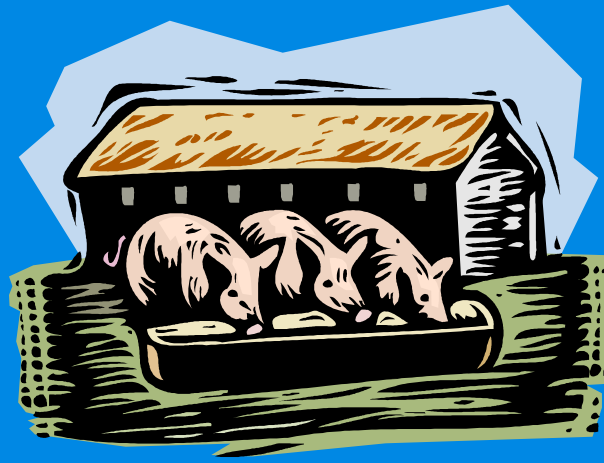
Action By Individual Board Members Outside of Meetings

- Officers
- Other Board Members

Legal Standard of Care

The “PIG” Rule

If it seems “piggish” to you, it probably is!
...so keep your snout in your own trough!



Legal Standard of Care

Water District

No statutory standard of care but the case law standard requires...

- Good faith
- Reasonable care and diligence
- Acting within the scope of authority

The statutory standard of care for water association directors is instructive for water districts and utility commissions.

Legal Standard of Care

Water Associations (KRS 273.215)

A Director shall discharge his duties:

- In good faith
- On an “informed basis”
- In the best interests of the Association

“Informed Basis” KRS 273.215(2)

A director shall be considered to discharge his duties on an informed basis if he makes, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, inquiry into the business and affairs of the corporation or into a particular action to be taken or decision to be made.

Legal Standard of Care

Reliance on Information KRS 273.215(3)

A director is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, if prepared or presented by:

- Officers or employees of the corporation whom the director honestly believes to be reliable and competent;

Cont.

Legal Standard of Care

Reliance on Information KRS 273.215(3)

- Legal counsel, public accountants or other experts as to matters the director honestly believes to be within that expert's area of expertise; or
- A committee of the board of directors of which he is not a member if the director honestly believes the committee merits confidence.

Legal Standard of Care

Exceptions may be made in instances where a director possesses special knowledge that indicates alternative action is prudent and necessary.



QUESTIONS?

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MUNICIPAL WHOLESale RATES

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DISCUSSION TOPICS

1. Historical Background
2. PSC Procedure: An Overview
3. Rate Case Preparation
4. Communications
5. Free Water
6. Rate Case Expense

HISTORICAL BACKGROUND

CURRENT DEFINITION OF “UTILITY”

“Utility” means any person **except . . . a city**, who owns, controls, operates, or manages any facility used or to be used for or in connection with . . . [t]he diverting, developing, pumping, impounding, distributing, or furnishing of water to or for the public, for compensation

KRS 278.010(3)

***Simpson County Water Dist. v.
City of Franklin (1994)***

- 1963 Contract (\$0.21/1,000 gals rate – changes OK if applied to both wholesale & retail)
- 1986 Contract Revision sets rate at \$0.84 per 1,000 gals. for 5 years
- 1990: Franklin raises rate to \$1.35 per 1,000 gallons

*Simpson County Water Dist. v.
City of Franklin (1994)*

- 1991: Franklin raises rate to \$1.67/1,000 gallons
- Simpson County refuses to pay increases
- Franklin brings action to collect unpaid amounts & to declare contract void
- Simpson District: Courts lack jurisdiction - **PSC must approve rate increase**

***Simpson County Water Dist. v.
City of Franklin (1994)***

KRS 278.040(2):

The jurisdiction of the commission shall extend to all utilities in this state. **The commission shall have exclusive jurisdiction over the regulation of rates and service of utilities, but with that exception nothing in this chapter is intended to limit or restrict the police jurisdiction, contract rights or powers of cities or political subdivisions.**

Simpson County Water Dist. v. City of Franklin (1994)

KRS 278.200:

The commission may, under the provisions of this chapter, originate, establish, change, promulgate and enforce any rate or service standard of any utility that has been or may be fixed by ***any contract, franchise or agreement between the utility and any city,*** and all rights, privileges and obligations arising out of any such contract, franchise or agreement, ***regulating any such rate or service standard,*** shall be subject to the jurisdiction and supervision of the commission, but ***no such rate or service standard shall be changed,*** nor any contract, franchise or agreement affecting it abrogated or changed, ***until a hearing has been had before the commission*** in the manner prescribed in this chapter.

Simpson County Water Dist. v. City of Franklin (1994)

HOLDING:

- KRS 278.040: PSC may restrict City's contract rights in area of utility rates & service
- Cities are generally exempted from PSC regulation because they are not "utilities"
- KRS 278.200 specifically addresses contracts between a city & a utility
- KRS 278.200 requires hearing before PSC before such contracts can be changed

PROCEDURE FOR MUNICIPAL WHOLESALE RATE ADJUSTMENT

NOTICE OF RATE ADJUSTMENT

- Municipal Utility Must Give Notice of Rate Change to
 - PSC
 - Wholesale Customer
- Notice must be made at **least 30 days prior** to the proposed increase
- Notice must conform with 807 KAR 5:011

NOTICE TO PSC

- File Tariff Sheet
 - Name of Wholesale Customer (if not a uniform rate)
 - Proposed Rate
 - Effective Date (**30 Days From Date of Filing**)
 - Name & Signature of Authorized Official
 - Proof of Notice to Wholesale Customer
 - Tariff Sheets Are Available from PSC Website
- Electronically Submitted

NOTICE TO WHOLESALERS CUSTOMERS

- 807 KAR 5:011, §8(4) governs
- Proposed Effective Date
- Date Filed with PSC
- Dollar & Percentage Amount of Proposed Change

NOTICE TO WHOLESALER CUSTOMERS

- Effect on Average Bill
- Location of Filing for Examination
- Right to Intervene
- Right to Comment on the Proposed Rate

CONTRACT NOTICE REQUIREMENTS

- Contract Notice Requirements still apply
- Required notice in excess of 30 days should be given prior to filing with PSC unless the Contract provides otherwise
- **Strategic Considerations:** Running out the clock vs. lost review time

NOTICE TO WHOLESALE CUSTOMERS

- PSC has previously required **strict compliance** with notice regulation
- Acceptable Methods of Notice: Mail - Personal Delivery - Newspaper
- Mailed/Delivered/Published **NLT Date of Filing**
- Notice to the Public is **NOT** required

ADDITIONAL DOCUMENTS

- Cost-of-Service Study **OR** Rate Study
- Financial Reports
- Historical Narrative
- Explanation for Increase
- Ordinance Establishing New Rates
- Wholesale Customer's Statement of No Objection/Waiver of Hearing

PSC'S RESPONSE

- Posts proposed contract/rate to PSC Website
- Reviews for compliance with filing requirements
- If filing requirements are met, PSC must act before proposed effective date

PSC'S RESPONSE

- KRS 278.190: Before a rate becomes effective, PSC may suspend operation of that rate for 5 months beyond its proposed effective date to further review
- Waits for comments/objections
- May request additional information

WHOLESALE CUSTOMER'S OPTIONS

- No Response Required
- Notice of No Objection
- Request PSC Review/Investigation
- Identify Specific Areas of Concern or Objections

STANDARD FOR PSC INVESTIGATION

- Does a **customer** object to the proposed increase?
- Does the propose rate/rule conflict with existing PSC regulations/rulings?
 - Rate Indexing (Case No. 2006-00067)
 - Service Practice that conflicts with PSC Regulations (Case No. 2001-230)

YES – Suspend **NO** – No Action (Rate Takes Effect)

PSC INVESTIGATION: PROCEDURAL RULES

Following the [Supreme] Court's decision in *Simpson County*, the Commission has allowed city-owned utilities to file rate adjustments by a tariff filing, and if a hearing is requested and the Commission suspends the proposed rate, the requirements, and procedures set forth in KRS Chapter 278, and the Commission's regulations ***apply equally to filings by a city-owned utility or a jurisdictional utility.***

Case No. 2017-00417, Order of 7/12/2018

PSC INVESTIGATION: PROCEDURAL RULES

- Formal Proceeding Established
- Proposed Rate Suspended For 5 Months
- Scope Of Review: Reasonableness Of Rate
- Burden of Proof on Municipal Utility

PSC INVESTIGATION: PROCEDURAL RULES

- Proposed Rate May Be Assessed After 5 Months subject to refund
- Final Decision Due Within 10 Months Of Filing (Case No. 2006-00403)
- Extensive requests for information possible
- Written Testimony required

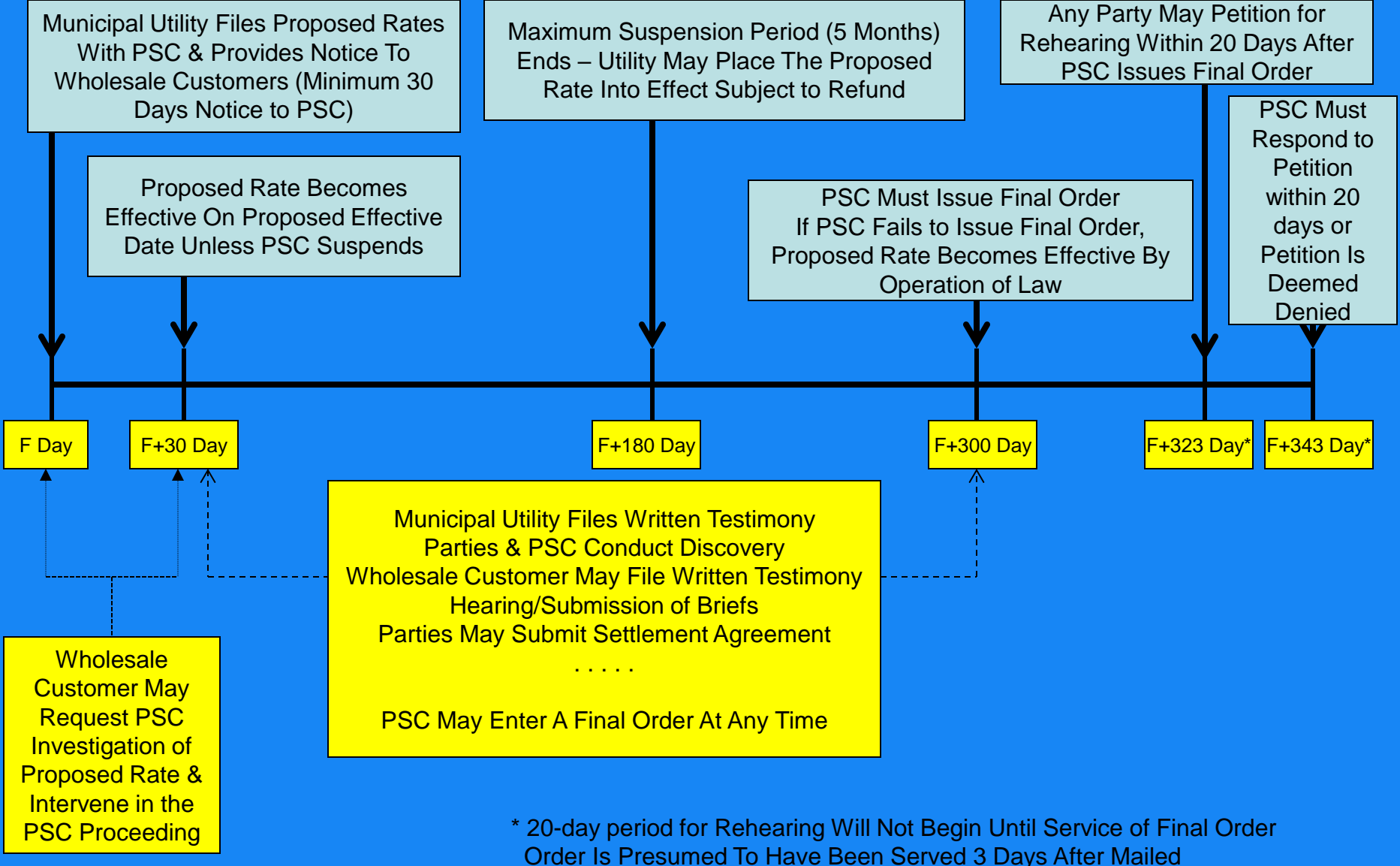
PSC INVESTIGATION: PROCEDURAL RULES

- No cost-of-service study required
(But Recommended)
- Intervening Parties not required to present testimony or participate in proceedings

PSC INVESTIGATION: PROCEDURAL RULES

- Hearing
 - No opening/closing statements
 - Cross-examination only
 - PSC Staff participates
- Decision issued within 240-280 days
- Agreement terminates Investigation

TIMELINE FOR A MUNICIPAL RATE ADJUSTMENT PROCEEDING



* 20-day period for Rehearing Will Not Begin Until Service of Final Order Order Is Presumed To Have Been Served 3 Days After Mailed

APPEAL PROCESS

- Request Rehearing NLT 23 days after Order's Issuance
- PSC Must Rule Within 20 Days of Request
- Action for Review in Franklin Circuit Ct NLT 23 days of Rehearing Order

APPEAL PROCESS

- Party May Bring Action For Review NLT 33 days of Initial Order Without Requesting Rehearing
- Appealing Party Must Demonstrate that Order is Unlawful or Unreasonable

RATE CASE PREPARATION AND MANAGEMENT

COMMUNICATIONS

PRE-FILING DISCUSSIONS

- Explain reasons for rate adjustment
- Provide supporting data/documents
- Negotiate before filing the rate with PSC
- Supplier should consider any objections & critiques of supporting data
- Customer should voice all reasonable objections and concerns

CONTRACT REVIEW

- Limitations on frequency of rate adjustment
- Contract formula?
- Notice Requirements
- Is wholesale rate tied to retail rate adjustment?
- Other Concerns

RATE CASE PREPARATION

- Assemble documents/materials necessary for response to 1st PSC Info Request
- Obtain a working knowledge of PSC process
- Research potential issues
- Begin tracking rate case expenses
- Retain attorney & rate expert & include them in preparation & negotiations

IF AGREEMENT IS REACHED

- Wholesale customer's agreement should be in writing
- Ask for/prepare Wholesale Customer's letter stating no objection to proposed rate
- Include Acknowledgement of Notice & Waiver of right to a hearing
- File Letter/Acknowledgement with tariff sheet

COST OF SERVICE STUDY

WHAT IS A COST OF SERVICE STUDY?

- Used to determine the cost of providing service to customer groups based upon each group's water use characteristics and service requirements
- Used to determine a supplier's cost of providing service to a wholesale customer

BENEFITS OF A COST OF SERVICE STUDY

- Produces critical information about Muni's cost to serve all customer groups
- Identifies the specific cost to serve a wholesale customer
- Allows assessment of the applicant's case for rate adjustment prior to proceeding
- Facilitates rate negotiations

PSC VIEW OF COST OF SERVICE STUDY

“The Commission is of the opinion that a cost-of-service study is a **valuable tool** to developing fair, just and reasonable rates. It provides a thorough analysis of a utility’s expenses and revenues and serves as a starting point for ratemaking.”

Case No. 2009-00373, Order of 7/2/2010 at 7.

TIME TO PREPARE COST-OF-SERVICE STUDY

“[T]he better practice in municipal rate adjustment proceedings is for the applicant to undertake and complete its cost-of-service study **prior to filing notice of its proposed wholesale adjustment.** Regardless of whether the municipal utility chooses to strictly adhere to the study’s results, the study provides critical information regarding costs for the wholesale supplier and customer that, if widely known, is likely to result in agreement on prospective rate adjustments.”

Case No. 2009-00373, Order of 7/2/2010 at 9.

TIME TO PREPARE COST-OF-SERVICE STUDY

“We place . . . all municipal utilities on notice that, in future proceedings where a municipal utility has failed to conduct such studies **prior** to the filing of its proposed rate adjustment, the additional litigation costs incurred by all parties will be a factor that will be considered in assessing the reasonableness of the costs related to an “after-filing cost-of-service study.”

Case No. 2009-00373, Order of 7/2/2010 at 9.

MUNICIPAL TAKEAWAYS

- Consider performing COSS as part of rate case preparations
- If study recently performed (< 5 years), across the board rate adjustment may be appropriate
- Provide wholesale customer with copy of COSS and access to COSS preparer

CUSTOMER TAKEAWAYS

- Request a copy of the COSS from Supplier
- Request opportunity to question COSS preparer
- Closely review the COSS's assumptions to determine if realistic
- If assumptions are unrealistic, propose alternative assumptions
- Consider retaining own expert to review COSS

TEST PERIOD

TEST PERIOD

- A consecutive 12-month period
- Generally the 12 month-period reflected in the utility's most recent annual report or audit.

TEST PERIOD

- PSC: Pro forma adjustments based on **budgetary projections** are neither known nor measurable and should be **disallowed**
- Actual FY2016 used – most adjustments based upon FY 2018 budget rejected
- PSC based salary/wage expense on **current wages & salaries**

TEST PERIOD

- Employee retirement expense based on **current CERS contribution rate** (Not FY 2016)
- Depreciation based upon **existing facilities** (including post-test year construction)

TEST PERIOD: MUNICIPAL TAKEAWAYS

- Use the most current year as test period
- Do not base adjustments upon budget projections
- Inflation factors unlikely to be accepted
- Time Rate Filing with completion of audit
- If major construction projects in progress, consider completion date

TEST PERIOD: MUNICIPAL TAKEAWAYS

- Implement wage/salary changes NLT rate filing date
- Review operations for all known and measurable changes

TEST PERIOD: CUSTOMER TAKEAWAYS

- Identify use of budgeted amounts or assumptions
- Can “Matching Principle” be applied to proposed adjustment?
- Identify the use of inflation factors

DEPRECIATION

DEPRECIATION EXPENSE

- City's proposed depreciation expense based on internally developed schedule of useful lives
- Customer; Depreciation should be calculated using NARUC mid-point instead
- Use of NARUC mid-point reduced depreciation expense by \$168,648

DEPRECIATION EXPENSE

- No evidence offered in support of City's schedule of useful lives
- City conceded issue for current proceeding, but reserved right to challenge future proceedings

PSC POSITION ON DEPRECIATION

- Utility bears burden of proof to demonstrate appropriateness of its useful lives
- In absence of evidence to the contrary, mid-point on NARUC Guide will be used
- PSC is skeptical of expert testimony questioning the use of NARUC Guide
- Consistent use of NARUC Guide mid-point since 2016 in all cases – jurisdictional & municipal utilities
- No successful challenge in last eight years

DEPRECIATION: MUNICIPAL TAKEAWAY

- Compare your useful lives to NARUC Guide mid-point when calculating proposed rate
- If significant difference, determine if any support to justify continued use of current useful lives
- Retain engineer to assist in analysis & to prepare evidentiary support for present useful lives
- Perform cost-benefit analysis of accepting NARUC mid-point vs. cost of litigating issue
- Consider adjustments to useful lives when developing proposed rate

DEPRECIATION: MUNICIPAL TAKEAWAY

- Tactical Consideration: Request rates based upon current useful life revision, but consider conceding issue in negotiations or PSC proceeding
- Make no permanent concession but reserve right to challenge in future proceedings

DEPRECIATION: CUSTOMER TAKEAWAY

- Request & examine Muni's depreciation schedule
- Compare Muni's useful lives to NARUC Guide mid-points – note variances
- Highlight significant variances at **each stage** of proceeding
- Depreciation on debt-financed assets is inappropriate; requires customer to pay 2X

FRINGE BENEFITS

FRINGE BENEFITS

- City in FY 2017 achieved 22.3% (\$54,144) reduction in employee health insurance costs
- PSC ordered disallowance of \$130,767 (\$76,623 more than savings)
- Reason for disallowance: Employees not required to pay a portion of the costs of single health insurance coverage

PSC POLICY

- PSC reviewing employers' contribution for health insurance cost
- If employer's contribution (%) exceeds BLS estimate of national average, recovery for excess **DENIED**
- PSC **encouraging** utility policies requiring employees to pay portion of health & dental insurance costs

BLS: Estimate of National Average

Coverage	Average	Private Industry	State & Local Government
Family	68/32	67/33	71/29
Single	80/20	79/21	86/14

MUNICIPAL UTILITY TAKEAWAYS

- Use Good Procurement Practices
 - Request Bids/Seek cost estimates from various providers annually
 - Document costs/efforts to reduce costs
- Determine the amount of likely disallowance prior to filing and if cost-effective to contest likely disallowance
- If not cost-effective, still document the record

MUNICIPAL UTILITY TAKEAWAYS

- Compare **Total Compensation Cost** vs. Other Regulated Utilities/Municipal Utilities
- Offer comparisons of benefits/costs by other regional/state utilities (Use KRWA/KLC Surveys)
- Provide evidence on local labor markets
- Emphasize unique aspects of your workforce

MUNICIPAL UTILITY TAKEAWAYS

- Consider differences between the quality of your insurance coverage & National Average Policy (e.g. deductibles, benefits)
- Propose use of BLS State/Local Government Category or Private Firm Utility or KY State Contribution Rate
- Argue for use of different study to determine National Average (e.g., Kaiser Family Foundation)

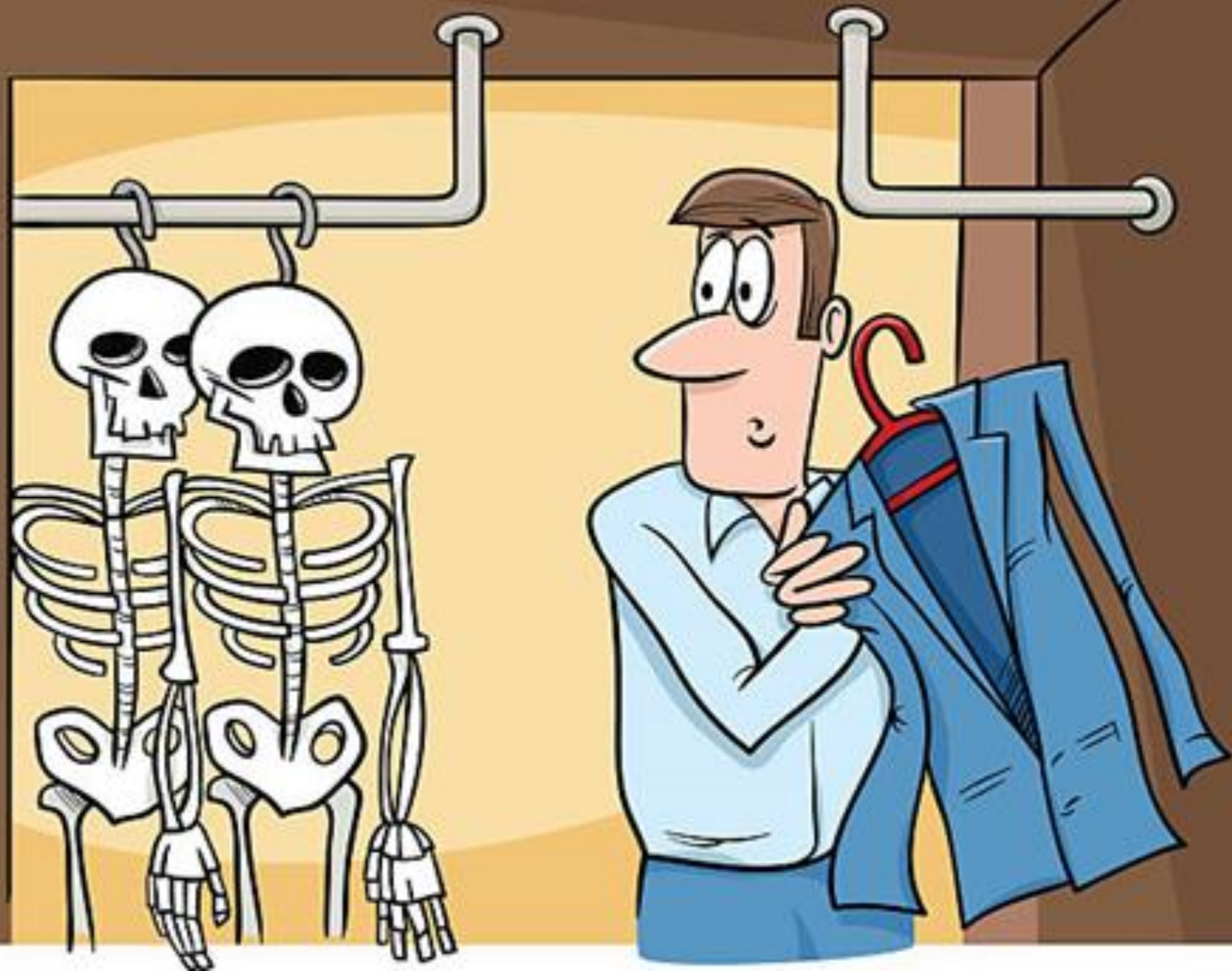
CUSTOMER TAKEAWAYS

- Conduct discovery on employee's required contribution for the cost of health, vision, and dental insurance
- Argue for application of the PSC's rules on fringe benefits

PSC AUTHORITY TO MANDATE EMPLOYEE CONTRIBUTION

- Employer Contribution is a **matter of managerial (Board) discretion**
- PSC jurisdiction limited to ratemaking
- PSC **CANNOT** restrict what employer pays for employee health insurance
- PSC **CANNOT** mandate employees contribute to health insurance cost

FREE WATER



FREE WATER SERVICE

- City provided 3,700,000 cf of water to City for sludge disposal service
- Not disclosed in initial testimony
- Revealed in responses to discovery
- Total Cost: \$92,500
- Estimated Cost of Sludge Disposal: \$64,980

FREE WATER SERVICE

- Customer: Revenue Requirement should be reduced to reflect water transfer
- City: Water revenues should be increased by \$92,500; Treatment costs increased by \$64,980
- PSC: Water revenues increased by \$92,500

FREE WATER SERVICE: MUNICIPAL TAKEWAYS

- Muni will not be allowed to recover cost related to free services in wholesale rate
- Identify all free services
- City government should pay at minimum actual cost of service
- In-kind transactions should be avoided

FREE WATER SERVICE: MUNICIPAL TAKEWAYS

- Execute separate agreements for the provision of in-kind services
- Water service to City should be metered or measured

FREE WATER SERVICE: CUSTOMER TAKEWAYS

- Request information on all services provided to various city departments
- Ensure a cost is assigned to such service & revenue requirement calculation reflects imputed income from such service
- Other services may be provided (e.g., billing and collection services for sewer/garbage/911 operations)

RATE CASE EXPENSE

PAST PRECEDENT

- US Supreme Court (1939): “the utility should be allowed its fair and proper expenses for presenting its side to the commission
- *City of Owenton* (1998): City entitled to recovery regardless of when requested
- *City of Danville* (2015): City must provide notice of proposed recovery in its notice to PSC

RATE CASE EXPENSE PROPOSAL

- Separate charge to recover reasonable rate case expense
- PSC determines “reasonable level”
- Recovery over 36 Months
- Equal Installments
- Notice contains example (\$72, 000)
- Actual Expense: \$162,696

PSC RESPONSE

- Level of rate case expense “excessive”
- Limits Recovery to \$72,000
- Compares City’s expense to Customer’s Expense to determine reasonableness
- Magnitude of Rate Case Expense to Requested Revenue Increase

PSC RESPONSE

- City had “duty to reasonably manage & control its expenditures” based upon original estimate
- City failed to give notice of actual amount
- Re-notice when estimated level exceeded

MUNICIPAL TAKEAWAYS

- Surcharge is most effective means of rate recovery
- Must be identified in initial notice
- If estimate of costs used, base estimate on robust litigation from PSC & customer
- Estimate will likely serve as cap
- Consider “actual costs” ILO estimate

MUNICIPAL TAKEAWAYS

- Avoid re-notice for increased expense level – resets statutory clock
- Require Attorney to provide detailed invoices
- Be prepared to address comparisons with customer's expense level

CUSTOMER TAKEAWAYS

- Request and review Muni invoices
- Argue for longer recovery period
- Remember: Assessed rate case expense can be recovered through PWA



QUESTIONS?

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BASIC PROCUREMENT LAW FOR GOVERNMENTAL WATER UTILITIES

FEBRUARY 19, 2025

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Order of Presentation

- KRS 424.260: Bidding Statute
- Local Model Procurement Code
- Cooperative Purchasing
- Statutory Preferences
- Procurement Issues With State and Federally Fund Projects



KRS 424.260



KRS 424.260(3): Bidding Statute

No city or district may make a **contract**, **lease**, or **other agreement** for **materials**; **supplies** (except perishable foods); **equipment**; or **contractual services** other than professional involving an expenditure of **more than \$40,000** without first making **newspaper advertisement** for **bids**.



Subject to Bidding Requirement

Applicable to Purchases exceeding **\$40,000** of:

- Materials
- Supplies (Perishable Goods Excluded)
- Equipment
- Contractual Services (not professional services)



What is a Professional Service?

“[A] profession includes any occupation or vocation in which a professed knowledge of some department of science or learning is used by its practical application to the affairs of others, either advising, guiding or teaching them, and in serving their interests or welfare in the practice of an art founded on it. The word implies attainments in professional knowledge, as distinguished from mere skill, and the application of such knowledge to uses for others as a vocation.”

City of New Rochelle v. Friedman, 78 N.Y.S.2d 681 (1947)



Professional Service: Examples

- Legal Services
- Engineering Services
- Architectural Services
- Banking Services
- Insurance Broker Services
- Accounting Services
- Construction Manager Services



Not Considered Professional Services

- Computer Billing Services
- Construction Inspector
- Design-Build Contracts



Threshold Amount: \$40,000

- Bidding Required if total cost exceeds **\$40,000**
- Severing Contract/Project to avoid amount not permitted
- Supply Contracts: Estimated Need Should be Used Unless Extenuating Circumstances



Publication of Notice

- Published in newspaper of general circulation
- Not more than 21 days nor less than 7 days
- Must publish notice even if good faith belief that only one supplier exists
- Multicounty Districts: Published in Newspaper of Each County



Notice

Notice Must Contain:

- Time/place for receipt of Bids
- Description of goods/services sought
- Any special terms
 - Where contract specifications can be obtained
 - Funding agency requirements
 - Award Criteria



Newspaper Qualifications

- Published in utility's area
- Principal business office in County of Agency
 - Published at least once weekly
 - If utility's area less than county, published in county
 - If no county newspaper, then newspaper in adjoining county
 - Digital newspaper



Awarding Bids

- Not required to accept lowest bid
- Purpose of statute
 - Opportunity for competition
 - Basis to compare bids
- If lowest bid is not accepted, provide basis for non-acceptance
- Required Preference for Certain Bidders

Failure to Comply

- No contract exists - Bid award is voidable
- Injunctive relief available
- Citizen suits permitted to void award and seek civil penalties
- Civil penalties against utility (\$50-\$500)
- Attorney Fees awarded for successful actions



Exceptions

- Emergency Purchases
- Purchases from Federal Government
- State Contract Purchases
- Cooperative Purchases



Conflict of Interest Rules

- KRS 424.260: None
- KRS 74.020: removal of WD Commissioners voting on matters with direct financial interest
- KRS 96.533: removal of City Utility Board member failing to act in good faith
- KRS 65A.070: County/City Code of Ethics apply



LOCAL MODEL PROCUREMENT CODE



Local Model Procurement Code

- KRS 45A.345-.460
- Voluntary – Local Public Agencies **MAY** Adopt
- If Adopted Other purchasing statutes do not apply
- **Requires all contracts and purchases be awarded by competitive seal bidding**



Invitation to Bid: Contents

- Basis of Award
 - Lowest Price
 - Lowest Evaluated Price
- Objective Measurable Criteria For Award (if Lowest Evaluated Price)
- Reciprocal Preference for Resident Bidders



Notice of Invitation

- Adequate Public Notice Prior to Bid Opening
- Alternative Publication Methods:
 - Posting on Internet
 - Publication in Newspaper of General Circulation
- Notice: At least 7 days before bid opening
- Contain Time & Place of Bid Opening
- Contain Time & Place to Obtain Bid Specs



Bid Award

- Public opening
- Award to responsive bidder with lowest bid price or lowest evaluated bid
- Reciprocal preference applied to lowest evaluated bids
- If no responsive bids or all greater than available funds, **noncompetitive negotiations** may be used



Competitive Negotiations Permissible

- Unable to develop specs sufficiently specific to permit award based on LB or LEB
- Sealed Bidding is inappropriate:
 - Available sources limited
 - Time & Place of performance undetermine
 - Law regulates Price
 - Price cannot be fixed in advance
- Sealed Bid prices unresponsive/unreasonable



Competitive Negotiations: Notice

- Requests for Proposals
- Use Competitive Bidding Methods
- Any Other Means to Notify Adequate Number of Qualified Sources to Permit Reasonable Competition
- RFPs must indicate Factors Considered, Relative Importance & Reciprocal Preference



Competitive Negotiations: Discussions

- May be oral or written
- Held with ALL responsible offerors
- May not disclose any info derived from competing proposals
- Discussion of revised proposals must be discussed with all offerors



Competitive Negotiations: Award

- Must be based upon evaluation factors in RFP
- Standard: Most advantageous to the Agency
- Must be in Writing to responsible offerer



Noncompetitive Negotiations Permissible

- Emergency – Public Harm resulting from delay
- Single Source within reasonable geographic area
- Contract for services of licensed professional
- Purchase of perishable items
- Contract for replacement parts
- Purchase of proprietary items for resale



Noncompetitive Negotiations Permissible

- Purchase of supplies at public auction or by receiving sealed bids
- Insurance
- Contract for sale of supplies at reduced prices that will afford a purchase at savings
- Contract with private real estate developer w/ arrangements for sanitary sewer/stormwater



Small Purchases

- Purchase under \$40,000 may use small purchase procedures ILO bidding
- Agency must have developed such procedures
- Procedures must be in writing
- Procedures must be available for public inspection



Other LMPC Provisions

- Agency must make reasonable inquiry/written determination re: responsibility of bidder
- Bidder must submit sworn statement on non-violation of campaign finance laws
- Suppliers may be prequalified as responsible
- Agency has right to inspect contractor's plant or place of business



LMPC Conflict of Interest Rules: Breach of Ethical Standards

- Employee participation in procurement decision in which:
 - Employee/Family member has financial interest
 - Business or organization in which employee/family member is officer, director, trustee, partner or employee is a party
 - Any person, business, or organization w/whom employee or FM is negotiating employment is a party



LMPC Conflict of Interest Rules: Breach of Ethical Standards

- Offering or giving any agency employee or former employee a gratuity or offer of employment in connection with procurement or administration of contract
- Employee or former employee soliciting, demanding, or agreeing to accept gratuity or offer of employment in connection with procurement or administration of contract



LMPC Conflict of Interest Rules: Breach of Ethical Standards

- Making any payment, gratuity, or offer of employment by or on behalf of a subcontractor to the prime contractor or higher tier contractor or associated person as an inducement for the award of a subcontract or order
- Any current or former employee knowingly using confidential information for his actual or anticipated personal gain



LMPC Conflict of Interest Rules

- Conflict of Interest provisions must conspicuously set forth in every contract & solicitation
- Value of anything transferred or received in breach of ethical standards may be recovered
- Agency may recover value of any kickback may by subcontractor to prime contractor or higher tiered subcontractor



WHICH IS BETTER: KRS 424.260 OR LMPC?



COOPERATIVE PURCHASING



STATUTORY PREFERENCES



PROCUREMENT ISSUES WITH STATE AND FEDERALLY FUNDED PROJECTS



QUESTIONS?



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