

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF NORTHERN)	
KENTUCKY WATER DISTRICT FOR)	CASE NO.
ACCREDITATION OF WATER MANAGEMENT)	2023-00109
TRAINING PROGRAM)	

ORDER

On April 7, 2023, Northern Kentucky Water District and Stoll Keenon Ogden PLLC (collectively, Joint Applicants) filed an application¹ for approval and accreditation of a training program scheduled to take place on May 10, 2023. The program is entitled Northern Kentucky Water Training 2023 (Training Program). The Training Program is intended to be in-person at the Northern Kentucky Water District's office in Erlanger, Kentucky. Having reviewed the Joint Applicants' request and being otherwise sufficiently advised, the Commission approves the program to satisfy the six hours of training described by KRS 74.020(6) and KRS 74.020(7), subject to the conditions discussed below. Joint Applicants did not request the Training Program be approved and accredited to satisfy any portion of the 12 hours of initial training for newly appointed commissioners required by KRS 74.020(8).

¹ All applications should be filed in an optimized pdf format (searchable or OCR) and include bookmarks to distinguish sections. Any future applications from Joint Applicants not meeting this requirement will be rejected as deficient.

DESCRIPTION OF THE TRAINING PROGRAM

The Training Program will be conducted in person at Northern Kentucky Water District's office in Erlanger, Kentucky on May 10, 2023. The Training Program will consist of the following sessions:

1. Recent Developments in Utility Regulation (1 hour): This presentation reviews recent developments in public utility law and regulation. Topics include water loss, revisions to the Sales Tax laws concerning "Residential" exemptions, borrowing money, compliance with PSC Orders, keeping Minutes, laws enacted by the 2023 General Assembly, and examine and discuss recent court and PSC decisions.

2. Water Utility Tariffs: Practical Considerations (1 hour): This presentation will highlight various provisions that a water utility should have as part of its tariff to protect against financial and legal liability as well as avoid common customer disputes. The statutory and regulatory framework for utility tariffs and the process by which a tariff may be revised will also be discussed.

3. Employment Law in the Workplace (1 hour): This presentation will review existing federal and state employment laws designed to protect employees and applicants for employment. It will also discuss the legal responsibilities of water utility board members regarding the prevention and elimination of discriminatory work and hiring practices and how these responsibilities can be met.

4. In the Dock: PSC Show Cause Proceedings (1 hour): This presentation examines the methods the PSC uses to enforce KRS Chapter 278 and PSC regulations. It will review and discuss PSC enforcement hearing procedures, sanctions that the PSC may impose for violations, various approaches to respond to PSC enforcement actions,

including strategies to mitigate the severity of possible sanctions, and actions that utilities and their officers can take to prevent common statutory and regulatory violations, and potential liabilities that utility officers, including commissioners and directors face and strategies to reduce those officers' exposure.

5. Kentucky Division of Water Law Update (1 hour): This presentation provides an overview of the organization and mission of the Kentucky Division of Water and its current regulatory initiatives. It will also discuss the U.S. Environmental Protection Agency's proposed PFAS Rule, revisions to the Lead Copper Rule, proposed revisions to the consumer confidence reports, and its recent guidance to state regulators to include a review of a water system's cybersecurity practices when conducting sanitary surveys and how they may affect Kentucky's public water systems.

6. Legal Issues in the Operation & Management of Water Systems- Panel Discussion (1 hour): A panel of attorneys will entertain 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, including the Claims against Local Government Act, Bidding Requirements provision of KRS Chapter 424, Eminent Domain, Local Model Procurement Law, Whistle Blowers Act, and general laws related to special districts. PSC regulatory requirements will also be discussed.

The presenters at the Training Program will be Gerald E. Wuetcher, Damon R. Talley, and Amy Miles of Stoll Keenon Ogden PLLC; Tom Edge, General Counsel and Manager of Legal, Compliance, and Regulatory Affairs at Northern Kentucky Water

District; and Alicia Jacobs, Manager of the Drinking Water Branch of the Kentucky Division of Water.

DISCUSSION

KRS Chapter 74 authorizes the creation of water districts for the purpose of operating drinking water facilities and wastewater treatment and collection facilities. Water districts organized under KRS Chapter 74 must be administered by a board of commissioners that shall control and manage the affairs of the district.² KRS 74.020(8) requires each newly appointed water district commissioner to complete 12 instructional hours of training regarding the laws governing the management and operation of water districts, and other subjects as determined appropriate by the Commission within 12 months of the commissioners' initial appointment.³ KRS 74.020(6) and (7) encourage water district commissioners to complete six instructional hours of "water district management training approved by the Public Service Commission" in each calendar year by allowing the commissioners to receive a raise if they complete the training each year.

Joint Applicants indicate that it is seeking to have the Training Program approved to satisfy six hours of annual training necessary for water district commissioners to satisfy KRS 74.020(6) and (7) but it is not seeking to have it approved to satisfy the initial training requirements of KRS 74.020(8). The Commission has discretion in approving "water district management training" offered by third parties to satisfy the six hours of subsequent training described in KRS 74.020(6) and (7) if it determines that the programs are "high quality" and "will enhance a water district commissioner's understanding of his or her

² See KRS 74.020(1).

³ KRS 74.020(8)(b) (discussing the training requirements for new water district commissioners).

responsibilities and duties.”⁴ However, third parties applying for approval of a proposed water district commissioner training program must file their applications, including a detailed description of the program, a description of the qualifications of any presenters, and a copy of the written materials to be distributed at the program among other things, 30 days prior to the first date on which the program is to be offered.⁵

Joint Applicants provided the information required by 807 KAR 5:070 and the Commission’s Order in Case No. 2018-00085 in a timely manner. The Training Program also covers topics that will be relevant and useful to water district commissioners. Moreover, the presenters appear to have knowledge of the topics they intend to discuss, and based on a review of the materials provided, the Training Program appears to be well developed and of a high quality.

The Commission finds that the Training Program will provide water district commissioners relevant and useful knowledge that will enhance the quality, management, operation, or maintenance of the water systems they operate and therefore, will conditionally approve the Training Program to satisfy the training requirements set forth in KRS 74.020(6) and (7) or a portion thereof.

IT IS THEREFORE ORDERED that:

1. Joint Applicants’ Training Program scheduled to take place on May 10, 2023, is hereby conditionally approved and accredited for up to six hours of annual water

⁴ See KRS 74.020(7)(c) (stating that the Commission “shall encourage and promote the offering of high-quality water district management training programs that enhance a water district commissioner’s understanding of his or her responsibilities and duties”).

⁵ Case No. 2018-00085, *Review of Training Required and Authorized by KRS 74.020 for the Commission of Water Districts* (Ky. PSC Mar. 15, 2018), Order at 4-5

district management training for water district commissioners seeking to satisfy training requirements set forth in KRS 74.020(6) and (7).

2. Joint Applicants' Training Program may not be used by water district commissioners seeking to satisfy any portion of the initial training requirement for water district commissioners required by KRS 74.020(8).

3. Joint Applicants shall retain a record of all water district commissioners attending the Training Program.

4. No later than 45 days after each scheduled offering of the Training Program, Joint Applicants shall file with the Commission:

a. A sworn statement attesting that the accredited instruction was performed, including a statement that the materials regarding each session were distributed as required by the Commission herein;

b. A description of any changes in the presenters or proposed curriculum that occurred after the application;

c. The name of each attending water district commissioner, his or her water district, the number of hours that he or she attended; and

d. A copy of any written material given to water district commissioners attending the sessions that was not previously provided to the Commission.

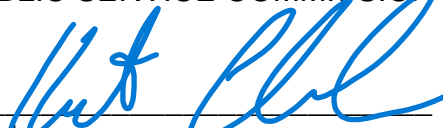
5. Upon receipt of the materials identified in paragraph 4 and provided there are no material changes to the program, the Commission shall issue a final order approving and accrediting the Training Program.

6. Joint Applicants shall permit a representative of the Commission to attend the Training Program at the Commission's discretion, without charge, to assess

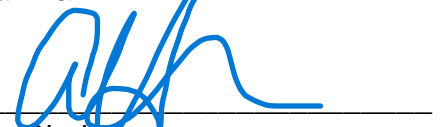
compliance with this Order or the quality of instruction for any other purpose deemed necessary by the Commission.

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PUBLIC SERVICE COMMISSION



Chairman



Vice Chairman



Commissioner

ENTERED
APR 28 2023 bstb
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

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