

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

**In the Matter of:**

**ELECTRONIC APPLICATION OF )**  
**NORTHERN KENTUCKY WATER DISTRICT )**  
**AND STOLL KEENON OGDEN PLLC FOR ) CASE NO. 2025-00046**  
**ACCREDITATION AND APPROVAL OF A )**  
**PROPOSED WATER DISTRICT )**  
**MANAGEMENT TRAINING PROGRAM )**

**APPLICATION**

Northern Kentucky Water District (“NKWD”) and Stoll Keenon Ogden PLLC (collectively “Joint Applicants”) jointly apply for an Order from the 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. NKWD is a water district organized pursuant to KRS Chapter 74.
2. NKWD’s mailing address is: 2835 Crescent Springs Road, Erlanger, Kentucky 41018-0640. Its email address is: tedge@nkywater.org.
3. NKWD provides retail water service to all or portions of Boone, Campbell, and Kenton Counties, Kentucky and provides wholesale water service to non-affiliated water distribution systems in Boone, Campbell, Kenton and Pendleton Counties, Kentucky.
4. NKWD is not a corporation, limited liability company or partnership. It has no articles of incorporation or partnership agreements.
5. Stoll Keenon Ogden PLLC is a Kentucky 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.

6. Stoll Keenon Ogden PLLC's mailing address is: 300 West Vine Street, Suite 2100, Lexington, Kentucky 40507-1801. Its email address for purposes of this Application is: gerald.wuetcher@skofirm.com.

7. The Joint Applicants propose to sponsor and conduct a water management training program on April 3, 2025 at NKWD's offices in Erlanger, Kentucky. The program is entitled "Northern Kentucky Water Training 2025." A copy of the proposed agenda is attached to this Application as **Exhibit 1**.

8. As reflected in Exhibit 1, the proposed training program includes presentations that will enhance the attendees' understanding of relevant legal issues involved in the management, operation, and maintenance of water and wastewater systems and are calculated to enhance and improve the quality of the management, operation and maintenance of the attendees' water and wastewater systems. These presentations are:

a. **Recent Developments in Utility Regulation.** This presentation reviews recent developments in public utility law and regulation at the state level. Topics include laws enacted by the 2025 Kentucky General Assembly affecting public utilities, compliance with Commission orders, keeping minutes of board meetings, borrowing money, and Commission investigations. The presenter also examines and discusses recent court and Commission decisions.

b. **Relations with the Public Service Commission: Best Practices for Maintaining Positive Interaction.** This presentation focuses on the practices that utilities can undertake to ensure effective relations with the Commission. It reviews 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 also discusses how the Commission reviews applications for relief and what filers should generally expect.

c. **Certificates of Public Convenience and Necessity and Debt Authorizations.** This presentation reviews the statutory law surrounding the construction of utility facilities and the issuance of debt and focuses on infrastructure projects that 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 requiring prior Commission authorization and exceptions to the requirement for prior Commission authorization.

d. **Recent Developments in Utility Law at the Federal Level.** This presentation reviews recent developments in federal law that have or will affect public water utilities. Topics include recent federal court decisions involving the Safe Drinking Water Act and the Clean Water Act as well as, recently enacted or proposed federal legislation regarding public water systems, and recently promulgated administrative regulations, such as the recent U.S. Environmental Protection Agency's regulations regarding PFAS.

e. **Law 101 – Basic Legal Principles of Contracts and Torts for Regulated Water Utilities.** This presentation focuses on situations involving contract and tort law that public water utilities regularly address and the laws that govern those situations. It includes discussion of contract formation and modification, contract disputes, remedies for contract breaches, utility liability for its employees' acts, and the Commission's jurisdiction over contract and tort disputes.

f. **Legal Issues in the Operation and Management of Water Systems.** A panel of attorneys will entertain audience questions regarding frequently recurring legal issues that regulated water utilities face. Discussion will 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. Commission regulatory requirements will also be discussed.

g. **PSC Consumer Services, One-on-One Discussion.** This session is a question-and-answer session with the Manager of the Commission's Consumer Services Branch primarily for utility customer representatives. Water district commissioners will have the option of attending if seating is available. The requirements of the Commission's regulation on customer relations will be examined in detail.

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. Each attendee will be provided a copy of the materials attached at **Exhibit 3**. These materials are of the same type and nature as those previously provided at the accredited training programs conducted at NKWD's offices in prior years.<sup>1</sup> The Joint Applicants will provide each

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<sup>1</sup> See *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. 2024-00090 (Ky. PSC Aug. 2, 2024); *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. 2023-00109 (Ky. PSC Jun. 13, 2023); *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. 2022-0338 (Ky. PSC Dec. 22, 2022); *Electronic Application of Northern Kentucky Water District for Approval of Commissioner Training and Continuing Education Credit*, Case No. 2019-00081 (Ky. PSC June 4, 2019); *Application of Northern Kentucky Water District For Accreditation and Approval of A Proposed Water District Management Training Program*, Case No. 2018-00091 (Ky. PSC May 9, 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*

attendee with a copy of each speaker's presentation. In addition, presenters may provide attendees with copies of applicable laws, regulations, Kentucky court decisions, and Commission orders. The Joint Applicants will include a copy of these materials with their sworn statement and report regarding the program. Should any presenter revise or amend his or her presentation prior to the presentation or provide additional written materials to the attendees, a copy of the revised presentation will also be submitted.

12. The Joint Applicants have applied or will shortly apply to the Kentucky Bar Association, the Division of Compliance Assistance, and the Department of Local Government for accreditation of the proposed training program for six hours of continuing education credit.

13. The Joint Applicants have sent notice of the proposed training program by electronic mail to the water districts and water associations that are under Commission jurisdiction as well as representatives of investor-owned and municipal 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. No later than May 1, 2025, 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,

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*Accreditation and Approval of A Proposed Water District Management Training Program*, Case No. 2015-00147 (Ky. PSC May 18, 2015).

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 for continuing education credit by certifying authorities and a copy of any written material provided to the attendees included in this Application.

17. Joint Applicants will admit Commission representatives 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.

WHEREFORE, the Joint Applicants request that the Commission approve and accredit the proposed training program entitled "Northern Kentucky Water Training 2025" for six hours of water district management training.

Dated: February 28, 2025

Respectfully submitted,



Tom Edge  
General Counsel and Director of Compliance,  
Communications, and Regulatory Affairs  
Northern Kentucky Water District  
2835 Crescent Springs Rd.  
P.O. Box 18640  
Erlanger, KY 41018  
tedge@nkywater.org  
Telephone: (859) 578-5457  
Fax: (859) 426-2770

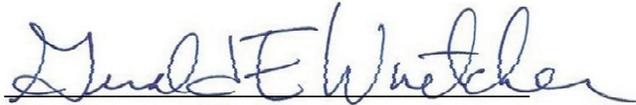
*Counsel for Northern Kentucky Water District*

Gerald E. Wuetcher  
Stoll Keenon Ogden PLLC  
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Lexington, Kentucky 40507-1801  
gerald.wuetcher@skofirm.com  
Telephone: (859) 231-3017  
Fax: (859) 259-3517

*Counsel for Stoll Keenon Ogden PLLC*

CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, and the Commission's Order of July 22, 2021 in Case No. 2020-00085, I certify that this document was transmitted to the Commission on February 28, 2025 and that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding.

A handwritten signature in blue ink that reads "Gerald E. Wuetcher". The signature is written in a cursive style and is positioned above a horizontal line.

Gerald E. Wuetcher

# **EXHIBIT 1**

**Northern Kentucky Water Training 2025**  
**Presented by**  
**Northern Kentucky Water District & Stoll Keenon Ogden PLLC**  
**April 3, 2025**  
**2835 Crescent Springs Road**  
**Erlanger, Kentucky**

**Morning Agenda**

- 7:45 – 8:25    **Registration and Refreshments**
- 8:25 – 8:30    **Program Overview and Welcome – Lindsey Rechtin, President, Northern Kentucky Water District**
- 8:30 – 8:45    **Opening Remarks – Angie Hatton, Chair, Kentucky Public Service Commission**
- 8:45 – 9:45    **Recent Developments in Utility Regulation – Damon Talley**  
This presentation reviews recent developments in public utility law and regulation at the state level. Topics include laws enacted by the 2025 Kentucky General Assembly affecting public utilities, compliance with Commission orders, keeping minutes of board meetings, borrowing money, and Commission investigations. The presenter also examines and discusses recent court and Commission decisions.
- 9:45 – 9:50    **Break**
- 9:50 – 10:45    **Recent Developments in Utility Law at the Federal Level – Tom Edge**  
This presentation reviews recent developments in federal law that have or will affect public water utilities. Topics include recent federal court decisions involving Safe Drinking Water Act and Cleanr Water Act as well as, recently enacted or proposed federal legislation regarding public water systems, and recently promulgated administrative regulations, such as the recent U.S. Environmental Protection Agency’s regulations regarding PFAS.
- 10:45 – 10:50    **Break**
- 10:55 – 11:55    **Certificates of Public Convenience and Necessity and Debt Authorizations – Gerald Wuetcher**  
This presentation reviews the statutory law surrounding the construction of utility facilities and the issuance of debt and focuses on the infrastructure projects that require a certificate of public convenience and necessity and the exceptions to the general requirement for a certificate of public convenience and necessity. It also identifies the debt issuances and contractual obligations requiring prior Commission authorization and exceptions to that requirement. Presentation will provide practical suggestions on preparing applications for such relief to reduce the time required to obtain Commission approval.

10:55 – 11:55 ***Special Session I – PSC Consumer Services, One-on-One Discussion – Rosemary Tutt***  
The Manager of the Commission’s Consumer Services Branch will conduct a question-and-answer session for utility customer representatives. The requirements of the Commission’s regulation on customer relations will be examined in detail. Seating is limited.

11:55 – 12:30 **Lunch (Provided on site)**

### **Afternoon Agenda**

12:30 – 1:30 ***Special Session II – PSC Consumer Services, One-on-One Discussion – Rosemary Tutt***  
Second session.

12:30 – 1:30 **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. It reviews 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.

1:30 – 1:40 **Break**

1:40 – 2:40 **Law 101 – Basic Legal Principles of Contracts and Torts for Regulated Water Utilities – Tom Edge**  
This presentation focuses on situations involving contract and tort law that public water utilities regularly address and the laws that govern those situations. It includes discussion of contract formation and modification, contract disputes, remedies for contract breaches, utility liability for its employees’ acts, and Commission jurisdiction over contract and tort disputes.

2:40 – 2:45 **Break**

2:45 – 3:45 **Legal Issues in the Operation & Management of Water Systems – Panel Discussion - Panelists: Tom Edge, Tina Frederick, Damon Talley, Gerald Wuetcher**  
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. Kentucky Public Service Commission regulatory requirements will also be discussed.

3:45 **Closing Remarks/Administrative Announcements**

# **EXHIBIT 2**

## **TOM EDGE**

TOM EDGE is General Counsel and Director of Compliance, Communications, and Regulatory Affairs at the Northern Kentucky Water District. As General Counsel, Tom provides legal counsel and guidance to the District's Board of Commissioners and its Management Team on all legal matters including personnel law, real estate, contracts, tax, insurance, public monies and purchasing. He has been with Northern Kentucky Water District since January 2021. He previously served in the Campbell County Attorney's Office and maintained a private practice that included several municipalities. Tom has an Associate Degree in Information Systems Technology from the Community College of the Air Force, a Bachelor's Degree in Information Technology from American Military University, a Master's in Business Administration from American Public University, and a Juris Doctorate from Northern Kentucky University.



## **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*.



**Angie C. Hatton**  
Chair, Kentucky Public Service Commission

Angie Hatton was appointed to the Public Service Commission and designated as Vice Chair by Governor Andy Beshear in March 2023. She was then appointed as Chair on August 6, 2024. Her term expires July 1, 2025.

Prior to her appointment, in addition to her private law practice, Chair Hatton served three terms representing Letcher, Pike and Harlan Counties in the House of Representatives, and served the General Assembly as House Minority Whip. Much of her legislative work centered around energy and utility issues. She served on the House Standing Committee on Natural Resources and was appointed by the Speaker of the House to the Southern Legislators Conference Committee on Energy and Environment.



Chair Hatton was named to the Kentucky Gazette's 50 Most Notable Women in 2019, named a KACO Outstanding County Advocate, awarded the Legislative Champion Award at the 2022 Senior Hunger Summit, given a Warrior for Working Families Award from the Working Families PAC, the Kentucky Valley Education Cooperative Henry Clay Award, the Cumberland Valley ADD Outstanding Advocate Award, the KCTC Outstanding Higher Education Advocate and numerous other awards. She serves on the Board of Directors for Kentucky Youth Advocates, Kentucky Habitat for Humanity, Eastern Kentucky Red Cross, Kentucky Community Farm Alliance, and EKY Heritage Foundation among other nonprofit boards. Currently she serves on the Board of Directors for both OPSI (Organization of PJM States) and OMS (Organization of MISO States). For NARUC, the National Association of Regulatory Utility Commissions, she serves on the Energy Resources and Environment Committee, the International Relations Committee and the Clean Coal Committee. Also, she serves on the Advisory Board for the New Mexico State University Center for Public Utilities.

After graduating from Eastern Kentucky University in 1994 with a degree in journalism, she worked as a newspaper reporter before earning her law degree at the University of Kentucky College of Law in 1999. Chair Hatton and her family reside in Whitesburg.



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.

## **ROSEMARY TUTT**

Ms. Tutt is the manager of the Kentucky Public Service Commission's Consumer Services Branch. This branch is responsible for investigating consumer complaints against the 1,500 utilities the Commission regulates, as well as handling the public's inquiries regarding those utilities rates, rules and services. She oversees a staff of two utility investigators. Ms. Tutt began her employment with the Commission in 2009. She was selected as Manager of the Consumer Services Branch in 2017.



### 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**

# HOT LEGAL TOPICS

April 3, 2025

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

SPONSORED BY  

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## DISCUSSION TOPICS

1. PSC Filings
2. 2025 General Assembly
3. Notable PSC Orders
4. Minutes



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## DISCUSSION TOPICS

5. Comply with PSC Orders
6. Borrowing Money
7. Cases to Watch



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### Reporting Requirements

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

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## 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



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## 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



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## E-Mail Address

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



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## Why Municipals?

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



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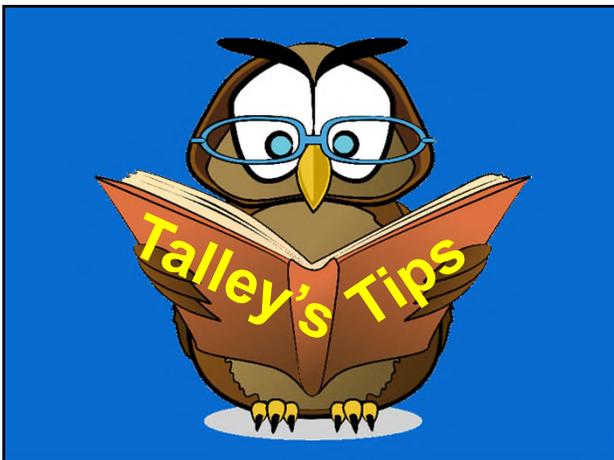
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## Default Regulatory E-mail Address

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



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## 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



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## 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



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# 2025 General Assembly



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## Notable Bills – House

- HB 16 Fluoride
- HB 85 Sanitation Districts
- HB 345 Ky. Buy American Act
- HB 386 Bidding Threshold Increased



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## Notable Bills – Senate

- SB 8 PSC Commissioners
- SB 89 Waters of the Commonwealth



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## HB 16 – Fluoride

- “Local Option”
  - Decision to Have Drinking Water Fluoridation Program is Now Optional
    - Local Control
    - Decision Made by Governing Board of Water Producer
- Current Program Continues Until Decision Made to Cease



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## HB 85 – Sanitation Districts

- Sanitation District Cannot Charge Fee Unless Property Is:
  - Connected to Sewer Line;
  - Approved Plan to Extend Sewer Line within 5 years; or
  - Stormwater from Property Flows to Storm Sewer



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## HB 345 – Ky. Buy American Act

- State and Local Government Contracts for Public Works Shall:
  - Iron, Steel, and Aluminum to Be Manufactured in America
- Applies to Cities & Water Districts
- Water Associations Exempt



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## HB 386 - Bidding Threshold

- Raises Threshold from \$40,000 to \$60,000
- Amends KRS 424.260
- Vehicles - No Threshold
- Does Not Amend KRS 45A
- Provides for Alternate Publication



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## SB 8 – PSC Commissioners

- Expands Number from 3 to 5
- Detailed Eligibility Criteria
- One Commissioner – Consumer Advocate
- Governor Appoints 3
- State Auditor Appoints 2
- Commissioners Elect Chair & Vice Chair



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## SB 89 – Waters of the Commonwealth

- Changes Definition of “Waters of the Commonwealth” to Mean **Navigable** Waters as Defined under Federal Law
- Threatens Water Quality of:
  - Rivers, Streams & Creeks
  - Ground Water
  - Wells



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# Notable PSC Orders



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## PSC Case No. 2023-306

Filed: 11-08-2024  
Utility: North Nelson WD  
Type: Declaratory Order  
Issue: Is CPCN Needed?  
Decided: 01-28-2025  
Answer: NO



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## North Nelson WD

- Facts: Construct 7.3 Miles Transmission Main
  - Supplemental Source for B-Town
  - Cost: \$16.6 Million
  - Grants: \$17.8 Million
- Problem: Net Utility Plant = \$11.4 Million
- Concern: Depreciation Expense = \$225,000



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## PSC Case No. 2024-286

Filed: 10-18-2024  
Utility: Warren County WD  
Type: CPCN – Construct  
Headquarters  
Decided: 02-18-2025

(continued)



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## Warren County WD

- Unique Features:
  - Design Build Contract
  - Emergency Operations Center  
Included in New Building



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## 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



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## 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 . . .)



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## 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 . . .)



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## OCWD (continued)

PSC Order:

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



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## 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. . .)



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## PSC Case No. 2023 - 247

Hearing: 01-11-2024  
Brief: 02-16-2024  
Decided: 07-29-2024



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## 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



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## Hardin Co. W.D. No.2

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



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## 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



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## 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



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## PSC Case No. 2023 - 257

### Issues:

1. Is the Tank Maintenance Contract an Evidence of Indebtedness ?  
Answer: Yes
2. Is CPCN Needed ?  
Answer: No



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## 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



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## Change the Facts

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



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## Is a CPCN Needed ?

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



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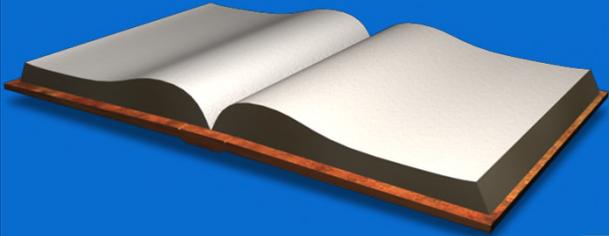
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## MINUTES



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## What Are MINUTES?

- Official Record
- Much, Much More . . .



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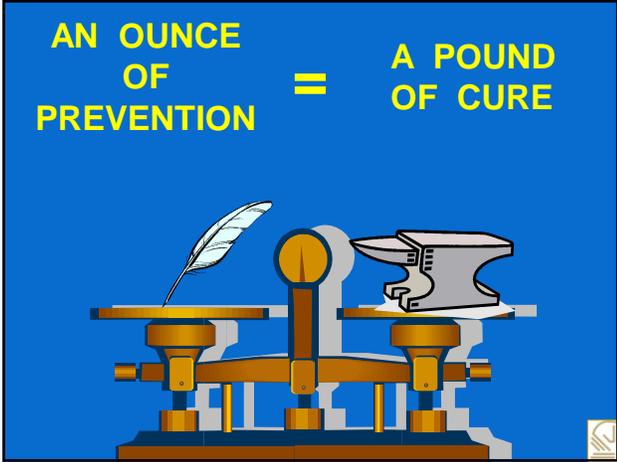
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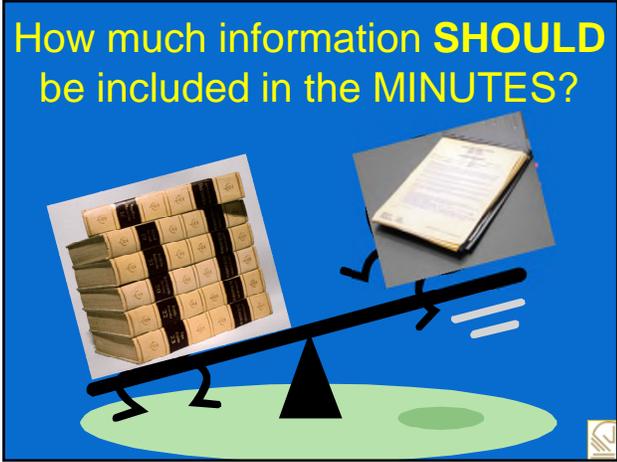
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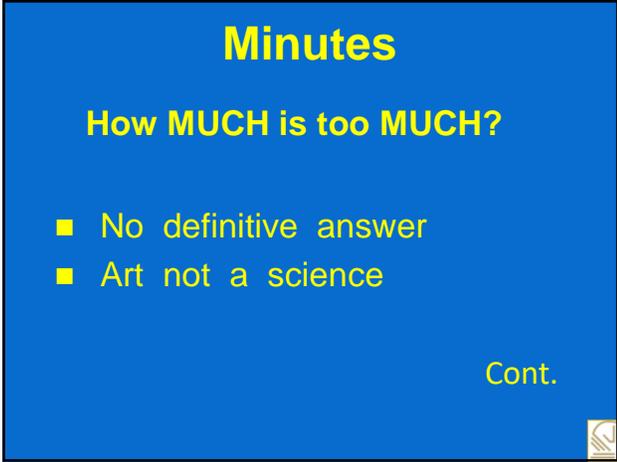
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## Minutes ...

### 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



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## 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.”



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“Conversations are **NOT** official actions of the Board.”

Virginia W. Gregg  
Former PSC Staff Attorney



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### 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



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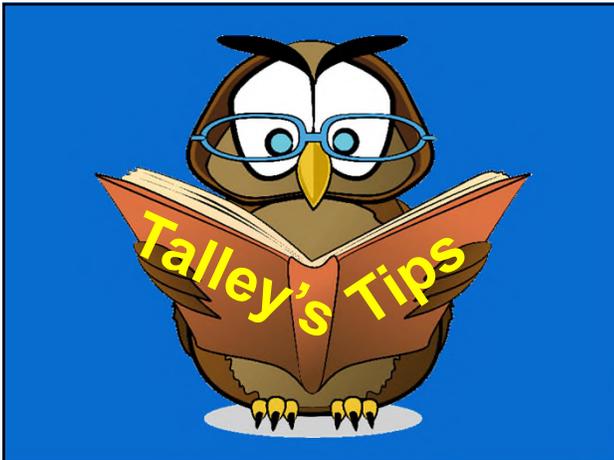
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### Talley's Tips

#### 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.



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# Comply With All PSC Orders



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“ . . . 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.”



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PANDORA'S  
BOX



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**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.

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**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)

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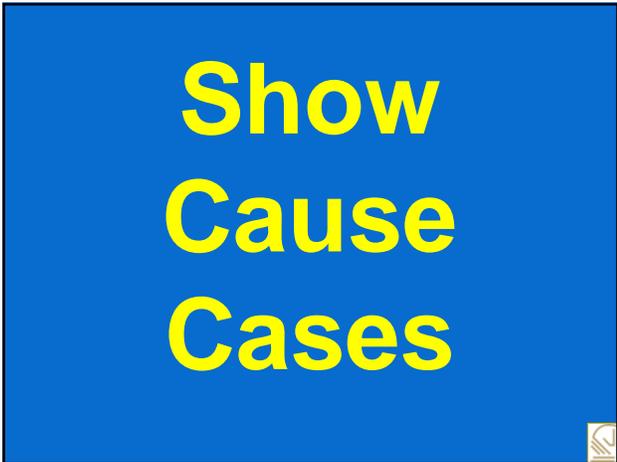
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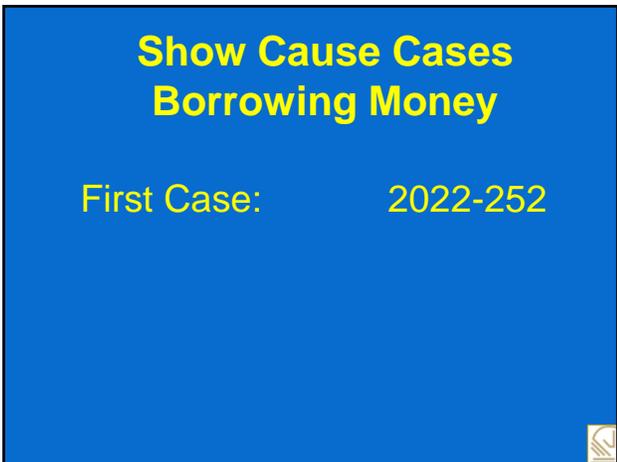
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### Case # 1

Case No. 2022 - 252  
Opened: 02-16-2023  
Issue: KRS 278.300  
(4 Violations)  
Hearing: 08-01-2023  
Decided: 10-17-2023



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### Case # 1

Facts: Leased 4 Trucks  
4 & 5 Year Terms  
Issue: Is Long Term Lease  
An evidence of  
Indebtedness ?  
Holding: Yes



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### Case # 1

Outcome:

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



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## Oldham (continued)

Issues on Appeal:

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



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[damon.talley@skofirm.com](mailto:damon.talley@skofirm.com)

270-358-3187



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Northern Kentucky Water Training 2025

# RECENT DEVELOPMENTS IN UTILITY LAW AT FEDERAL LEVEL

Presented by Tom Edge, Esq.

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## PRESENTATION DISCLAIMER

*The materials provided in this presentation and any comments or information provided by the presenters are for educational purposes only and nothing conveyed or provided should be considered legal, engineering or technical advice nor replace independent professional judgment.*

*Statements of fact and the views, thoughts and opinions expressed are those of the presenter and not opinion or position of the Northern Kentucky Water District.*



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## PRESENTATION SUMMARY

- **Legislation**
  - Special District Grant Accessibility Act
  - Water System PFAS Liability Protection Act
  - CRA Resolution for LCRI Regulation
- **Regulations**
  - Regulatory Process Overview
  - PFAS - SDWA MCL and CERCLA
  - Lead and Copper Rule
  - Microbial and Disinfection Byproduct Rule Revisions
  - UCMR 6
- **Judicial Activities**
  - AWWA v. EPA, U.S. Court of Appeals, D.C. Circuit, Case 24-1188
  - AWWA v. EPA, U.S. Court of Appeals, D.C. Circuit, Case 24-1376
  - WV Rivers Coalition, Inc. v. The Chemours Company FC, LLC, U.S. South Dist of WV, Case 24-CV-00701
  - Chamber of Commerce of the U.S.A. v. EPA, D.C. Circuit Court of Appeals, Case 24-1193
  - PFAS Multi-District Litigation
- **Federal Guidance Documents**

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# LEGISLATIVE ACTIONS

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**Special District Grant Accessibility Act - HR 7525/S. 4673 (118<sup>th</sup> Congress)**

- Creates a formal definition for “special district” in federal law which would assist in ensuring special districts can receive federal grants.
- In 118<sup>th</sup> Congress (2023-24), it passed House on May 6th 2024 but no action taken after introduction in Senate.
- Will need to be reintroduced in both House and Senate under 119th Congress.

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**Water Systems PFAS Liability Protection Act - HR 1267(119<sup>th</sup> Congress)**

- Exempts Water Systems from liability under CERCLA.
- First introduced on April 11, 2024 in House and May 3, 2023 in Senate but no action in either chamber.
- Reintroduced in 119th Congress with bi-partisan support.
- The bill provides narrowly tailored liability exemptions for water and wastewater systems to ensure that polluters, not ratepayers, are held financially responsible for PFAS contamination under CERCLA.
- Without explicit liability protections, a water system that removes PFAS from drinking water and disposes of the residuals at a landfill could be treated as a polluter under the law and forced to engage in lengthy litigation and pay for future cleanup of the site.

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### CRA Resolution for LCRI Regulation – HJR 18 (119<sup>th</sup> Congress)

- Congressional Action under Congressional Review Act (CRA) to void the EPA’s LCRI regulation.
- CRA Resolutions are a legislative maneuver that allows a simple majority of each chamber of Congress to overturn new regulation.
- CRAs only provide for the repeal of an entire regulation. It is not possible to repeal only certain problematic parts of a regulation through a CRA, while leaving other parts intact.
- CRA also bars an agency from ever again promulgating a rule that is “substantially the same” as a repealed rule.
- Would need to pass both chambers and signed by President by Mid-May at latest.
- Currently referred to House Committee on Energy and Commerce but no official action taken.

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## REGULATIONS

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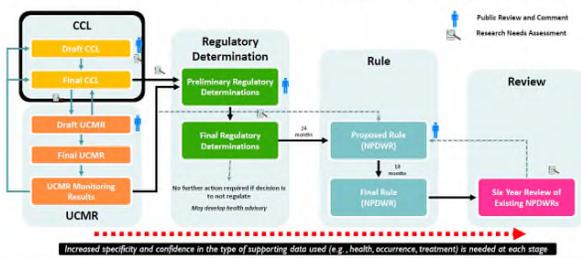
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### General Flow of SDWA Regulatory Processes



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## REGULATORY HISTORY

August 26, 2022	March 14, 2023	April 10, 2024	April 19, 2024
EPA proposed rule to designate PFOA and PFOS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).	EPA proposed rule to regulate 6 PFAS compounds in drinking water.	EPA enacts final rule to regulate 6 PFAS compounds in drinking water.	EPA enacts final rule to designate PFOA and PFOS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA also issued a PFAS Enforcement Discretion and Settlement Policy under CERCLA.

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## PFAS – NEW RULES

**Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)**

- On April 19, 2024, EPA designated perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS), as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

**Safe Drinking Water Act**

- On April 10, 2024, EPA enacted a final rule to regulate 6 PFAS compounds in finished drinking water.

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## PFAS – CERCLA

**Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).**

CERCLA stands for the Comprehensive Environmental Response, Compensation, and Liability Act, which is often referred to as Superfund. It's a United States federal law passed in 1980. The main purpose of CERCLA is to address the cleanup of sites contaminated with hazardous substances and pollutants.

**What CERCLA entails:**



Response Actions



Liability



Cleanup Process



Funding



Community Involvement

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### INITIAL MONITORING

- The final rule requires that all community water systems and non-transient, non-community water systems complete initial monitoring within three years after the date of the final rule promulgation. The monitoring must be conducted at all entry points to the distribution system. Based on their system size and source water at an entry point to the distribution system, systems must conduct initial monitoring either twice or quarterly during a 12-month period as follows:
  - **Surface water systems.** All surface water systems are required to initially monitor quarterly within a 12-month period. Samples are required to be collected 2 to 4 months apart.
  - **Groundwater systems serving greater than 10,000 customers.** Initially, these systems are required to monitor quarterly within a 12-month period. Samples are required to be collected 2 to 4 months apart.
  - **Groundwater systems serving 10,000 or fewer customers.** EPA is requiring that these systems initially only monitor twice within a 12-month period, with each sample collected 5 to 7 months apart.
- In order to reduce costs for systems, primacy agencies can allow systems to use previously collected monitoring data to satisfy some or all of the initial monitoring requirements, if the sampling was conducted using EPA Methods 533 or 537.1 as part of UCMR 5 or other state-level or other appropriate monitoring campaigns.

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### ONGOING COMPLIANCE MONITORING

- Three years following the date of rule promulgation, community water systems and non-transient, non-community water systems are required to begin quarterly compliance monitoring at all entry points.
- Based on initial monitoring, primacy agencies have the authority to reduce compliance monitoring frequency at a systems' applicable entry points to once every three years (for all sizes of systems and water source types) if initial monitoring results are below rule trigger levels for all regulated PFAS.
- The trigger levels are used for establishing appropriate monitoring frequency. For certain regulated PFAS, they are set at a defined threshold that shows if these PFAS are present or absent. The trigger levels are set at one-half of the MCLs for regulated PFAS (i.e., 2.0 ppt for PFOA and PFOS, 5 ppt for PFHxS, PFNA, and GenX Chemicals) and one-half of the Hazard Index MCL (0.5 unitless) for mixtures of PFHxS, GenX Chemicals, PFNA, and/or PFBS.
- Systems with multiple entry points to the distribution system may establish different compliance monitoring schedules for each entry point depending on their monitoring results.

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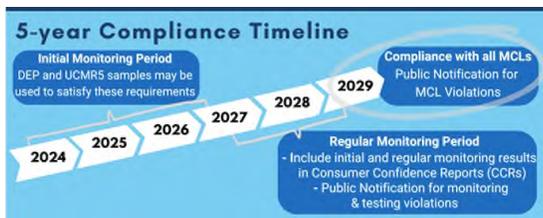
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### PFAS –SDWA TIMELINE




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**BACKGROUND –**  
*Lead & Copper Rule*

- EPA authorized to establish standards under the *Safe Drinking Water Act*.
- Lead and Copper Rule began in 1991.
- Maximum Contaminant Level Goal (MCLG) for lead: 0 µg/L
- Test water at the tap in homes that have lead service lines or copper with lead solder.
- Action Level for lead: 15 µg/L
  - >AL - Install corrosion control treatment; and
  - Replace lead service lines at a rate of 7%



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**BACKGROUND –**  
*Lead & Copper Rule Revisions (LCRR)*

LCRR promulgated on January 15, 2021 and created new requirements **THAT BECOME EFFECTIVE OCTOBER 16, 2024:**



Lead Service Line Inventory    Tap Sampling    Trigger Level    Corrosion Control Treatment    Lead Service Line Replacement    Schools/Child Care Facilities

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**BACKGROUND –**  
*Lead & Copper Rule Improvements (LCRI)*

Final Rule October 2024, then 3 years to comply.

**Lead and Copper Rule Improvements major areas of change:**



Tap Sampling    Communications    Inventory    Lead Service Line Replacement

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### PROPOSED LCRI COMPLIANCE



#### Tap Sampling

- Reduce action level from 15 to 10 ug/L
- Requires use of 100% lead service lines in sample pool
- Use higher of 1<sup>st</sup> and 5<sup>th</sup> liter samples



#### Communications

- Requires several new communications and outreach efforts for various compliance levels
  - Example: 3-calender day notification of lead testing results.

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### ACTION LEVEL EXCEEDANCE

EPA is proposing systems with first and second action level exceedances must:

- Notify customers within 24 hours
- Conduct system-wide public education outreach, such as conducting a townhall meeting or participating in a community event, to raise additional awareness of the health effects of lead in drinking water, identify steps consumers can take to reduce their exposure, and provide information about how the water system is addressing the issue.

EPA is proposing systems with three action level exceedances must:

- Make filters certified for lead reduction available to all consumers served by the system.
- Conduct at least one additional system-wide public education outreach activity, such as conducting a townhall meeting or participating in a community event, to raise additional awareness of the health effects of lead in drinking water, identify steps consumers can take to reduce their exposure, and provide information about how the water system is addressing the issue.
- Repeat the public education activity every 6 months

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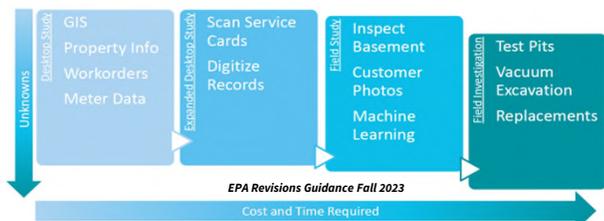
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### INVENTORY DEVELOPMENT PROCESS

Inventory Due October 16, 2024



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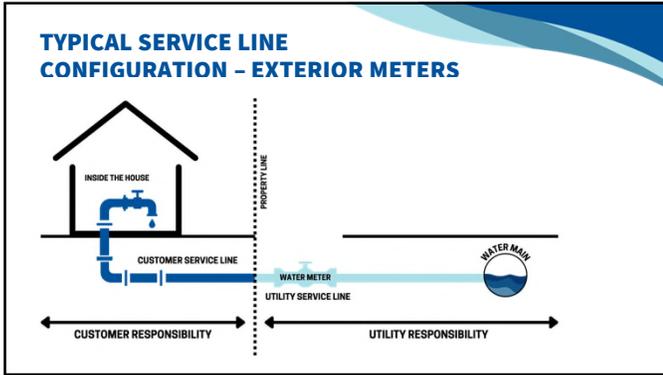
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### LCRI RULE COMPLIANCE OUTLOOK

**Lead Service Line Removal**

- Remove all lead service lines within 10 years *in control of utility*;
- Must fully replace 10% annually on three-year rolling average.

**Outlook: Water Districts are not “in control” of private service lines**

Kentucky Administrative Regulation, 807 KAR 5:066 Section 12 lays ownership of service lines past the meter and meter box with the customer. After the point where NKWD's ownership ends, NKWD, as a special purpose government entity whose statutory purpose under Kentucky Revised Statute 74.012 is limited to furnishing public water supply, is prohibited from seizing ownership of the service line beyond that point in accordance with Kentucky Constitution Sections 10, 13 and 242.

In limited circumstances, NKWD may arguably replace private lead service lines with consent as an implied power when reasonably incidental and indispensable to its power of furnishing a public water supply (i.e., as part of water main replacement project). See e.g., Commonwealth v. Fayette County, 39 S.W.2d 962 (Ky. 1931); OAG 84-148 (water district could probably require hook up in interest of public health, safety and welfare).

**Consent only applicable in limited circumstances, but in any case, funding is open question . . .**

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### FUNDING OPTIONS

- State or Local** – No additional monies currently expected from grants by Legislature.
- Customer Funded Directly** – Customer either pays:
  - lump sum of costs for replacement at or before time of replacement; or
  - through a surcharge program similar to NKWD's subdistricts (if PSC would approve such a program).
- Utility Through Rates** – Utility pays and recoups through rates.  
Legal Opinion: PSC would approve for utility owned portion but may not approve recovery of rates for private side.

278.010 Rates, classifications and service of utilities to be just and reasonable – to be adequate – to be prohibited from exercising power to obstruct service where not in and prevent.

(1) The utility shall, in its rates or service, give any unreasonable preference or advantage to any person or interest any person in any unreasonable prejudice or disadvantage or establish or maintain any unreasonable difference between individuals or between classes of service for doing a like and contemporaneous service under the same or substantially the same conditions.

(2) Every utility may demand, collect and receive due, just and reasonable rates for the services rendered or to be rendered by it to any person.

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### Microbial and Disinfection Byproduct Rule Revisions

- Creates a formal definition for “special district” in federal law which would assist in ensuring special districts can receive federal grants.
- In 118<sup>th</sup> Congress (2023-24), it passed House on May 6th 2024 but no action taken after introduction in Senate.
- Will need to be reintroduced in both House and Senate under 119th Congress.

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### UCMR 6

- Expected to see EPA proposal for contaminants to test in November 2025.
- EPA uses the Unregulated Contaminant Monitoring Rule (UCMR) to collect data for contaminants that are suspected to be present in drinking water and do not have health-based standards set under the Safe Drinking Water Act (SDWA).
- Occurrence data are collected through UCMR to support the EPA's determination of whether to regulate particular contaminants in the interest of protecting public health.
- EPA pays for the analysis of all samples from public water systems serving 10,000 or fewer people that it selects for sampling.

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### JUDICIAL ACTIVITIES

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**AWWA v. EPA,  
U.S. Court of Appeals, D.C. Cir., Case 24-1188**

- On June 7, 2024 AWWA and AMWA filed a petition for a judicial review of the EPA's PFAS Drinking Water Rule on the basis the Hazard Index was arbitrary and Capricious, violated the Administrative Procedures Act and the rule cost analysis was arbitrary.
- On October 7 AWWA and AMWA filed a joint Opening Brief and on December 23, 2024, EPA filed its Brief. Additional briefing will be concluded by March 25, 2025 with a decision hopefully by the end of 2025.
- On February 7, 2025, EPA filed motion for 60 day abeyance which was not opposed.

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**AWWA v. EPA,  
U.S. Court of Appeals, D.C. Cir., Case 24-1376**

- On December 13, 2024, AWWA filed a petition for judicial review of the EPA's LCRI on the basis that the replacement of service lines on private property not owned by the water system violated the SDWA, the 10 year replacement time frame was arbitrary and capricious, and the rule costs analysis was arbitrary and capricious.
- Democratic attorneys general (AGs) from 10 states and the District of Columbia originally sought to intervene as parties to the case but abruptly changed position to only seek providing an amicus brief after AWWA opposed the intervention on the basis the states could pass their own rules that were similar or more stringent than LCRI.
- No scheduling order for briefs and arguments has been set and nothing is expected over the next 60 days as EPA through DOJ requested an abeyance for the new administration.

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**WV Rivers Coalition, Inc. v. The Chemours  
Company FC, LLC, U.S. South Dist of WV,  
Case 24-CV-00701**

- On December 5, 2024, West Virginia Rivers Coalition, a nonprofit organized to promote the overall health of WV waters filed a citizen suit against Chemours for violation of the Clean Water Act NPDES permit, and 2023 Consent Order.
- The matter is in the pleadings and initial discovery phase.

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### Chamber of Commerce of the U.S.A. v. EPA, D.C. Circuit Court of Appeals, Case 24-1193

- This litigation is the regulatory challenge to designating PFOA and PFOS as CERCLA Hazardous Substances.
- EPA requested via motion a stay of 60 days to review.

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### PFAS MULTIDISTRICT LITIGATION SUMMARY

- The PFAS Multidistrict Litigation (a special type of proceeding used for judicial efficiency or MDL for short) started in December 2018 and is currently home to over 15,000 cases.
- Cases that involve PFAS-containing aqueous film-forming foam (AFFF) are primarily litigated on the consolidated docket although many claimants, such as NKWD, have expanded to all PFAS related claims, directly and indirectly.

There are four categories of cases that are currently on the MDL:

- (1) Water Utilities seeking costs of necessary testing and remediation technology for PFAS;
- (2) States, for environmental PFAS pollution (broadly, not limited to only drinking water issues) within state borders seeking monetary relief for necessary testing, natural resource damages, and remediation;
- (3) Individual Persons for personal injury claims and medical monitoring brought alleging that PFAS in the AFFF products used by the fire fighters led to an injury; and
- (4) Property damage claims of individuals, governmental entities and others for PFAS impacts to real property, including but not limited to, private wells, airports, wastewater systems, and fire training locations.

*PFAS problem is bigger than Defendants and what can be recovered from the litigation. This is only one piece to the solution of PFAS problem which will likely also include funding from various government entities and our rate payers.*

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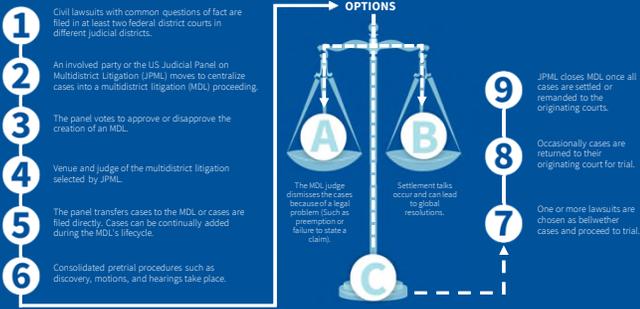
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### MULTIDISTRICT LITIGATION PROCESS



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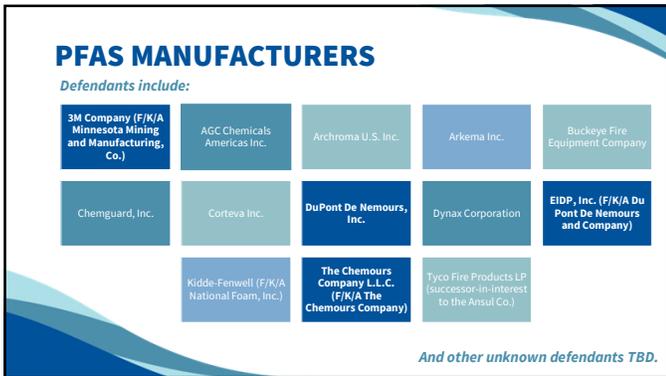
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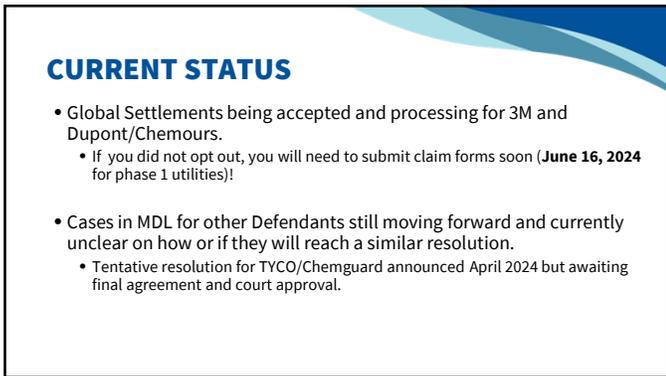
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### SETTLEMENT AMOUNT DETERMINATION

- Proceeds to each utility determined by the participating utility's score as a percentage of total of all participating utilities scores.
- **Scores arrived at through complex formula** primarily based on flow rates, prior PFAS test results, and EPA estimated capital/O&M costs.
- Each utility may also be eligible for the following enhancement adjustments:
  - Litigation Bump – for those who filed litigation before the Settlement Dates
  - Bellwether Bump – for the utilities who served as Bellwether Plaintiffs
  - Regulatory Bump – for those whose PFAS contamination exceeds certain state or proposed federal maximum contaminant levels.
- Exact numbers cannot be determined until actual claim forms are submitted and reviewed.

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### FEDERAL GUIDANCE MATERIALS

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### NEW FEDERAL GUIDANCE DOCUMENTS

Links below to material that may assist:

- EPA released an update to its SRF Portal in hopes of better communicating the impact of federal water infrastructure funding to Congress and public at large. It can be found at [https://edhhs.epa.gov/cehs/efdw-pub/efdw/overref\\_public/home](https://edhhs.epa.gov/cehs/efdw-pub/efdw/overref_public/home).
- EPA released two geographic information system (GIS) interfaces that present water system area boundaries and link the visual presentation to community water system compliance information. Some boundaries are based on boundary data submitted to state agencies, while others are algorithmic predictions. The interfaces include the [Community Water System Service Area Boundaries](#) and the [EJScreen tool](#).
- The EPA's long-standing Effective Utility Management (EUM) collaborative program with several water associations released an updated primer reflecting concepts that may have changed since the last update 8 years ago. It can be found at <https://www.epa.gov/system/files/documents/2024/08/eum-primer.pdf>.
- The Cybersecurity and Infrastructure Security Agency (CISA) published a joint report titled "Modern Approaches to Network Access Security" which provides best practices for organizations to move towards more robust security solutions for greater visibility on network access. It can be found at: <https://www.cisa.gov/resources-tools/resources/modern-approaches-network-access-security>.
- CISA released a new resource entitled, Resources for Onboarding and Employment Screening. This resource, designed for critical infrastructure organizational leaders, provides a simple checklist that organizations can utilize as part of their background check processes for new hires. It can be found at: <https://www.cisa.gov/resources-tools/resources/resources-onboarding-and-employment-screening-fact-sheet>.
- FEMA updated the Hazard Mitigation Assistance Guide to make it more user-friendly. The update consolidates information and eligibility requirements for projects addressing air quality, drought, extreme temperatures, wildfire and wind. It also reflects recent policy changes to simplify program delivery. It can be found at: <https://www.fema.gov/grants/mitigation/hazard-mitigation-assistance-guidance>.

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# Relations with the Public Service Commission

## Best Practices for Maintaining Positive Interaction

April 3, 2025

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



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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



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**DISCLAIMER**



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## 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)



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## 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



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## 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. (412 in 2024)
8. Adoption of KRS 278.019
  - Imposed an 8-month statutory deadline



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## 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



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## 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.



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## 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.



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## 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



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## 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

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## 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**



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## 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?)



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## 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



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## 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)



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## 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



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## 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.



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## 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?



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## 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



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## 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!**



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## 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.

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## 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.

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## 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 31<sup>st</sup>
  - Do not assume an extension will be granted for the annual report or the rate case.



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## 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?



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## 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



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Tina.frederick@skofirm.com



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Northern Kentucky  
Water District

Northern Kentucky Water Training 2025

## LAW 101 – BASIC LEGAL PRINCIPLES OF CONTRACTS AND TORTS FOR REGULATED WATER UTILITIES

Presented by Tom Edge, Esq.



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### PRESENTATION DISCLAIMER

*The materials provided in this presentation and any comments or information provided by the presenters are for educational purposes only and nothing conveyed or provided should be considered legal, engineering or technical advice nor replace independent professional judgment.*

*Statements of fact and the views, thoughts and opinions expressed are those of the presenter and not opinion or position of the Northern Kentucky Water District.*




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### PRESENTATION SUMMARY

- *Importance and Authority*
- *Contracts*
- *Torts*



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### AUTHORITY FOR WATER DISTRICTS

74.070 Duties and powers of commission – Corporate powers of water district exercised by or under authority of commission.

- (1) The commission shall be a body corporate for all purposes, and may make contracts for the water district with municipalities and other persons.
- (2) All corporate powers of the water district shall be exercised by, or under the authority of, its commission. The business and affairs of the water district shall be managed under the direction and oversight of its commission.
- (3) The commission may prosecute and defend suits, hire the chief executive officer and do all acts necessary to carry on the work of the water district.
- (4) The commission may adopt bylaws not inconsistent with the provisions of this chapter.
- (5) The commission shall comply with the provisions of KRS 65A.010 to 65A.090.

Effective: March 21, 2013

History: Amended 2013 Ky. Acts ch. 40, sec. 20, effective March 21, 2013. – Amended 2009 Ky. Acts ch. 6, sec. 7, effective July 15, 2009. – Recodified 1942 Ky. Acts ch. 206, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 938g-4, 938g-5.

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### Contract Law

- Kentucky contract law protects people who enter into contracts. It covers the formation of contracts, breach of contracts, and remedies.
- Two types of contracts – oral and written
  - Written contracts have 10 year statute of limitation (if signed after 7/15/2014) or 15 year statute of limitations (if signed before 7/15/2014)
  - Oral contracts have 5 year statute of limitations

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### Statute of Frauds – KRS 371.010.

- Requires certain contracts can only be enforced if in writing. Includes:
  - any representation or assurance concerning the character, conduct, credit, ability, trade, or dealings of another, made with intent that such other may obtain thereby credit, money, or goods;
  - any promise to pay a debt contracted during infancy, or any ratification of a contract or promise made during infancy;
  - any promise of a personal representative as such to answer any liability of his decedent out of his own estate;
  - any promise to answer for the debt, default, or misdoing of another;
  - any agreement made in consideration of marriage, except mutual promises to marry;
  - any contract for the sale of real estate, or any lease thereof for longer than one year;
  - any agreement that is not to be performed within one year from the making thereof;
  - any promise, agreement, or contract for any commission or compensation for the sale or lease of any real estate or for assisting another in the sale or lease of any real estate; or
  - any promise, contract, agreement, undertaking, or commitment to loan money, to grant, extend, or renew credit, or make any financial accommodation to establish or assist a business enterprise or an existing business enterprise including, but not limited to the purchase of realty or real property, but this subsection shall not apply to agreements pursuant to which credit is extended by means of a credit card or similar device, or to consumer credit transactions;

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### Contract - Formation

- To form a contract must have:
  - Offer
  - Acceptance, and
  - Consideration



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### Contract - Breach

- When a party fails to fulfill any of their obligations outlined by the agreement, this is considered a breach.
- A breach is often defined by the agreement itself. Examples include:
  - party failed to perform on time,
  - party does not perform in accordance with the terms of the agreement or fails to perform at all.
- When a breach occurs, it is categorized as being either material or immaterial.
  - Material, then it is an essential component of the agreement.
  - Immaterial, then it is considered to be not essential or pertinent.

In other words, a material breach could mean that the contract cannot be resolved while an immaterial breach could still allow for the contract to remain but with slight modifications.

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### Contract - Damages

Unless the contract specifically prohibits it, a person who has been harmed by the breach of a construction contract can recover a variety of damages. A person may seek:

- Actual damages, the amount of money that the person lost as a direct result of the breach;
- Incidental damages, which are the additional expenses that the person incurred because of the breach.
- Consequential damages, which are economic losses a person suffered which were not directly resulting from the breach, but are related to the breach.
  - Some examples of consequential damages include lost profits, delay, unabsorbed overhead and loss of bonding capacity.
  - Courts will only award consequential damages if they were foreseeable at the time the parties entered into the contract.

Many construction contracts have liquidated damages clauses that state precisely how much each party can recover in the event of a breach. Courts will enforce these clauses if they bear a reasonable relation to the costs involved in the contract.

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### Contract - Defenses

Common defenses to contract claims in Kentucky include:

- Lack of written contract: If a written contract is required by law
- Misrepresentation: If one party deceives the other
- Incapacity: If one party lacked the capacity to enter the contract
- Undue influence: If one party coerced the other
- Mutual mistakes: If both parties made a mistake
- Unconscionability: If the contract is unfair or oppressive
- Failure of consideration: If one party doesn't fulfill their obligations, such as paying an agreed-upon amount
- Duress: If one party is forced to do something they would not otherwise do
- Fraudulent inducement: If one party is intentionally misrepresented information by the other party
- Illegality: contract is illegal and void by operation of the law or statute prohibition

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### Contract – Special Provisions/Considerations

Kentucky Fairness in Construction Act (KRS 371.405 et seq.)

- The Act prohibits "no damages for delay" clauses, which are clauses that waive the rights of contractors or subcontractors to recovery costs or damages for delay that were in the control of the owner of the property. The Act only applies to commercial construction contracts.
- Kentucky law also prohibits clauses in construction contracts that attempt to hold a contractor harmless from his or her own negligence or the negligence of his or her agents.

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### Contract – Special Provisions/Considerations

“Force Majeure”

means an event beyond a party’s reasonable control, including, without limitation, acts of God, hurricane, flood, volcano, tsunami, tornado, storm, tempest, mudslide, vandalism, illegal or unauthorized radio frequency interference, strikes, lockouts, or other industrial disturbances, unavailability of component parts of any goods provided hereunder, acts of public enemies, wars, blockades, insurrections, riots, epidemics, earthquakes, fires, restraints or prohibitions by any court, board, department, commission or agency of the United States or any States, any arrests and restraints, civil disturbances and explosion.

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### Contract – Special Provisions/Considerations

#### Indemnification

- Under Kentucky law local governments cannot agree to indemnification, even with other governments.
- The prohibition arises from Sections 177, 179 and 50 of the Kentucky Constitution. See OAG 82-235.
- [WORKAROUND – Hold Harmless Clause.](#)

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### Contracts – Special Provisions/Considerations

#### Engineers Joint Contract Documents Committee (EJCDC) Construction Contract Documents

Prefabricated Construction Contract Documents that are industry recognized and have been tested over decades of use and interpreted in courts across America.

- Benefits:
  - reduce the potential for errors, omissions, redundancies, or conflicts in construction documents.
  - All documents are fully coordinated and integrated.
  - The documents provide for industry-accepted distribution of risk among project participants.

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### Tort Law

- A tort is an act or omission that harms a person or property
- Common law that aims to compensate victims of wrongful acts through civil legal proceedings
  - Different than criminal law which focuses on punishment
- In civil tort cases, the Court or Jury awards money to the victim from the person or entity that caused the harm.
- Civil cases proved by a “preponderance of the evidence” standard.
- Several types of torts including:
  - Intentional, Negligence; Strict Liability

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### Torts - Vicarious Liability

- In Kentucky, an employer can be held liable for the actions of their employees, known as "vicarious liability," (or respondeat superior) if those actions were performed within the scope of their employment, meaning the employee was acting while carrying out their job duties.
- The key factor in determining employer liability is whether the employee's actions were considered "within the scope of their employment."
- Exception - An employer is generally not liable for an employee's actions that are completely outside of their job duties or if the employee acted with personal motives not related to their work.

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### Torts - Statute of Limitations

- In Kentucky, the statute of limitations for most torts is one year from the date of the injury
- There are exceptions and extensions to this timeline, especially for minors and people who are incapacitated
- For motor vehicle accidents, the statute of limitations is two years from the last payment of PIP benefits

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### Intentional Torts

- Seven intentional torts exist: assault, battery, intentional infliction of emotional distress, false imprisonment, trespass to chattels, trespass to property, and conversion.



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### Negligence

- To establish a negligence claim in Kentucky, must prove the following four elements:
  - Duty: The defendant owed a duty of care to the plaintiff.
  - Breach: The defendant failed to meet that duty.
  - Cause in fact: The defendant's failure was the cause of the plaintiff's injury.
  - Damages: The plaintiff suffered an injury and can prove it.
- The standard of care for a negligence claim is ordinary care, which is the care a reasonably prudent person would exercise in similar circumstances.
- If a plaintiff cannot prove any one of these elements, the case fails.
- Kentucky is a "pure comparative fault state," which means that if a jury finds a plaintiff partially at fault, their compensation will be reduced. See KRS 411.182

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### Motor Vehicle Accidents

- KRS 189.635(4) Provides that:

Any person operating a vehicle on the highways of the state who is involved in an accident resulting in any property damage exceeding five hundred dollars (\$500) in which an investigation is not conducted by a law enforcement officer shall file a written report of the accident with the Department of Kentucky State Police within ten (10) days of occurrence of the accident upon forms provided by the department.

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### Motor Vehicle Accidents

Per KRS 365.532, the minimum insurance coverage requirements for motor vehicles in Kentucky are:

- **Bodily injury:** \$25,000 per person and \$50,000 per accident
- **Property damage:** \$25,000 per accident
- **Personal injury protection (PIP):** \$10,000

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### Kentucky Underground Damage Prevention Act

- Tort claim where duty is set by Statute (KRS 367.4901 to 367.4917)
- Requires that underground facilities be marked and located before any excavation
- Applies to excavation activities by utility service providers, licensed professionals, and individuals
- Prevents damage to underground facilities that carry natural gas, electricity, water, wastewater, and more
- The PSC investigates incidents of damage to natural gas and hazardous liquid pipelines

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### When/How do these laws Apply

- Over the next slides we will go through some sample incidents where the previously discussed principles would apply.

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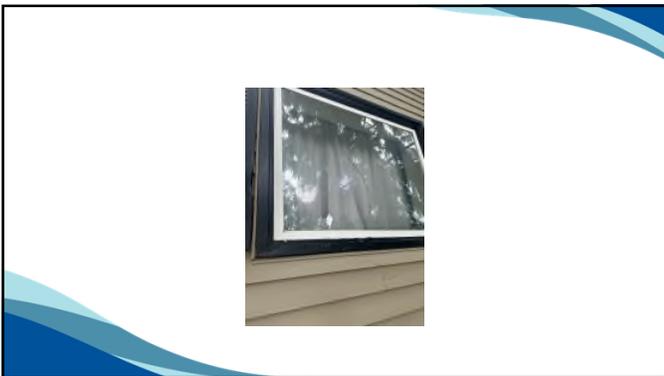
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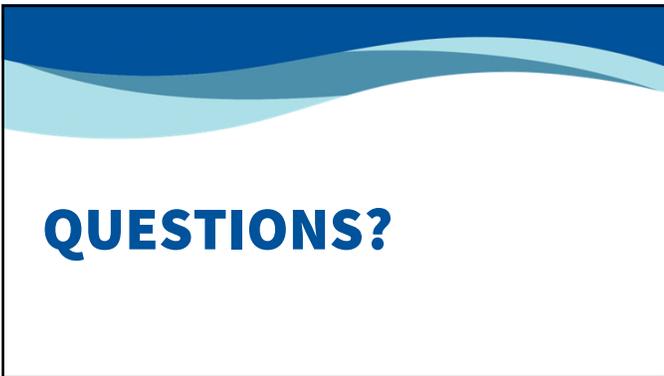
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**EVERYTHING YOU WANTED TO KNOW ABOUT CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND DEBT AUTHORIZATIONS\***

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

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**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 Poor Decisions That Threaten Utility's Financial Integrity
- Ensure Technically Feasibility

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### WHAT IS CONSTRUCTION?

“To build; erect; put together; make ready for use. To adjust and join materials, or parts of, so as to form a permanent whole. To put together constituent parts of something in their proper place and order.”

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### WHAT IS CONSTRUCTION?

- Construction of Buildings/Facilities
- Remodeling of Existing Facilities
- Purchase & Installation of Equipment
- Extensive Repair Work

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**WHAT IS NOT CONSTRUCTION & DOES NOT REQUIRE A CERTIFICATE**

- Purchase of Building or Land
- Maintenance Projects
- Demolition of Existing Facility
- Preparation of Land for Construction
- Acquisition of Easements

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**KRS 278.020(1): EXCEPTIONS**

- Service Connections to Electric Consuming Facilities By Retail Electric Suppliers
- Water Main Extension or Improvement Project
- Ordinary Extensions of Existing Systems in Usual Course of Business

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**WATERLINE EXTENSION OR IMPROVEMENT**

- Added to KRS 278.020(1) in 2018
- Applicable only to **Waterline Extension or Improvement Projects**
- Only Class A & B Water Districts And Water Associations Are Eligible

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### WATERLINE EXTENSION OR IMPROVEMENT

- Total Project Cost < \$500,000 **OR** No Debt Obligations Requiring PSC Approval
- Project Cannot Require Rate Increase
- Not Applicable to Sewer Projects

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### WATERLINE EXTENSION OR IMPROVEMENT

- PSC Initially Limited 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**”

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### WATERLINE EXTENSION OR IMPROVEMENT

- WA proposes to construct water booster station, includes 300 feet of 2” water line & pressure reducing valve
- PSC Staff Opinion 2017-002: “[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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**WATERLINE EXTENSION OR IMPROVEMENT**

- 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 project cost

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**WATERLINE EXTENSION OR IMPROVEMENT**

- Project financed through AML money
- PSC: Project is "waterline extension or improvement project"
- Extended in PSC Case No. 2023-00417

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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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**TESTS FOR MATERIALLY AFFECT**

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

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### 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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### 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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### 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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**PROJECT COSTS NOT 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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**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 Certificate**

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**CASE NO. 2017-00195**

- IOU to relocate gas line running through landfill at landfill's request
- Landfill 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 Certificate**

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**CASES NO. 2019-00067 AND  
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 Certificate**

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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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**GOVERNMENT GRANTS AND  
"MATERIAL EFFECT"**

- 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 NOT IN THE ORDINARY COURSE**

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

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**IF 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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**COMMENCING SERVICE**

- Certificate Must Be Obtained Prior to Commencing Service
- Acquisition of Non-Jurisdictional Entity Triggers Requirement
- Service in Area Served by Acquired Entity is Deemed New Service

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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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## 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
- Obligations subject to Federal Agency Supervision

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**GENERAL CONSIDERATIONS**

- Amount of Loan Not Relevant
- Violation Occurs Upon Execution
- Violation Not 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 Intervenors
- Hearing on Application Seldom Held
- Matter to Go to Front of PSC Docket
- Final Order: 60 Days from filing of Application but application may be continued beyond 60 days

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# QUESTIONS?

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