

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY)	
RURAL WATER ASSOCIATION FOR)	CASE NO.
ACCREDITATION APPROVAL OF)	2023-00316
COMMISSIONER TRAINING)	

ORDER

On September 22, 2023, Kentucky Rural Water Association (KRWA) and Stoll Keenon Ogden PLLC (jointly, Joint Applicants) filed an application¹ for approval and accreditation, pursuant to KRS 74.020(6) and (7) and 807 KAR 5:070, for the proposed water district management training titled 8th Annual Water Law Series (Training Program) scheduled to take place on October 26, 2023, at the Holiday Inn University Plaza in Bowling Green, Kentucky.

Having reviewed the Joint Applicants's request and being otherwise sufficiently advised, the Commission approves the Training Program to satisfy the six hours of training described by KRS 74.020(6) and (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 TRAINING PROGRAM

The Training Program will be conducted in person on October 26, 2023, at the Holiday Inn University Plaza in Bowling Green, Kentucky. The Training Program will consist of the following sessions:

1. Recent Developments in Utility Regulation (Part I) (1 hour): This presentation reviews recent developments in public utility law and regulation. Topics include unaccounted for water loss, borrowing money, compliance with PSC Orders, PSC Investigations, and recent court and PSC decisions.

2. What the 2023 General Assembly Did for Water Districts (1 hour): This presentation will discuss the legislative changes and impact on water districts of HB 360 (new sales tax exemption for materials purchased by contractors); HB 522 (increasing bidding threshold); SB 263 (Regionalization) and amended HB 8 (enacted by 2022 General Assembly concerning residential sales tax exemption for utility customers).

3. Working Effectively with Your Board (1 hour): This presentation addresses the role of a water district General Manager, the role of the Board of Commissioners, and how they should work harmoniously to benefit the water district. It will guide the Board members in understanding their role, performing their role, and improving their performance. The presentation will focus on the Board's oversight, policy making, strategic planning, and emergency preparedness role.

4. Water District Tariff: Practical Considerations (1 hour): This presentation will discuss the statutory and regulatory framework for utility tariffs and the process by which a tariff may be revised. It will highlight various provisions that a water district should

include in its tariff to protect against financial and legal liability and to void common customer disputes.

5. Hot Water Topics (1 hour): This presentation focuses on bringing the attendees up to date on environmental law issues that impact water and wastewater utilities. Topics that will be addressed include the evolving PFAS landscape, the Biden Administration's rule defining Waters of the U.S. and its scramble to revise the definition following the recent Sackett decision by the Supreme Court, and a new Supreme Court challenge to defense to federal agencies in interpreting statutes. Status updates on the EPA's Lead and Copper Rule, 401 water quality certification, and the proposed rule to change aspects of the Risk Management Program will be provided.

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 face by water utilities. Discussion will address KRS Chapter 74 and its effects on the management and operations of water districts, 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.

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)

² KRS 74.020(1).

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 indicates that they are 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 the Joint Applicants are 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 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

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

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").

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 the Training Program should be conditionally approved 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's Training Program scheduled to take place on October 26, 2023, is hereby conditionally approved and accredited for up to six hours of annual water district management training for water district commissioners seeking to satisfy training requirements set forth in KRS 74.020(6) and (7).

2. Joint Applicants's 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).

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.

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.

PUBLIC SERVICE COMMISSION

[Handwritten Signature]
Chairman

[Handwritten Signature] *by KAC w/permission*
Vice Chairman

[Handwritten Signature]
Commissioner

ENTERED
OCT 09 2023 bsb
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:

[Handwritten Signature]
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