



# Kentucky Rural Water Association

Helping water and wastewater utilities help themselves

December 3, 2015

RECEIVED

DEC - 9 2015

PUBLIC SERVICE  
COMMISSION

Mr. Jeff Derouen, Executive Director  
Public Service Commission  
P. O. Box 615  
Frankfort, KY 40602-0615

Re: Case No. 2015-00339

Dear Mr. Derouen:

Kentucky Rural Water Association held a seminar on October 27, 2015, in Bowling Green, Kentucky, entitled **Utility Law Seminar – 2015 Water Law Series**. On behalf of Kentucky Rural Water Association, I hereby attest that this session, herein referenced as Case No. 2015-00339, was held as scheduled. The planned course of instruction, approved for six credit hours by the Commission, was performed as submitted.

As required, KRWA has included a list of commissioners who attended the meeting and earned continuing education credit for the approved topics. KRWA did not submit this training for operator continuing education credit; however, the firm of Stoll Keenon Ogden submitted this seminar to the Kentucky Bar Association for continuing legal education accreditation. A copy of their approval is included, along with the printed information provided to all attendees.

Kentucky Rural Water Association would like to thank the Kentucky Public Service Commission and staff for their leadership and support in approving the training offered during this seminar.

Sincerely,

Janet Cole  
Education Coordinator  
[j.cole@krwa.org](mailto:j.cole@krwa.org)

Enclosures (3)

**Hours Earned by Water District Commissioners Attending the  
Utility Law Seminar held October 27, 2015  
Sponsored by  
Kentucky Rural Water Association  
Case #2015-00339**

|  |                   |                  |                  |
|--|-------------------|------------------|------------------|
| <b>Utility Law Seminar</b>                           |                   |                  |                  |
| October 27, 2015                                     |                   |                  |                  |
| Holiday Inn University Plaza/Sloan Convention Center |                   |                  |                  |
| Bowling Green, Kentucky                              |                   |                  |                  |
| <b>Organization</b>                                  | <b>First Name</b> | <b>Last Name</b> | <b>PSC Hours</b> |
| <b>Grayson Co. Water District</b>                    | <b>Tim</b>        | <b>Purcell</b>   | <b>6</b>         |
| <b>Southeast Davless Co. Water District</b>          | <b>John</b>       | <b>Bell</b>      | <b>6</b>         |
| <b>Southeast Davless Co. Water District</b>          | <b>Joe</b>        | <b>Elliott</b>   | <b>6</b>         |
|  |                   |                  |                  |
|  |                   |                  |                  |

**Kentucky Rural Water Association**

3251 Spring Hollow Avenue • Bowling Green, KY 42104 • Ph.: 270.843.2291 • Fx.: 270.796.8623 • [www.krwa.org](http://www.krwa.org)

**Kentucky Bar Association**  
Continuing Legal Education Commission  
514 West Main Street  
Frankfort, KY 40601-1812  
Phone: 502-564-3795  
Fax: 502-564-3225  
<http://www.kybar.org>

Gerald Edward Wuetcher  
110 Old Hickory Ln  
Versailles KY 40383-1131

ID: 79125

Re: CLE Activity Accreditation  
Date: October 20, 2015

The application for CLE accreditation for the activity listed below has been approved by the KBA CLE Commission. Kentucky attorneys attending or participating in the activity who have NOT claimed CLE credit must file the appropriate reporting certificate as listed below.

Sponsor: Stoll Keenon Ogden - Lexington  
Activity: Utility Law Seminar - 2105 Water Law Series  
Location: Bowling Green KY  
Date: 10/27/2015

Activity No. 161531 Sponsor No. 1858

TOTAL CREDITS: 6.25 ETHICS CREDITS: 1.00

Ethics credits are INCLUDED in the TOTAL number of credits.

Please file a Form #3 for attendance at a live CLE program or completion of a technological program.  
*Should you require additional information, please contact Clifford Timberlake, Accreditation Coordinator at (502) 564-3795 ext. 228.*



# 2015 WATER LAW SERIES

October 27, 2015

Holiday Inn University Plaza/Sloan Convention Center  
Bowling Green, Kentucky

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COMMISSION

## MORNING AGENDA

**7:45 - 8:25**      **Registration & Refreshments**

**8:25 - 8:30**      **Welcome**

**8:30 - 9:15**      **Municipal Utility Rates: Practices, Procedures & Practical Suggestions**  
**Presenters: Gerald Wuetcher & Damon Talley**

Learn about the Kentucky Public Service Commission's role in setting a municipal utility's wholesale rate for water or wastewater service to PSC-regulated water and wastewater utilities. Presenters will outline rules and procedures governing wholesale rates and service, and provide suggestions for representing utilities in wholesale rate adjustments.

**9:15 - 9:25**      **BREAK**

**9:25 - 9:55**      **Why Did They Do That? Lessons Learned from PSC Municipal Utility Cases**  
**Presenters: Damon Talley & Gerald Wuetcher**

Gain insight into significant PSC decisions over the last five years involving municipal utility wholesale rates sought by the cities of Versailles, Frankfort, Hopkinsville, Glasgow and Danville. Through an analysis of issues common to each proceeding, learn which tactics produced successful results and those that should be avoided. This presentation is intended to help both wholesale suppliers and customers present their best case to the PSC.

**9:55 - 10:05**      **BREAK**

**10:05 - 10:30**      **When Bad Things Happen: PSC Investigations / Presenter: Damon Talley**

Recently the Kentucky PSC has taken a serious stance toward violators of statutes and regulations, by levying severe penalties on water utilities and their commissioners and managers. This presentation examines recent investigative proceedings and outlines the best means to represent a water utility's interests. Learn which actions can be taken to avoid violations and mitigate the effects of PSC sanctions.

**10:30 - 11:00**      **All Things Meter / Presenter: Damon Talley**

Learn more about regulations on meter testing and recent PSC rulings that raise questions over when and how testing should be performed, and if meter manufacturers are complying with PSC regulations.

**11:00 - 11:10**      **BREAK**

**11:10 - 12:10**      **EEO No! An Employment Law Primer / Presenter: Stacy Miller**

It's been said that the best defense is a good offense. This is especially true in employment law. This session surveys the most common bases for employment litigation and explores how to manage your personnel decisions to sidestep legal pitfalls.

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# 2015 WATER LAW SERIES

October 27, 2015

Holiday Inn University Plaza/Sloan Convention Center  
Bowling Green, Kentucky

## AFTERNOON AGENDA

**12:10 - 1:10 LUNCH**

**1:10 - 2:10 Privacy and Data Security: An Update for Water Utilities**  
**Presenter: Doug Brent**

Topics include critical infrastructure protection guidance, the evolving NIST cyber security framework, 2015 legislation on threat information sharing and best practices for data protection. Cyber security collaboration within other utility sectors in Kentucky also will be discussed.

**2:10 - 2:20 BREAK**

**2:20 - 3:20 Recent Developments in Utility Regulation / Presenters: Damon Talley & Gerald Wuetcher**

New developments in public utility law and regulation and changes in Kentucky statutes affecting the operation of water utilities will be discussed. Learn more about the latest revisions to PSC regulations and how they will impact both water utility operations and PSC proceedings. Presenters will share an analysis of recent PSC decisions and possible trends.

**3:20 - 3:30 BREAK**

**3:30 - 4:30 Ethical Problems for Utility Board Members & Attorneys**  
**Presenter: Gerald Wuetcher**

Ethics laws and principles that affect utility policy makers, managers and attorneys are reviewed through commonly recurring fact situations. Utility board members' ethical obligations under statutory and common law, as well as the ethical obligations of a utility's attorney under the Kentucky Rules of Professional Conduct, will be explored.

**4:30 Closing Remarks / Announcements**

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## 2015 WATER LAW SERIES

October 27, 2015  
Holiday Inn University Plaza/Sloan Convention Center  
Bowling Green, Kentucky

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### RESUMÉS OF SPEAKERS

#### **Douglas F. Brent**

Doug is an experienced regulatory lawyer and chairs the Privacy & Information Security and the Class Action practices for Stoll Keenon Ogden PLLC. Doug's focus includes telecommunications industry litigation and representation of competitive wireline, wireless, cable and information service providers in regulatory and legislative matters, including tariff, tax recovery and TCPA compliance. He has also represented industrial customers in disputes with energy and communications providers, including the discovery and recovery of tariff overcharges. He is a frequent speaker on information privacy topics, including cyber security regulation and critical infrastructure protection.

His telecommunications law experience includes practice before the FCC and numerous state commissions before and after the passage of the 1996 Telecommunications Act. He was in-house counsel to a global telecommunications carrier before joining the firm. He began his career as an attorney for the Kentucky Public Service Commission.

Doug received his J.D. from the University of Kentucky College of Law in 1986. He earned his B.B.A. (Honors Program) from the University of Kentucky in 1982.

Doug is AV Preeminent® Peer Review Rated™ by Martindale-Hubbell®, listed in *The Best Lawyers in America*® and recognized as a Top Lawyer by Louisville Magazine. A member of the Kentucky Bar Association and the Federal Communications Bar Association, he is a member of the International Association of Privacy Professionals (IAPP) with the CIPP/US certification. Doug has also served as a Trustee for the Olmsted Parks Conservancy. In his free time, Doug enjoys cycling and photography.

Email: [douglas.brent@skofirm.com](mailto:douglas.brent@skofirm.com)

Direct Line: 502-568-5734

## **Stacy E. Miller**

Stacy is a Member of the Labor, Employment & Employee Benefits practice in Stoll Keenon Ogden's Lexington office. Stacy concentrates her practice on counseling, civil litigation and administrative defense with emphasis on employee benefits, the Family and Medical Leave Act, the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Fair Labor Standards Act, the Kentucky Civil Rights Act, wrongful termination and noncompetition and other employment agreements.

Stacy received her J.D. from the University of Kentucky College of Law in 2005. Prior to that, she earned her Master's degree from the Patterson School of Diplomacy and International Commerce at the University of Kentucky in 2001.

Stacy serves as a member of the Board of Directors for the Foster Care Council of LexKy, and is a member of the Society for Human Resources Management (SHRM). Stacy is the author of "Discrimination Based Upon Disability," UK/CLE Employment Law in Kentucky Handbook, 4th ed., 2013, Chapter 6. She is a regular presenter at seminars and trainings on employment law issues.

Email:            [stacy.miller@skofirm.com](mailto:stacy.miller@skofirm.com)

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## **Damon R. Talley**

Damon joined Stoll Keenon Ogden PLLC on May 1, 2015. He is a member of the Utility & Energy practice. He practices out of the Hodgenville, Louisville, and Lexington, Kentucky offices. Damon brings to SKO more than 35 years of experience working in private practice focusing on public utility work. He serves as General Counsel of the Kentucky Rural Water Association and has served in this capacity since 1979.

He is a frequent speaker at training sessions sponsored by the Kentucky Rural Water Association, Public Service Commission, Division of Water, Utility Management Institute, and other Utility Industry Groups.

Damon received his J.D. from the University of Kentucky College of Law in 1975, and earned his B.S.M.E. in 1972 from the University of Kentucky College of Engineering. He served as a board member of the Kentucky Infrastructure Authority for 15 years (2000-2015), and was a charter member, a long-time board member and Board Chairman for two terms of the KY FFA Foundation, Inc. He also serves as a board member for a variety of other non-profit organizations.

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

Direct Line:    270-358-3187



## **Gerald E. Wuetcher**

Jerry is Counsel to the Firm and a member of the Utility & Energy practice. He brings to Stoll Keenon Ogden more than 25 years of experience working at the Kentucky Public Service Commission, where he served as a staff attorney, deputy general counsel and executive advisor. He 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. Jerry also served as the Commission's representative in a number of interagency groups addressing water and wastewater issues. Between 2009 and 2013, he was the Commission's representative on the Board of the Kentucky Infrastructure Authority. Jerry developed and implemented the Commission's training program for water utility officials in 1998 and served as one of its principal instructors during his tenure with the Commission.

Jerry served for 27 years in the United States Army as a judge advocate before retiring at the rank of Colonel in 2011. His service encompassed numerous roles on active duty and in a reserve status, including claims officer, trial and defense counsel and legal assistance officer. He commanded the 139th Legal Support Organization – an Army Reserve unit consisting of four legal services teams in Kentucky and Tennessee – and has served as the Staff Judge Advocate to the 100th Division (Training). His military awards include the Legion of Merit and Meritorious Service Medal.

Jerry received his J.D. from Emory University in 1984, and earned his B.A. in History in 1981 from Johns Hopkins University. Jerry also serves as a member of Board of Trustees of the Woodford County Library and has previously served as an adjunct professor at the University of Louisville Brandeis School of Law.

Email:           gerald.wuetcher@skofirm.com

Direct Line:    859-231-3017

**1**

**Municipal Utility Rates:  
Practices, Procedures &  
Practical Suggestions**

**2**

**Why Did They Do That?  
Lessons Learned from PSC  
Municipal Utility Cases**

**3**

**When Bad Things Happen:  
PSC Investigations**

**4**

**All Things Meter**

**5**

**EEO No! An Employment Law  
Primer**

**6**

**Privacy and Data Security: An  
Update for Water Utilities**

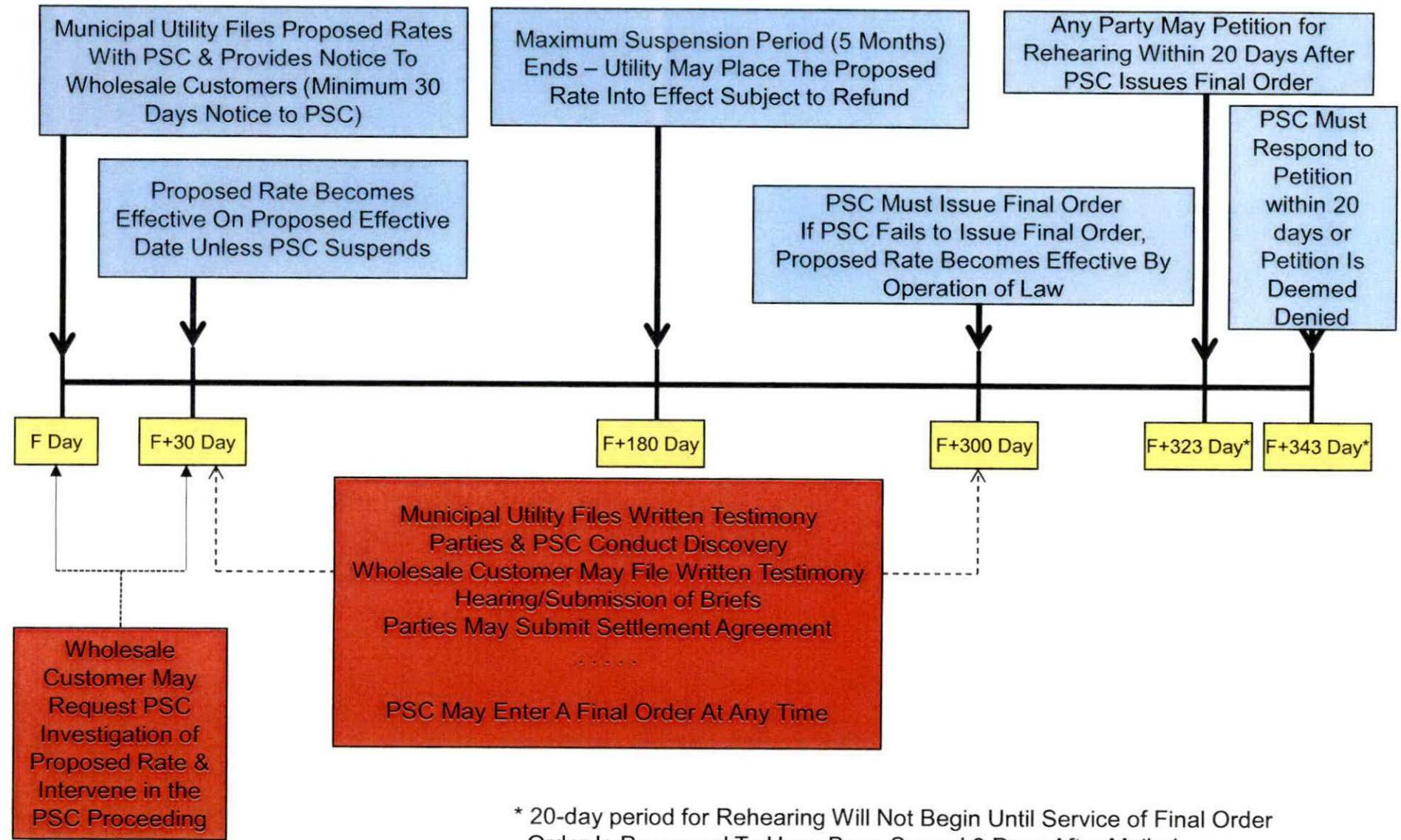
**7**


**Recent Developments in  
Utility Regulation**

**8**

**Ethical Problems for Utility  
Board Members & Attorneys**

## TIMELINE FOR A MUNICIPAL RATE ADJUSTMENT PROCEEDING



  
**STOLL KEENON OGDEN**  
1981

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**PUBLIC SERVICE COMMISSION REVIEW  
OF MUNICIPAL UTILITY RATES:  
PRACTICES, PROCEDURES AND PRACTICAL  
SUGGESTIONS**

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**STOLL KEENON OGDEN** 

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**Order of Presentation**

- Historical Overview
- Basic Rules
- Procedure for Adjusting Wholesale Rates
- Practical Suggestions for Rate Adjustments
- Resources

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**STOLL KEENON OGDEN** 

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**HISTORICAL OVERVIEW**

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**Timeline**

- 1934: Public Service Commission created
- 1936: Definition of Utility Amended to Exclude Cities
- 1948: *Olive Hill* Decision – PSC regulation of Extra-territorial Municipal Rates
- 1961: *McClellan* Decision – No PSC regulation of Municipal Rates
- 1976: *Georgetown* Decision – No PSC regulation of Municipal Utilities
- 1994: *Simpson County Water District v. City of Franklin*

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**PSC Regulation Resurrected:  
*Simpson County Water Dist. v. City of Franklin (1994)***

**Facts:**

- 1963 Contract (\$0.21/1,000 gallons rate – changes permitted if applied to retail & wholesale alike)
- 1986 Contract Revision Guarantees \$0.8478/1,000 gallon rate for 5 years
- 1990: Franklin raises rate to \$1.3478/1,000 gallons
- 1991: Franklin raises rate to \$1.67/1,000 gallons
- Simpson County refuses to pay any amount in excess of \$0.845/1,000 gallons
- Franklin brings action to collect unpaid portion of bills in Simpson Circuit Court & to declare contract void
- Simpson District argues that Court lacks jurisdiction & only PSC can hear case – emphasizes KRS 278.200

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**PSC Regulation Resurrected:  
*Simpson County Water Dist. v. City of Franklin (1994)***

**KRS 278.040(2):**

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

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PSC Regulation Resurrected:  
*Simpson County Water Dist. v. City of Franklin (1994)*

**KRS 278.200:**

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

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PSC Regulation Resurrected:  
*Simpson County Water Dist. v. City of Franklin (1994)*

**MAJORITY:**

- KRS 278.040 – A “Rates and Service” Exception exists to the exemption for cities & political subdivisions
- KRS 278.200 – Applies to Agreements between cities and utilities where the city is the seller of utility service
- While cities exempted from PSC regulation because they are not “utilities”, cities forfeit exemption when they contract to provide utility service to a utility
- Exception to exemption is designed to protect ratepayers of public utilities
- Contract will **always** exist when city sells to public utility

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PSC Regulation Resurrected:  
*Simpson County Water Dist. v. City of Franklin (1994)*

**MINORITY:**

- PSC has jurisdiction only over a **public utility’s** rates and service
- KRS 278.200 applies to agreements between cities and utilities only if **the seller is a public utility**
- KRS 278.200 designed to supersede any contrary provisions in franchise agreements between city & public utility

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## BASIC RULES

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### **RULE #1: Some, But Not All, Municipal Transactions are Subject to PSC Jurisdiction**

- Contract for Sale of Service to Water District **Yes**
- Contract for Sale of Service to Water Association **Yes**
- Contract for Sale of Service to Investor-Owned Utility **Yes**
- Retail Service **No**
- Service to Other Cities **No**
- Service to Sanitation Districts/Other Special Districts **No**
- Service to Public Utilities Without Contract **No**

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### **RULE #2: A Written Contract Is Necessary for PSC Jurisdiction**

- KRS 278.200 refers to a contract between city and utility
- *City of Greenup, Ky. v. Pub. Serv. Com'n*, 182 S.W.3d 535 (2005):
  - The contract must be "made and executed by the mayor."
  - If mayor has not executed a contract, no PSC jurisdiction
- *South Shore Water Works v. City of Greenup*, Case No.2009-00247 (Oct. 5, 2010). Sales made without a contract are NOT subject to PSC jurisdiction

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**RULE #3: Contracts/Rates Must Be Filed With PSC**

- **Administrative Case No. 351** (08/10/1994)
  - Municipal Utilities directed to file wholesale contracts & schedule of rates with PSC NLT 09/09/1994
  - New/revised contracts must be filed 30 days prior to effective date
- **All municipal utility wholesale rates prior to 04/21/1994 are presumed reasonable** (Case No. 92-084 01/18/1996)

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**RULE #3: Contracts/Rates Must Be Filed With PSC**

- **Municipal Utility (Not Public Utility Purchaser) is responsible for filing contract** (Adm. Case No. 351 08/10/1994; Case No. 2001-230 10/19/2001)
- **Consequences of Failure to Submit**
  - Violation of PSC Order
  - Possible Penalty (Min = \$25; Max = \$2,500)
  - Municipal Utility lacks legal authority to charge rate – possible refunds of all monies collected (Case No. 2006-00072 01/12/2007)

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**RULE #3: Contracts/Rates Must Be Filed With PSC (Statutory Basis)**

- KRS 278.160(1): "[E]ach utility shall file with the commission . . . schedules showing all rates and conditions for service established by it and collected or enforced."
- KRS 278.160(2): "No utility shall charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules . . ."
- KRS 278.180(1): "[N]o change shall be made by any utility in any rate except upon thirty (30) days' notice to the commission, stating plainly the changes proposed to be made and the time when the changed rates will go into effect."

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**RULE #3: Contracts/Rates Must Be Filed With PSC  
Is Your Contract or Rate on File with PSC?**

- Check PSC Tariff Library at:  
[http://psc.ky.gov/Home/Library?type=Tariffs  
&folder=Water/Municipals](http://psc.ky.gov/Home/Library?type=Tariffs&folder=Water/Municipals)
- Unfiled Contracts/Tariffs
  - Contact PSC Tariffs Branch (502) 782-2626
  - Submit with Explanation for Failure
  - Possible Sanctions

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**RULE #4: A Municipal Utility Must File Its New  
Rate With PSC Before Charging The Rate**

- Statutory Basis
  - KRS 278.200: Hearing Required for Increase
  - KRS 278.160: Rates Must Be On File With PSC
  - KRS 278.180: 30 Days' Notice Before Becoming Effective
- System Development Charges (807 KAR 5:090)
- New/Revised Conditions of Service
- Dangers of Ignoring PSC
- Exception: Rate Formula

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**RULE #5: PSC Jurisdiction Is Limited to Rates  
And Service Issues**

**Areas Outside of PSC Jurisdiction**

- Construction of Facilities - Certificates of Public Convenience & Necessity
- Service Area Disputes
- Uniform System of Accounts
- Reports to the PSC
- Assessments for Maintenance of PSC

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## PROCEDURE FOR WHOLESALE RATE ADJUSTMENT

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### Procedure For Rate Adjustment

- Municipal Utility must give notice of rate change to
  - PSC
  - Wholesale Customer
- Notice must be made at **least 30 days prior** to the proposed increase
- Notice must conform with 807 KAR 5:011\*

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### Procedure For Changing Rates: Notice To PSC

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

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**Procedure For Changing Rates:  
Notice To Wholesale Customers**

- Contents of Notice – 807 KAR 5:011, §8(4)
  - Proposed effective date
  - Date filed with PSC
  - Dollar & percentage amount of proposed change
  - Effect on average bill
  - Statement Re: location of filing for examination
  - Statements Re: intervention
  - Statement Re: comments on the proposed rate

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**Procedure For Changing Rates:  
Notice To Wholesale Customers**

- PSC has required **strict compliance** with notice contents regulation\*\*
- Acceptable methods of notice: Mail - Personal Delivery - Newspaper
- Mailed/Delivered/Published **NLT Date of Filing**
- Notice to the public is **NOT** required (Eliminates any reason to publish notice)

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**Procedure For Changing Rates:  
Recommended Additional Documents**

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

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**PSC's Actions Upon Receipt of Contract/Rate**

- Posts proposed contract/rate to PSC Website
- Reviews for compliance with filing requirements
- If filing requirements are met, PSC must act before proposed effective date
- KRS 278.190: At any time before a rate becomes effective, PSC may suspend operation of that rate for 5 months beyond its proposed effective date to further review
- Waits for comments/objections
- May request additional information

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**Regulatory Models For Reviewing Municipal Rate Proposal**

- Arbitrator Model
  - PSC's sole purpose is to resolve disputes
  - PSC reviews the reasonableness of proposed wholesale rate **only when a dispute exists or Customer requests**
- Utility Model
  - PSC's function is to determine the reasonableness of the proposed rate
  - PSC suspends and reviews in all instances

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**Standards for Suspension/PSC Investigation**

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

YES – Suspend

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**PSC Investigation: Procedural Rules**

- Formal proceeding established to investigate proposed rate
- Proposed rate suspended for 5 months
- Scope of review: Reasonableness of proposed rate
- Burden of proof on municipal utility to demonstrate reasonableness of proposed rate
- After 5 months municipal utility may assess proposed rate subject to refund
- PSC must issue a final decision on proposed rate within 10 months of filing (Case No. 2006-00403)

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**PSC Investigation: Procedural Rules**

- Extensive requests for information possible\*
- Written testimony required\*
- No cost-of-service study required (but helpful)
- Intervening parties not required to present testimony or participate in proceedings

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**PSC Investigation: Procedural Rules - II**

- Hearing
  - No opening/closing statements
  - Cross-examination only
  - PSC Staff actively participates
- Decision generally issued within 240 days of initial filing
- If Agreement Reached, Investigation terminates

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**SUGGESTION #1:  
Discuss with Wholesale Customers Before Filing**

- Negotiate before filing the rate with PSC
- Explain reasons for rate adjustment
- Provide supporting data/documents
- Consider any objections/critiques of supporting data
- Consider the economics/practical aspects of negotiated rate

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**SUGGESTION #2:  
Document Wholesale Customer's Agreement**

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

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**SUGGESTION #3:  
Prepare For Litigation Before/During Discussions**

- Assemble documents/materials necessary for response to 1<sup>st</sup> PSC Info Request
- Obtain a working knowledge of PSC process
- Research potential issues
- Pre-filing conference with PSC Staff
- Track rate case expenses
- Include attorney/experts in preparation & negotiations
- Consider Application, ILO, tariff sheet filing

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**Document Assembly: Required Documents - I**

- Written Testimony
- Independent Auditor's Reports (Last two years)
- Detailed General Ledger
- Adjusted Trial Balance & Audit Adjustments
- Detailed Payroll Records
- Employee Job Descriptions
- Allocation Procedures for Shared Costs (including Payroll)
- Detailed Depreciation Schedules

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**Document Assembly: Required Documents - II**

- For Each Outstanding Bond Issuance
  - Ordinance or Resolution
  - Amortization Schedules
- COS Studies
- Uniform Financial Information Report
- Detailed System Map
- Minutes of Council Meetings
- Communications with Wholesale Customers

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**SUGGESTION #4:**

**Give Close Attention to The Filing's Details**

- Rate ordinance should reflect potential for PSC action
- State an effective date that is at least 30 days from the filing date
- Precisely follow the notice content requirements when notifying wholesale customer

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**SUGGESTION #5:  
Proposed Rate Is NOT The Only Requested Relief**

- Request that proposed rate be placed into effect immediately subject to refund
- Request expedited discovery and hearing
- Ask PSC to require Customer to state its objections at start of proceeding
- Expressly request rate case expenses!!!!
  - Method of recovery
  - Periodically update rate case amount
  - Provide invoices/supporting docs

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**SUGGESTION #6:  
Be Prepared to Address These Issues**

- Allocation of costs between departments & services
- Depreciation: Useful Life of Facilities
- Debt Service Requirements
- Costs re: facilities not yet in service
- Rate Case Expense

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**SUGGESTION #7:  
Use Electronic Filing Procedures**

- Allows for submission of documents during non-business hours
- Requires the production of only one paper copy (instead of 10 copies)
- Easier to organize & distribute documents
- Prompt delivery of PSC/Intervenor documents

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**SUGGESTION #8:  
Avoid Tariff Filing – File Application**

- KRS 278.200: No change without PSC hearing
- Tariff Filing may not result in a “hearing”
- No Hearing – Compliance with KRS 278.200?
  - Subject to Possible Legal Challenge in Court
- File Application – Request Order
  - Contents of Application
- Order Issued – Paper Hearing has occurred
- Compliance w/KRS 278.200 – Better Position

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**SUGGESTION #9:  
Be Weary of AG Intervention**

- If Customer has intervened, AG has no standing to intervene
- May make settlement difficult
- AG may use the wholesale proceeding as a forum to question retail rates or wholesale rates charged to non-utility wholesale customers
- Consider prior briefing to AG & inquire re: AG’s concerns

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**SUGGESTION #10:  
Avoid Overreliance on PSC Staff**

- Limited PSC Resources
- Lack of familiarity with municipal utilities
  - Specific Utilities
  - General Legal/Managerial Aspects
- General expectation of negotiated settlement reduces zeal to investigate
- Consider retaining expert assistance

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STOLL KEENON OGDEN 

## RESOURCES

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STOLL KEENON OGDEN 

### Resources

- **FAQS Re: PSC Jurisdiction – KLC Website**  
[www.klc.org/userfiles/files/PSCFrequentlyAskedQuestions.pdf](http://www.klc.org/userfiles/files/PSCFrequentlyAskedQuestions.pdf)
- **Laws Affecting Public Utilities (Blue Book) – PSC Website** [psc.ky.gov](http://psc.ky.gov)
- **Compilation of Kentucky Public Utility Laws – SKO Website** <http://bit.ly/1AsC9NB>
- **PSC Web Site – [psc.ky.gov](http://psc.ky.gov)**
- **PSC Recent Developments - <https://twitter.com/gwuetcher>**

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STOLL KEENON OGDEN 

## Questions?

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**STOLL KEENON OGDEN** 

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STOLL KEENON OGDEN

## Why Did They Do That? Lessons Learned From Municipal Rate Cases

Damon R. Talley  
damon.talley@skofirm.com

October 27, 2015

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### Overview

1. Glasgow
2. Hopkinsville
3. Frankfort
4. Danville
5. Talley's Tips
6. Versailles



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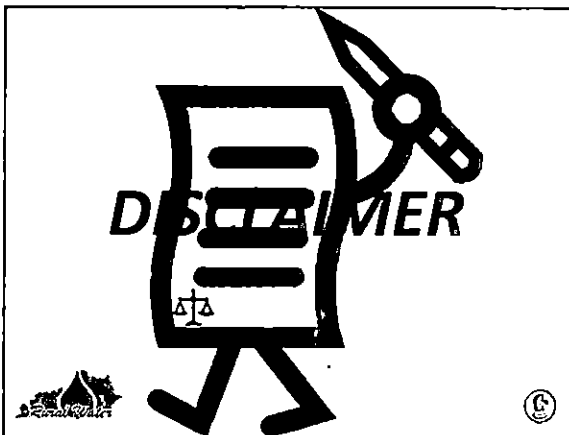
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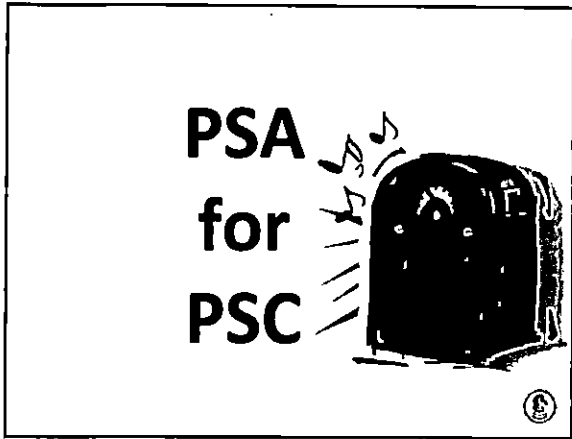
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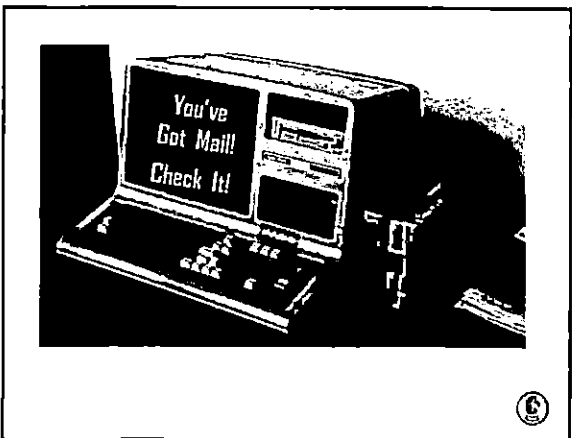
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**Reporting Requirements**

- Must Notify PSC . . .
  - After Vacancy
  - After Appointment
- When?      Within 30 Days

©

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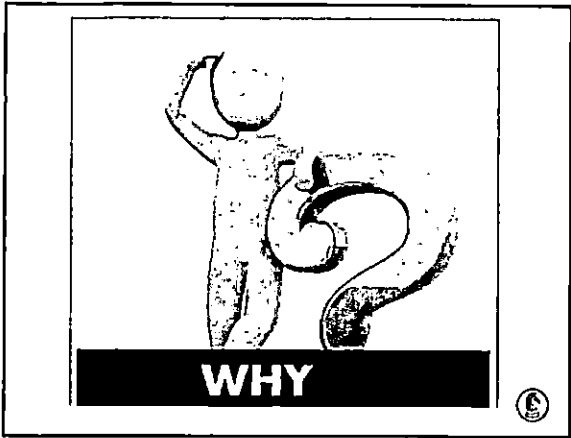
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**Glasgow  
Water  
Company**



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PSC Case No. TFS 2008-337

Seller: Glasgow  
Buyers: Multiple (6)  
Filed: 5-22-08  
Approved: 6-26-08



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**Glasgow**

- Cost-of-Service Study
- Existing Rate: \$1.40
- Proposed Rate: \$1.95
- Increase: \$0.55 or 40%
- Uniform Wholesale Rate



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**Glasgow**

- Phased-In Rates
  - Phase 1: \$0.35 ↑
  - Phase 2: \$0.20 ↑
- First Time Use of Phased-In Wholesale Rates
- Communicated to Wholesale Customers
- No Objections



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**Hopkinsville  
Water Environment  
Authority**



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PSC Case No. 2009 – 373

Seller: Hopkinsville Water  
Environment Authority

Buyer: Christian County WD

Decided: 7-2-10



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**Background**

- Contractual Limitations
- Prior Settlement Limited  
Amount of Wholesale Rate  
Increase
- HWEA Staff Calculated Amount
- No Cost-of-Service Study  
(COSS)



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**Facts**

- Notified Christian County WD
- City Ordinance
  - > Retail: 37% ↑
  - > Wholesale: 37% ↑
- HWEA Hired Me
- COSS Needed



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**PSC Proceedings**

- HWEA Filed Tariff
- Christian County WD Objected
- HWEA Requested Informal Conference
- After the Fact COSS
  - Justified 90% ↑
  - Requested 37% ↑
  - Difference = \$420,000



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**PSC Proceedings**

- HWEA Declined COSS Rates
- Rate Case Expenses
  - HWEA Proposed Monthly Surcharge
  - 36 Months
- Why Surcharge? Fairness
- No Hearing Conducted



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**PSC Order**

- 37% Increase Approved
- Reasonable Rate Case Expenses Recovered
  - Surcharge
  - 36 Months
- Portion of COSS Expenses Recovered



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**PSC Order**

- Allocation of COSS Expenses
  - % of Revenue Derived From Each Rate Class
    - Retail: 80.7%
    - Wholesale: 19.3%
- COSS Wisdom
- After The Fact COSS

©

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*Excerpts from . . .*

**PSC Case No. 2009-373  
Hopkinsville Water  
Environment Authority  
July 2, 2010 Order**

©

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**Cost-of-Service Study**

**WISDOM**

©

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



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**After The Fact COSS**

**PSC**

**Says . . .**



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"We find that the better practice in municipal rate adjustment proceedings is for the applicant to undertake and complete its cost-of-service study **prior** to filing notice of its proposed wholesale adjustment. Regardless of whether the municipal utility chooses to strictly adhere to the study's results, the study provides critical information regarding costs for the wholesale supplier and customer that, if widely known, is likely to result in **agreement** on prospective rate adjustments."



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**WARNING!!**

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

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**Frankfort  
Electric &  
Water Plant  
Board (FEWPB)**

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**PSC Case No. 2014 – 254**

**Seller:** FEWPB  
**Buyers:** Multiple (7)  
**Filed:** 06-25-14  
**Settled:** 10-10-14  
**Decided:** 11-12-14



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**Facts**

- COSS In Advance
  - Recommended 60% ↑ \$3.18
  - Requested 45% ↑ \$2.91
- FEWPB Filed Tariff & COSS
- Uniform Wholesale Rate
- All Wholesale Customers Intervened
- AG Intervened



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**PSC Proceedings**

- Extensive Discovery
- Informal Conference
- Settlement Reached Early
  - 3 ½ Months
- No Rate Case Expenses
- No Hearing



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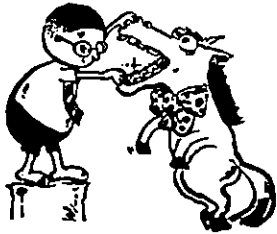
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### Why Settle?



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### Settlement Terms

- Current Rate: \$2.01
- Requested Rate: \$2.91
- Phased-In Rates (4 Steps)
  - Year 1: \$2.25
  - Year 2: \$2.35
  - Year 3: \$2.45
  - Year 4: \$2.55
- No Rate Case for 4 Years



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### Settlement Terms

- All 7 Wholesale Customers Agreed
- AG Signed Settlement
  - Rare
  - Usually Just Keeps Mouth Shut



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**Why Settle Early?**

- FEWPB
  - Implement New Rate Now
  - Avoid Uncertainty of Outcome
  - Avoid Additional Rate Case Expenses
  - Avoid Future Rate Cases for 4 Years
  - Rates Will Increase Each Year



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**Why Settle Early?**

- Wholesale Customers
  - Phased-In Rates
  - Modest Increase Each Year
  - Avoid Potential Rate Shock
  - Avoid Uncertainty of Outcome
  - Avoid Paying FEWPB's Rate Case Expenses

Continued



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**Why Settle Early?** con't.

- Wholesale Customers
  - Reduce Litigation Expenses
  - Rate Certainty for 4 Years
  - Avoid Future Rate Cases for 4 Years
  - Good Faith Negotiations **Before** Next Case



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# City of Danville



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PSC Case No. 2014 – 392

Seller: Danville

Buyers: Multiple (4)

Decided: 8-13-15 (On Appeal)



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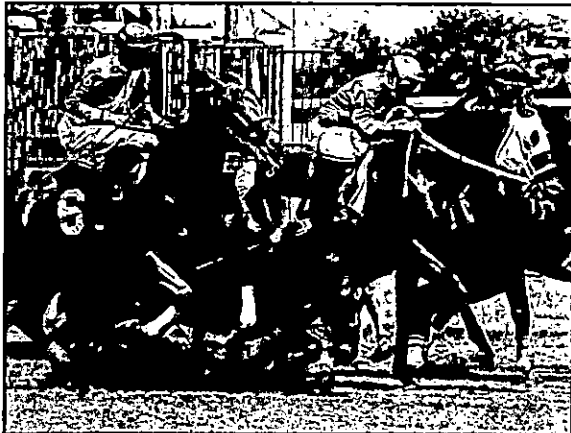
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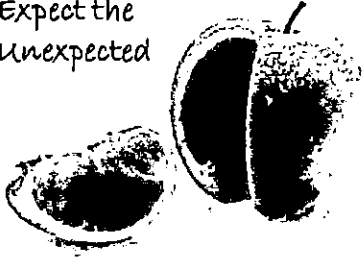
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Expect the  
Unexpected



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### Background

- Contractual Limitations
  - 5 Months Advance Notice
- Prior Settlement Agreements
  - 90 Days Advance Notice
  - 45 Days to Object



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### Danville

- Performed COSS
- Met with Wholesale Customers
- Adopted City Ordinance
- Written Notice: 8-20-14
- Effective Date: 9-1-14
- Newspaper



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**Wholesale Customers**

- Filed Complaint Cases with PSC
  - No 90 Day Notice
  - Violates Contract Provisions
- Danville Had Not Yet Filed Tariff with PSC
- Put Danville on Defense



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**PSC Proceedings**

- Danville Filed Revised Tariff
- Effective Date: 11-19-14
- PSC Suspends Rates for 5 Months
- Extensive Discovery



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**PSC Proceedings**

- Fully Litigated Case
  - Extensive Discovery
  - Evidentiary Hearing
  - Briefs
  - PSC Order (8-13-15)
  - On Appeal



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### PSC Order

- Danville's Proposed Rates Approved W/O Any Changes
- Rate Case Expenses
  - No Recovery
  - Not Requested at Time of Filing



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### Bizarre Result

- Danville Did Everything Right
- PSC Changed Rules After Case Was Over
- PSC Rationale Faulty
- Danville Appealed



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Expect the  
unexpected



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# Talley's Tips



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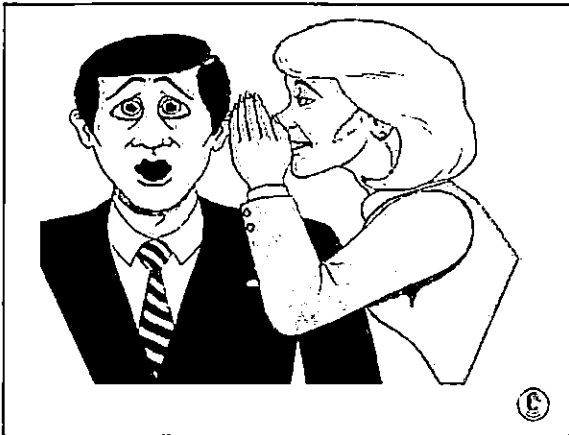
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## Talley's Tips

1. Read Contract & Other Documents
  - Time Between Increases
  - Advance Notice
  - Delayed Effective Date
  - Formula
  - No Wholesale  $\uparrow$  w/o Retail  $\uparrow$
  - Other Provisions



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**Talley's Tips**

**2. Communicate**

- Need for Increase
- Rate Case Expenses
- Buyer Should Voice Objections

**3. Document Communication**

- 1<sup>st</sup> PSC Info Request
- Emails
- Letters



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**Talley's Tips**

**4. Cost-of-Service Study**

- Early
- Before Wholesale Rate is Set
- Not as an Afterthought

**5. Consider Phased-In Rates**

- Avoid Rate Shock
- Gradualism Principle
- Examples



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**Talley's Tips**

**6. Rate Ordinance**

- Effective Date?
  - Date Certain or
  - Upon PSC Approval
- Rate Case Expenses?
- Duty to Advise Mayor & City Council



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### Talley's Tips

#### 7. Request Informal Conference

- When? ASAP After Filing
- Meet PSC Team
- Expedite PSC Process
- Jump Start Negotiations



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### Talley's Tips

#### 8. Settle If You Can

- No Retroactive Rates
- Start Collecting New Rates
- Avoid Rate Case Expenses



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### Talley's Tips

#### 9. Minutes of Meetings

- Very Important
- Not Too Much
- Not Too Little
- Be Careful What You Put in Minutes



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### Talley's Tips

#### 10. Notice Must Be Perfect

- Check and Double Check It
- Get Attorney to "Sign Off"
- Must Comply with PSC Regulation
- Must Include Info Regarding Recovery of Rate Case Expenses



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### Talley's Tips

#### 11. Recovery of Rate Case Expenses

- Surcharge (36 months)
- Include in Ordinance
- Include in Notice
- Include in Tariff or
- Include in Application
- Watch Danville Appeal



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### Talley's Tips

#### 12. Stuck With a Bad Contract?

- Consider Asking PSC for Relief
- Use Versailles Case as Authority
- Request Must be Reasonable



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# Versailles and NE Woodford



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PSC Case No. 2011 – 419

Seller: Versailles

Buyer: NE Woodford WD

Decided: 8-12-14



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## Facts

- 1966 Contract  
Max: 5,000,000
- 1994 Contract Amended  
Max: 15,000,000
- 2000 to 2005 City: \$13,000,000  
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**Facts**

- 2011 District & FPB Contract  
Min: 3,000,000 Gallons  
"Take or Pay"
- District Uses 14,000,000 Gallons
- District Uses ~ 20% of City's  
Water Production



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**Contract Language**

"Versailles shall furnish water . . . .  
. . . in such quantity as may be  
required by the District, not to  
exceed 15,000,000 gallons per  
month."



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**Case History**

- Filed: 9-20-11
- Hearing: 5-3-12
- Briefs Filed: 7-6-12
- Submitted: 7-6-12
- PSC Decision: 8-12-14



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**Issues**

- "Requirements" Contract?
- Can PSC Modify Contract?
- Other Issues



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**PSC Order**

1. Not a Requirements Contract
2. PSC Can Modify Contracts
3. Request Not Reasonable
4. Silent on Other Issues



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**Rationale**

- Not a Requirements Contract
  - South Woodford WD
  - City's Intent
  - Minutes



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### Rationale

- Authority to Modify Contracts
  - State Police Power
  - KRS 278.200
  - Simpson Co. WD (1994)
  - So. Bell Telephone (1936)



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### Rationale

- Versailles Lost Because:
  - WTP Expansion Not Solely for NE Woodford
  - South Woodford Contract
  - Versailles Can Raise Wholesale Rate



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### Shifting Sands

| YEAR | VERSAILLES | FPB         |
|------|------------|-------------|
| 2010 | \$2.26     | \$1.81      |
| 2011 | 2.26       | 1.91        |
| 2012 | 2.26       | 2.01        |
| 2013 | 2.26       | 2.01        |
| 2014 | 2.26       | 2.25 (2.91) |
| 2015 | 2.26       | 2.35        |
| 2016 | ?          | 2.45        |
| 2017 | ?          | 2.55        |



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# Talley's Take Aways



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## Do Not Say:

- Seller shall supply all quantities required by Buyer
- Buyer shall buy all its water from Seller ("Requirements" Contract)



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## Do Say:

- Seller shall furnish such quantities as Buyer may require, but not to exceed \_\_\_\_\_ gallons per month.



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**Do Say:**

- The Buyer shall purchase a minimum of \_\_\_\_\_ gallons per month from Seller
- "Take or Pay" Contract



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**Quantity . . . Maximum**

- Good: Monthly Amount (30,000,000)
- Better: Daily Amount (1,000,000)



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**Quantity . . . Maximum**

- Best: Gallons per Minute (700 GPM)
- Perfect: GPM at each Delivery Point



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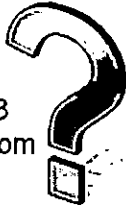


STOLL KEENON OGDEN

# QUESTIONS?



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STOLL KEENON OGDEN

## When Bad Things Happen PSC Investigations

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October 27, 2015

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### Overview

1. Show Cause Cases
2. Talley's Take Aways
3. Municipals & Gas Safety & PSC
4. Customer Notice
5. Talley's Tips



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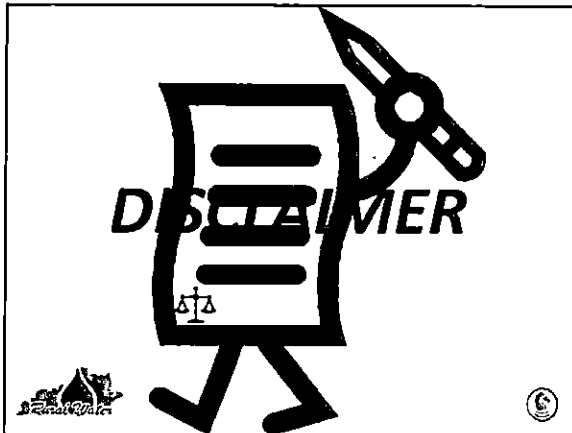
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# Show Cause Cases



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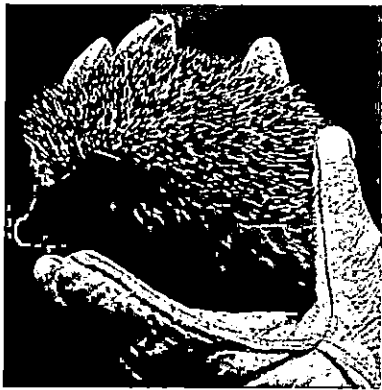
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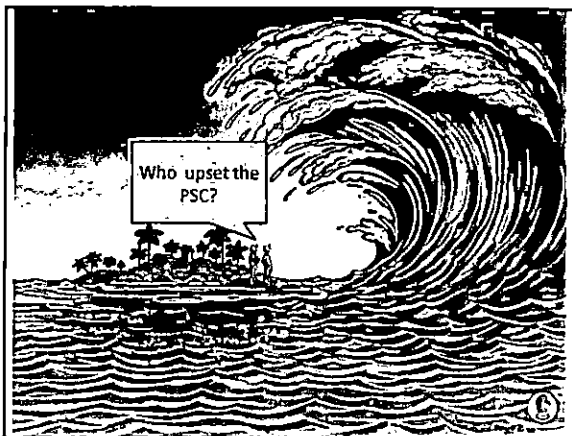
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| Show Cause Cases  |                                      |         |                                  |
|---|--------------------------------------|---------|----------------------------------|
| Utility   | Violation                            | KRS     | Penalty                          |
| A<br>2013-187   | Purchase Office Bldg Borrow \$54,000 | 278.300 | \$250 or 6 hours Training - Once |
| <ul style="list-style-type: none"> <li>▪ Ignorance Is an Excuse</li> <li>▪ Manager Not Named</li> </ul> |                                      |         |                                  |

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| Show Cause Cases   |                              |                    |                                      |
|--|------------------------------|--------------------|--------------------------------------|
| Utility  | Violation                    | KRS                | Penalty                              |
| B<br>2014-400  | WTP Rehab Borrow \$2,518,000 | 278.020<br>278.300 | \$250 or 12 hours Training - 4 Years |
| <ul style="list-style-type: none"> <li>▪ Blamed Engineer</li> <li>▪ Manager Not Named</li> <li>▪ Ignorance Is an Excuse</li> </ul> |                              |                    |                                      |

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| Show Cause Cases  |  |                   |  |
|---|--|-------------------|--|
| Utility   | Violation  | KRS               | Penalty  |
| C<br>2015-037   | Tank Collapse<br>1. Not Timely Reporting<br>2. No Annual Inspection<br>3. Poor Maintenance | 3<br>PSC<br>Regs. | \$500 x 3 = \$1,500<br>Rejected<br>\$2,500 x 3 = \$7,500<br>Inspect All Tanks in 6 months. |
| <ul style="list-style-type: none"> <li>▪ High Profile</li> <li>▪ District Vigorously Defended Case</li> <li>▪ District Paid Fine</li> </ul> |  |                   |  |

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### Show Cause Cases

| Utility       | Violation                                 | KRS     | Penalty   |
|---------------|---|---------|---|
| D<br>2015-155 | Pay Operating Expenses<br>Borrow \$86,000 | 278.300 | No Option to Pay Fine<br>Training & More Training<br>Mgr Also |

- Manager Made a Party
- 12 Hours Training Per Year
- 4 Years




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### Size Does Not Matter

| <u>Utility</u> | <u>Customers</u> |
|----------------|------------------|
| A              | 1,154            |
| B              | 1,779            |
| C              | 2,341            |
| D              | 1,036            |

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# Talley's Take Aways

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## Talley's Take Aways

- PSC Is Serious About ...
  - Public Safety
  - Compliance with KRS & Regs and its Orders
  - Training

Continued...

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## Talley's Take Aways

- Your Utility Should Be Serious About ...
  - Public Safety
  - Compliance with KRS & Regs and PSC Orders
  - Training

Continued...

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### **Talley's Take Aways**

- PSC Now Treats All Utilities the Same
  - Good Ole Days Over
  - No More Slap on Wrist
- Take Show Cause Cases Seriously
- More Show Cause Cases on the Horizon

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## **Municipals, Gas Safety & PSC**

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STOLL JEKSON OGDEN 

#### **PSC JURISDICTION EXTENDS TO MUNICIPAL UTILITY OPERATIONS**

- KRS 278.495(2)
- 49 USC § 60105
- KRS 278.992

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**PSC JURISDICTION OVER  
MUNICIPAL UTILITY OPERATIONS**

**KRS 278.495(2):**

Notwithstanding any other provision of law, the commission shall have the authority to regulate the safety of natural gas facilities which are owned or operated by any . . . city and used to distribute natural gas at retail

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**PSC JURISDICTION OVER  
MUNICIPAL UTILITY OPERATIONS**

**49 USC § 60105:**

- Permits US DOT to enter agreements w/States to participate in oversight of pipeline safety
- Allows for state agencies to enforce Federal Pipeline Safety Regulations as US DOT's agent
- KY PSC & US DOT have entered Agreement
- KY PSC enforces Fed Regs

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**PSC JURISDICTION OVER  
MUNICIPAL UTILITY OPERATIONS**

**KRS 278.992:**

- Authorizes KY PSC to assess civil penalty vs. any person who violates Fed Pipeline Safety regs or PSC Gas Safety Regs
- Maximum Penalty: \$100,000 per day per violation

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STOLL KLEINER GIBBY 

**PSC JURISDICTION OVER MUNICIPAL UTILITY OPERATIONS**

**What Rules/Regulations Apply?**

- 807 KAR 5:022 Gas Safety & Service
- 807 KAR 5:023: Control of Drug Use in Gas Operations
- 49 CFR Part 191 (Reporting Requirements)
- 49 CFR Part 192 (Minimum Safety Standards)
- 49 CFR Part 199 (Drug & Alcohol Testing)

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STOLL KLEINER GIBBY 

**PSC JURISDICTION OVER MUNICIPAL UTILITY OPERATIONS**

**Recent PSC Proceedings**

- 2015-00178 – Carrollton Utilities
- 2012-00362 – Tompkinsville Natural Gas System
- 2006-00046 – White Plains Natural Gas System
- 2004-00392 – Wheelwright Utility Commission
- 2001-00371 – Sturgis Natural Gas System.

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**CUSTOMER NOTICE**

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**Customer Notice**

- 2013 & 2014 PSC Reg. Revisions
  - Content Changes
  - Post on Utility Website

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**Customer Notice**

- Affects:
  - PWA            ➤ Municipal Rate Case
  - ARF
  - Tariff
  - RD Rate Case
  - General Rate Case

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**Talley's  
Tips**

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**Talley's Tips**

▪ **PSC Emphasis**

- Public Safety
- Customer Notices
- Protecting Personal Information
- Electronic Communications

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**Talley's Tips**

**Common Filing Mistakes**

1. No Resolution
2. Customer Notice Incorrect
3. Application NOT Signed
4. Related Party Transaction Form
5. Filing Personal Information
6. No Effective Date On Tariff Sheet

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STOLL KEENON OGDEN  
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P.A.

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**All Things Meter**



Damon R. Talley  
damon.talley@skofirm.com  
October 27, 2015

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**Overview**

1. Meter Testing Requirements
2. Reducing Meter Testing Costs
3. Options
4. Regulation by Order
5. Avoiding Pitfalls



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**All Things Meter**





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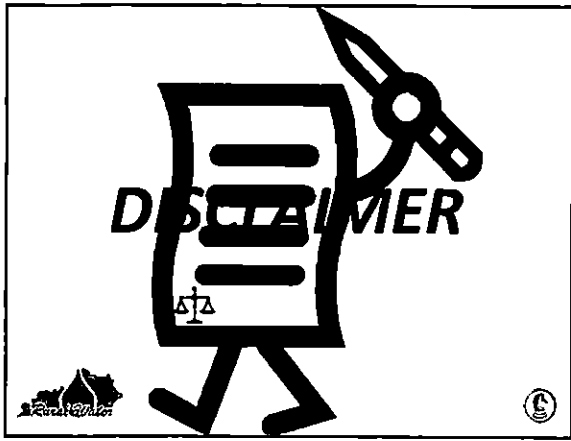
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### Meter Testing Requirements

- KRS 278.210
  - Establishes Statutory Standard for Meters
  - Meter May Not Be More Than Two (2) Percent to the Disadvantage of the Customer (2% fast)



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### Meter Testing Requirements

KRS 278.210(4):

"If a utility demonstrates through sample testing that no statistically significant number of its meters over-register above the limits set out in subsection (3) of this section, the meter testing frequency shall be that which is determined by the utility to be cost effective."



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**Meter Testing Requirements**

- 807 KAR 5:066, § 15 & 16
  - Requires Meters to be Tested Prior to Initial Placement into Service
  - Prohibits Meters from Remaining in Service More Than **10 Years** Without Testing
  - Meters Failing to Meet Standards May Not be Placed into Service
  - Prescribes Testing Standards



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**Meter Testing Requirements**

- 807 KAR 5:006, § 17
  - Requires Meters to be Tested Before Being Installed for Use by a Customer
  - Permits Use of Another Entity to Test
  - Requires Testing by Certified Meter Testers
  - Modifies Statutory Standard to Include Meters Running > 2% Slow



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**Reducing  
Meter  
Testing  
Costs**



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**Reducing Meter Testing Costs**

- What is Your Actual Cost?
  - Pull Meter
  - Test Meter
  - Replace Meter
  - Paper Work
- Cost Range
  - \$25 to \$187.04



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**Reducing Meter Testing Costs**

- Extend the Time Meter is in Service Without Testing (e.g. from 10 to 15 years)
- Use of Sample Testing



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**Butler  
Simpson  
& Warren  
Water Systems**



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**Cost Effective Economic Analysis\***

- Establish a sound, statistical analysis.
- Evaluate the cost of meter pulling, testing, and replacement.
- Determine the break-even point.
- Recommend modified metering testing program.

\* Courtesy of John M. Dix, P.E.

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**Warren Co. Water Dist. v PSC**

- Sought a Deviation from 10-yr Test Requirement Based Upon Results of Sample-testing
- Warren Co. WD Won Case on Appeal to Franklin Circuit Court
- Warren Co. WD v PSC Saga
- 21 Years



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**KAWC**



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**Case No. 2009-00253**

- KAWC Sample-tested Group of Meters
- Meters Tested Within Standard After 15 Years of Service
- Deviation from 807 KAR 5:066 Granted
- PSC Extended Time Meters Remained in Service to 15 Years for All Meters
- Estimated Annual Savings: \$90,000
- Estimated Annual Capital Expenditure Savings: \$545,000



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**Sample Testing**



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**Sample Testing**

- Based Upon Accepted Statistical Principles
- Representative Sample is Selected & Tested Annually
- Utilities Do **NOT** Test All Meters
- Electric and Natural Gas Utilities Have Received Authorization Upon Request
- No Water Utility Requested



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# PSC's Concerns



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## Electromagnetic Flow Meters

- PSC has Expressed Doubts Regarding Accuracy of Electromagnetic Meters
- Required Utilities to **Develop Sample-testing Program** for Such Meters
- Case No. 2013-00042 – PSC Required Testing of:
  - 100 Meters Annually for 1st Five Years
  - 1,000 Meters Annually for Next Five Years



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## Electromagnetic Flow Meters

- Case No. 2011-00233: Required Utility to Adopt Written Plan for a Sample-testing Program to Test the Proposed Metering Equipment After Installation
- Utilities Should Consider the Cost of Programs when Making Purchasing Decisions
- Require Vendors of Meters to Include Cost of Programs in Any Bid Proposal



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**Inadequate Mfg. Testing**

- Case No. 2013-00042
  - PSC Concerned that Mfg. did **Not** Test Each Meter
  - PSC Required All Meters to be Tested by Certified Tester Before Installation
- Requirement Now Routinely Appears in PSC Orders Granting CPCN for Meter Replacement Programs



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**Inadequate Mfg. Testing**

- Utilities Should Inquire About Mfg.'s Testing Processes Before Major Purchase of Metering Equipment
- Consider Cost of Performing its Own Tests When Making Purchase Decisions
- Consider Negotiating with Meter Equipment Vendor to Cover Testing Costs



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**Other PSC Concerns**

- Test Data is Utility Specific
- Test Data is Meter Type, Mfg. & Model Name / Number Specific
  - e.g. Sensus SR11 Meter
- New Technology
- Quality Control Safeguards
- Lack of Test Data



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# Options



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**Actual Flow Volume**

**10**  **15**



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- Options**
1. Do Nothing
  2. Amend Statute
  3. Amend Regulation
  4. Request Deviation... One Utility at a Time
  5. Class Action Deviation



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# Regulation By Order

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- ### PSC Regulation
- Statutes
  - Administrative Regulations
  - Orders Issued Case by Case

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- ### PSC Orders
- Examples:
    - Depreciation – Useful Life
    - Revenue Requirements
    - Meter Testing
  - Exceed KRS & Regs.

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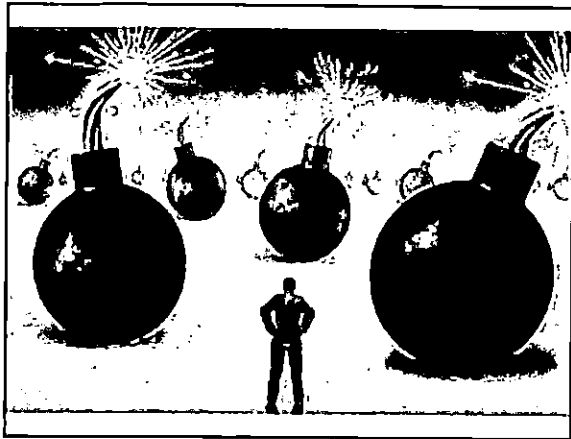
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**PSC Orders**

- Utility Must Test Every Meter Before Installation
- Develop Sample Testing Plan
- Periodic Testing of 20% of Meters in Years 6 thru 10
- Test Every Meter that is Pulled
- File Detailed Reports with PSC

(5)

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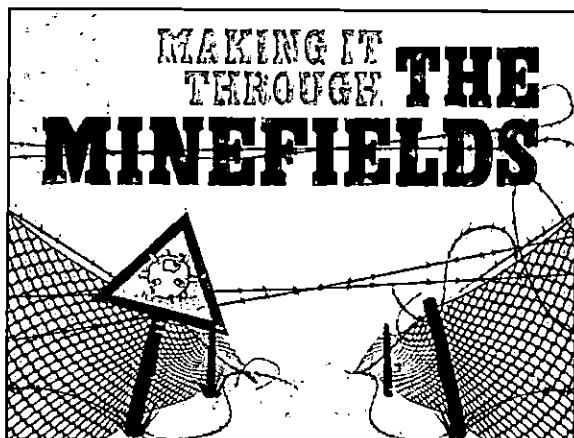
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# Avoiding Pitfalls



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## Avoiding Pitfalls

- Do **Not** Embark Upon Complete Meter Replacement Program Without First Considering All Factors
  - CPCN Will be Required
  - PSC May Impose Stricter Testing Requirements



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## Avoiding Pitfalls

- Other Factors:
  - Has Mfg. Been Certified by PSC?
  - Has Mfg. Tested Each Meter?
  - Will Utility Have to Test Each Meter Before Installation?
  - Will Utility be Required to Pay Another Entity to Test?



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### Avoiding Pitfalls

- Utility Unwittingly Agreeing To:
  - Assume More Frequent Periodic Testing
  - Test All Meters That Are Pulled
  - Report All Data to PSC



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### Avoiding Pitfalls

- Consider Meter Replacement Program Over Longer Time-Period
  - Extension in Ordinary Course of Business?
    - 10 Years - Yes
    - 5 Years - Probably
    - 3 Years - ?
  - Numerous Factors
  - Seek Expert Legal Advice



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# Lawyers Relief Act



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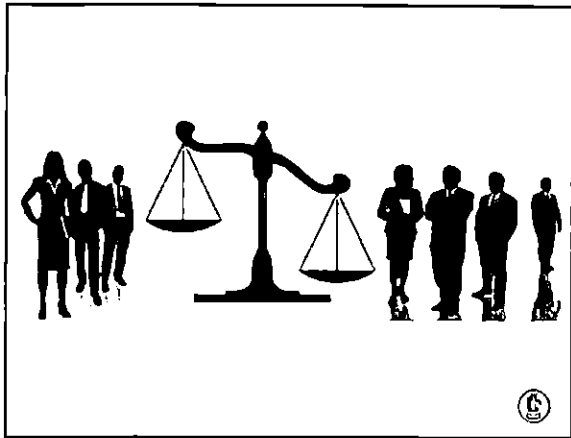
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STOLL KEENON OGDEN

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**QUESTIONS?**

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**STOLL KEENON OGDEN**  
1982

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**EEO No!**  
**A Discrimination Law Primer**

Stacy Miller, Esq.  
 Stoll Keenon Ogden, PLLC  
 859.231.3000  
 stacy.miller@skofirm.com

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**STOLL KEENON OGDEN** 

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**Protected Classes**

- Age
- Race
- Religion
- National Origin
- Color
- Disability
- Sex
- Military/Veteran
- Sexual Orientation
- Gender Identity



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**STOLL KEENON OGDEN** 

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**Protected Classes**

- **Sex**
  - Gender, pregnancy
- **Age**
  - Age 40 and over
- **Race/Color/National Origin**
  - Hair texture, skin color, facial features, language, citizenship
- **Religion**
  - Affirmative duty to accommodate

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### Pregnancy Discrimination

Darlene, who is visibly pregnant, applies for a job as office administrator at a campground. The interviewer tells her that July and August are the busiest months of the year and asks whether she will be available to work during that time period. Darlene replies that she is due to deliver in late September and intends to work right up to the delivery date. The interviewer explains that the campground cannot risk that she will decide to stop working earlier and, therefore, will not hire her.

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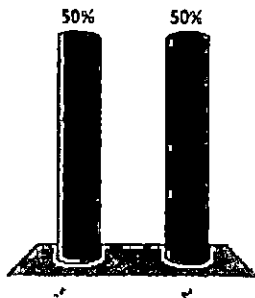
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Is the campground's refusal to hire Darlene on this basis pregnancy discrimination?

- A. Yes
- B. No



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### Pregnancy Discrimination

Shortly after Teresa informed her supervisor of her pregnancy, he met with her to discuss performance problems. Teresa had consistently received outstanding performance reviews during her eight years of employment with the company. However, the supervisor now tells Teresa that her performance is below expectations.

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Is this pregnancy discrimination?

A. Yes  
B. No

A bar chart with two bars. The left bar is labeled '50%' and the right bar is labeled '50%'. Both bars are of equal height and are positioned on a small base.

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STOLL KENNON OGDEN

### Pregnancy Discrimination

- July 14, 2014 - EEOC issued new guidance concerning pregnancy discrimination:

[http://www.eeoc.gov/laws/guidance/pregnancy\\_guidance.cfm](http://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm)

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STOLL KENNON OGDEN

### Protected Classes

- **Sex**
  - Gender, pregnancy
- **Age**
  - Age 40 and over
- **Race/Color/National Origin**
  - Hair texture, skin color, facial features, language, citizenship
- **Religion**
  - Affirmative duty to accommodate

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### Golden Rule #1

- Keep a job description handy
- Make a checklist of essential functions of the job

**If it's not a skill, don't grill!**

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To ask or not to ask?  
That is the question.

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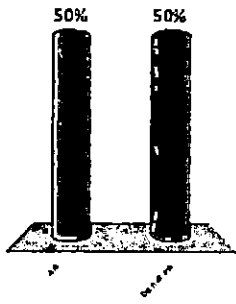
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Where were you born?

- A. Ask
- B. Do not ask



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When did you graduate?

A. Ask  
B. Do not ask

| Option        | Percentage |
|---------------|------------|
| A. Ask        | 50%        |
| B. Do not ask | 50%        |

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What languages do you speak or write fluently?

A. Ask  
B. Do not ask

| Option        | Percentage |
|---------------|------------|
| A. Ask        | 50%        |
| B. Do not ask | 50%        |

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**STOLLIKERSON OGDEN**

**EEOC v. City of Moss Point**  
\$92,500 Settlement

|  |  |
|--|--|
| <p><b>Job Description</b></p> <ul style="list-style-type: none"> <li>• BA/BS in personnel management, business or a related field</li> <li>• 6 years of HR-related work experience</li> <li>• 3 years as a supervisor</li> </ul> | <p><b>61-Year Old Applicant</b></p> <ul style="list-style-type: none"> <li>• BBA</li> <li>• 38 years of HR experience</li> <li>• 15 years supervisory experience</li> </ul> <p><b>Selected Candidate</b></p> <ul style="list-style-type: none"> <li>• 20-year old</li> <li>• BA English/Journalism</li> <li>• No HR-related work experience</li> </ul> |
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STOLL KLEENON OGDEN 

## EEOC v. Zenith Insurance Co.

|  |   |
|--|---|
| <p><b>Job Description</b></p> <ul style="list-style-type: none"> <li>• Mailroom Clerk</li> <li>• 6 months of mailroom experience (min.)</li> </ul> | <p><b>Black Applicant</b></p> <ul style="list-style-type: none"> <li>• 6 years experience</li> <li>• Degree in graphic arts</li> </ul> <p><b>Selected Candidate</b></p> <ul style="list-style-type: none"> <li>• White</li> <li>• No mailroom experience</li> </ul> |
|--|---|

**\$180,000 Settlement**

- Hiring rate of at least 18.3% African Americans
- Semiannual reports on recruitment and hiring
- Annual reports on applicants and hires, by race

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STOLL KLEENON OGDEN 

## Disability Discrimination

- "Disability"
  - A physical or mental impairment that substantially limits one or more major life activities,
  - A record of such an impairment, or
  - Regarded as having such an impairment
- Courts now instructed to construe the definition broadly
  - *"To the maximum extent permitted by the terms of the Act."*

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STOLL KLEENON OGDEN 

## Major Life Activities

|  |  |
|--|--|
| <ul style="list-style-type: none"> <li>• Caring for oneself</li> <li>• Performing manual tasks</li> <li>• Seeing</li> <li>• Hearing</li> <li>• Eating</li> <li>• Sleeping</li> <li>• Walking</li> <li>• Standing</li> <li>• Lifting</li> </ul> | <ul style="list-style-type: none"> <li>• Bending</li> <li>• Speaking</li> <li>• Breathing</li> <li>• Learning</li> <li>• Reading</li> <li>• Concentrating</li> <li>• Thinking</li> <li>• Communicating</li> <li>• Working</li> </ul> |
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### Plus: Major Bodily Functions

- Immune system
- Normal cell growth
- Digestive
- Bowel
- Bladder
- Neurological
- Brain
- Circulatory
- Endocrine
- Reproductive
- Respiratory

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### Disability Discrimination

- Duty to provide reasonable accommodation
  - Engage in the “interactive” process to find an accommodation that will work



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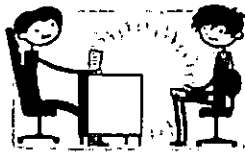
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### Golden Rule #2

**If you haven't hired,  
don't inquire!**



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### Harassment

- Interferes with work
- Creates an intimidating, hostile or offensive working environment
- Can be verbal, physical or visual
- Two types:
  - Hostile Environment
  - Quid Pro Quo

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### Harassment



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### Harassment

- Harassment can occur on the basis of ANY protected status
  - Age
  - Race
  - Religion
  - National Origin
  - Color
  - Disability
  - Sex
  - Military/Veteran
  - Sexual Orientation
  - Gender Identity

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### Hostile Environment Harassment

- Isolating, degrading or showing hostility or aversion toward an individual based on that person's protected trait through:
  - Comments, jokes, suggestions, stereotypes
  - Pictures, cards, calendars, toys, emails
  - Unwanted touching

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### Reasonable Person Standard

- Victim's perception matters more than intention of accused
- Would a reasonable person:
  - Consider the behavior out of bounds?
  - Feel uncomfortable?
  - Be humiliated?
  - Be embarrassed?
  - Feel unsafe?

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### Harassment by Outsiders

- Harassers can be outsiders, including customers, vendors, suppliers or service providers

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### Sexual harassment that is made a condition of employment

- Work-related rewards in exchange for sexual favors

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### Anti-Harassment Policy

- Outlines Complaint Procedure –
  - Complaint process should allow employee to bypass alleged harasser
- Complaints will be promptly and thoroughly investigated
- Violations of the policy will result in discipline
- Confidentiality will be protected
- Retaliation is prohibited
- Train employees and supervisors on the policy and complaint procedure

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## Cyber Security 101 for Water Utilities

Many drinking water and wastewater utilities today depend on computer networks and automated control systems to operate and monitor processes such as treatment, testing and movement of water. These industrial control systems (ICSs) have improved drinking water and wastewater service and increased their reliability. However, this reliance on ICSs, such as Supervisory Control and Data Acquisition (SCADA), has left the Water Sector and other interdependent critical infrastructures, including energy, transportation and food and agriculture, potentially vulnerable to targeted cyber attacks or accidental cyber events. A cyber attack causing an interruption to drinking water and wastewater services could erode public confidence, or worse, produce significant public health and economic consequences.<sup>1</sup>



Establishing facility and information access controls, which includes cyber security, is one of the Key Features of an Active and Effective Protective Program. The U.S. Environmental Protection Agency (EPA), in collaboration with the Water Sector, developed the Key Features to strengthen the security and resiliency of water systems in the face of all hazards.



### THE KEY FEATURES

1. Integrate protective concepts into organizational culture, leadership and daily operations
2. Identify and support protective program priorities, resources and utility-specific measures
3. Employ protocols for detection of contamination
4. Assess risks and review vulnerability assessments (VAs)
5. **Establish facility and information access control**
6. Incorporate resiliency concepts into physical infrastructure
7. Prepare, test, and update emergency response and business continuity plans
8. Develop partnerships with first responders, managers of critical interdependent infrastructure, other utilities and response organizations
9. Develop and implement internal and external communication strategies
10. Monitor incidents and threat-level information

### Types of Cyber Attacks on Water Systems

A cyber attack is an attempt to undermine or compromise the function of ICSs, or attempt to track the online movements of individuals without their permission. Attacks of this type may be undetectable to the water utility or SCADA system administrator but can lead to a total disruption of a water utility's network. Examples of these attacks include:

- **Denial of Service:** Flooding a resource (a network or Web server) with thousands of false requests so as to crash or make the resource unavailable to its intended users
- **Spyware:** Monitors user activity
- **Trojan Horse:** Malicious file or program that disguises itself as a legitimate file or program
- **Virus:** Attaches to existing programs, then replicates and spreads from one computer to another
- **Worm:** Malicious file that replicates itself and spreads to other computers
- **Sniffer:** Monitors information traveling over a network
- **Key Loggers:** Records and transmits keystrokes and transmits to the originator
- **Phishing:** Fake websites or e-mail messages that look genuine and ask users for confidential personal data

<sup>1</sup> "Water Security Roadmap to Secure Control Systems in the Water Sector," developed by the Water Sector Coordinating Council Cyber Security Working Group, March 2008.

## How Can Cyber Attacks Affect Water Systems?

Cyber incidents can affect water system operations in a variety of ways, some with potentially significant adverse effects to public health and the environment. Examples of potential impacts include:<sup>1</sup>

- Interference with operation of water treatment equipment, causing chemical over- or under-dosing
- Unauthorized changes to programmed instructions in local processors which enable individuals to take control of drinking water distribution or wastewater collection systems potentially resulting in disabled service, reduced pressure flows of water into fire hydrants, or overflow of untreated sewage into public waterways
- Changing or disabling alarm threshold, which could delay detection of intrusion or water contamination

## Preventing Cyber Attacks

Water utilities can reduce vulnerabilities from cyber attacks or events by: (1) identifying systems that need to be protected, (2) separating systems into functional groups, (3) implementing layered or tiered defenses around each system, and (4) controlling access into, and between, each group. Utilities should also:

- Institute procedures to limit number of individuals with authorized access to networks
- Update software on a regular basis
- Require strong passwords
- Install and maintain anti-virus software
- Employ intrusion detection systems and firewalls

To be most effective, water utility cyber security programs should build on strong organizational security policies, utility-wide security awareness, and effective personnel and physical security practices.

## Highlighting Real-World Cyber Attacks

The following are actual cyber incidents that impacted water utilities and illustrate the types of damages and impacts these attacks can cause:<sup>1</sup>

**Queensland, Australia, 2001:** Former employee of software development company hacked 46 times into the SCADA system that controlled a sewage treatment plant, releasing over 264,000 gallons of raw sewage into nearby rivers and parks.

**Harrisburg, PA, 2006:** Foreign hacker penetrated security of a water filtering plant through the Internet. The intruder planted malicious software that was capable of affecting the plant's water treatment operations.



## Where to go for additional information on Cyber Security

Additional resources and guidance documents on cyber security applicable to the Water Sector include:

- **Water Security Roadmap to Secure Control Systems in the Water Sector:** Developed by Water Sector Coordinating Council Cyber Security Working Group, in accordance with the Department of Homeland Security's National Infrastructure Protection Plan partnership model: <http://www.awwa.org/files/GovtPublicAffairs/PDF/WaterSecurityRoadmap031908.pdf>
- **Water Information Sharing and Analysis Center (WaterISAC):** Secure, Web-based clearinghouse that helps water utilities, state and federal agencies, first responders, law enforcement, and public health officials prepare for water service interruptions: <https://portal.waterisac.org>
- **U.S. Department of Homeland Security, Control Systems Security Programs (CSSP):** Coordinates activities to reduce likelihood of success, and severity of impact, of cyber attacks against critical ICSs: [http://www.us-cert.gov/control\\_systems](http://www.us-cert.gov/control_systems)
- **CSSP's Cyber Security Evaluation Tool (CSET):** Desktop software tool that guides users through step-by-step process to assess their control systems and IT network security practices: [http://us-cert.gov/control\\_systems/satool.html](http://us-cert.gov/control_systems/satool.html)

**FOR MORE INFORMATION:** EPA is committed to ensuring the Water Sector can access information and tools that enable utilities to enhance the security of their cyber systems. For more information on EPA's support for the Key Features of an Active and Effective Protective Program, visit <http://water.epa.gov/infrastructure/watersecurity/features> or email [WSD-Outreach@epa.gov](mailto:WSD-Outreach@epa.gov).



**WaterISAC**  
Security Information Center

## **10 Basic Cybersecurity Measures**

**Best Practices to Reduce Exploitable  
Weaknesses and Attacks**

June 2015

Developed in partnership with the U.S. Department of Homeland Security Industrial Control Systems Cyber Emergency Response Team (ICS-CERT), the FBI, and the Information Technology ISAC. WaterISAC also acknowledges the Multi-State ISAC for its contributions to this document.

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## About WaterISAC

The Water Information Sharing and Analysis Center, established in 2002 by the water and wastewater industry, is the designated communications and operations arm of the United States water and wastewater sector. With an all-hazards focus, WaterISAC provides its members with threat alerts and analysis as well as best practices and training on reducing risk, mitigating vulnerabilities, improving resiliency, and recovering from natural and manmade emergencies.

WaterISAC members are in the U.S., Canada, and Australia. They include water and wastewater utilities; federal, state, and local government agencies involved in security, law enforcement, intelligence analysis, emergency response, and public health; and engineering and consulting firms.

WaterISAC members have access to the world's largest and richest source of information and tools for strengthening water and wastewater utility security, resilience, and emergency management.

For more information about WaterISAC, visit <https://www.waterisac.org> or email [service@waterisac.org](mailto:service@waterisac.org).

If your organization has experienced a cybersecurity breach or suspects a breach has occurred, please contact WaterISAC and ICS-CERT:

### **WaterISAC**

Email: [analyst@waterisac.org](mailto:analyst@waterisac.org)

Call: 866-H2O-ISAC

Online Incident Report form: <https://www.waterisac.org/report-incident>

### **ICS-CERT**

Email: [ics-cert@hq.dhs.gov](mailto:ics-cert@hq.dhs.gov)

Call: 877-776-7585

## Introduction

In partnership with the U.S. Department of Homeland Security Industrial Control Systems Cyber Emergency Response Team (ICS-CERT), the FBI, and the Information Technology ISAC, WaterISAC has developed a list of 10 basic cybersecurity recommendations water and wastewater utilities can use to reduce exploitable weaknesses and defend against avoidable data breaches and cyber attacks. Each recommendation is accompanied by links to corresponding technical resources. This document is an updated version of the *10 Basic Cybersecurity Measures to Reduce Exploitable Weaknesses and Attacks* guide that WaterISAC published in August 2012.

In reviewing its incident reports for 2014, ICS-CERT noted that implementation of the first three recommendations likely would have detected the issues, prevented the vulnerabilities, and averted the resulting impacts related to those incidents. Although risks remain and threat actors will continue to change their capabilities and methods, ICS-CERT advises that the first three recommendations be implemented as soon as practical.

For further measures to reduce cyber risks, consult the *Framework for Improving Critical Infrastructure Cybersecurity* by the National Institute of Standards and Technology (NIST) and the American Water Works Association's (AWWA's) *Cybersecurity Guidance and Tool*. The NIST Cybersecurity Framework is a set of voluntary practices, standards, and guidelines created to help critical infrastructure owners and operators manage cyber risks. The AWWA Guidance and Tool is a sector-specific approach for adopting the NIST Cybersecurity Framework.

Also, download WaterISAC's *Cybersecurity Resource Guide* for more information on key resources to help water and wastewater utilities and the government agencies that support them mitigate risks and resolve vulnerabilities.

## 1) Maintain an Accurate Inventory of Control System Devices and Eliminate Any Exposure of this Equipment to External Networks

Never allow any machine on the control network to talk directly to a machine on the business network or on the Internet. Although some organizations' industrial control systems may not directly face the Internet, a connection still exists if those systems are connected to a part of the network – such as the corporate side – that has a communications channel to external (non-trusted) resources (i.e., to the Internet).

Organizations may not realize this connection exists, but a persistent cyber threat actor can find such pathways and use them to access and exploit industrial control systems to attempt to create a physical consequence. Therefore, organizations are encouraged to conduct thorough assessments of their systems, including the corporate enterprise segments, to determine where pathways exist. Any channels between devices on the control system and equipment on other networks should be eliminated to reduce network vulnerabilities.

- ICS-ALERT-12-046-01A Increasing Threat to Industrial Control Systems (ICS-CERT)
- ICS-ALERT-11-343-01A Control System Internet Accessibility (ICS-CERT)
- Targeted Cyber Intrusion Detection and Mitigation Strategies (ICS-CERT)

## 2) Implement Network Segmentation and Apply Firewalls

Network segmentation entails classifying and categorizing IT assets, data, and personnel into specific groups, and then restricting access to these groups. By placing resources into different areas of a network, a compromise of one device or sector cannot translate into the exploitation of the entire system. Otherwise, cyber threat actors would be able to exploit any vulnerability within an organization's system – the “weakest chain in the link” – to gain entry and move laterally throughout a network and access sensitive equipment and data. Given the rise of the “Internet of Things” – whereby many previously non-Internet connected devices, such as video cameras, are now linked to systems and the web – the importance of segmenting networks is greater than ever.

Access to network areas can be restricted by isolating them entirely from one another, which is optimal in the case of industrial control systems (as described in recommendation #1 above), or by implementing firewalls. A firewall is a software program or hardware device that filters the inbound and outbound traffic between different parts of a network or between a network and the Internet. For connections that face the Internet, a firewall can be set up to filter incoming and outgoing information. By reducing the number of pathways into and within your networks and by implementing security protocols on the pathways that do exist, it is much more difficult for a threat to enter your system and gain access to other areas.

Creating network boundaries and segments empowers an organization to enforce both detective and protective controls within its infrastructure. The capability to monitor, restrict, and govern communication flows yields to a practical capability to baseline network traffic (especially traffic traversing a network boundary), and identify anomalous or suspicious communication flows.

These boundaries also provide a means to practically detect potential lateral movement, network footprinting and enumeration, and device communications attempting to traverse from one zone to another.

- Improving Industrial Control Systems Cybersecurity with Defense-In-Depth Strategies (ICS-CERT)
- Why You Need to Segment Your Network for Security (CSO)
- Firewall Deployment for SCADA and Process Control Networks (UK Centre for the Protection of National Infrastructure via ICS-CERT)
- Beginners Guide to Firewalls: A Non-Technical Guide (MS-ISAC)
- Guide to Industrial Control Systems Security – Special Publication 800-82 (NIST)

### 3) Use Secure Remote Access Methods

The ability to remotely connect to a network has added a great deal of convenience for end users, but a secure access method, such as a Virtual Private Network (VPN), should be used if remote access is required. A VPN is an encrypted data channel for securely sending and receiving data via public IT infrastructure (such as the Internet). Through a VPN, users are able to remotely access internal resources like files, printers, databases, or websites as if directly connected to the network. This remote access can further be hardened by reducing the number of Internet Protocol (IP) addresses that can access it by utilizing network devices and/or firewalls to specific IP addresses and/or ranges and from within the U.S. Note that a VPN is only as secure as the devices connected to it. A laptop computer infected with malware can introduce those vulnerabilities into the network, leading to additional infections and negating the security of the VPN.

- Configuring and Managing Remote Access for Industrial Control Systems (ICS-CERT)
- Virtual Private Networking: An Overview (Microsoft)

### 4) Establish Role-Based Access Controls and Implement System Logging

Role-based access control grants or denies access to network resources based on job functions. This limits the ability of individual users – or attackers – to reach files or parts of the system they shouldn't access. For example, SCADA system operators likely do not need access to the billing department or certain administrative files. Therefore, define the permissions based on the level of access each job function needs to perform its duties, and work with human resources to implement standard operating procedures to remove network access of former employees and contractors. In addition, limiting employee permissions through role-based access controls can facilitate tracking network intrusions or suspicious activities during an audit.

Implementing a logging capability allows for the monitoring of system activity. This enables organizations to conduct thorough root cause analyses to find the sources of issues in the system, which may have been the activities of an employee or an outsider. Monitoring network traffic also allows organizations to determine if a user is making unauthorized actions or if an outsider is in the system, which provides an opportunity to intervene before problems are manifested.



- An Introduction to Role Based Access Control (NIST)
- Extending Role Based Access Control (SANS Institute)
- Targeted Cyber Intrusion Detection and Mitigation Strategies (ICS-CERT)

## 5) Use Only Strong Passwords, Change Default Passwords, and Consider Other Access Controls

Use strong passwords to keep your systems and information secure, and have different passwords for different accounts. Hackers can use readily available software tools to try millions of character combinations to attempt an unauthorized login – this is called a “brute force attack.” Passwords should have at least eight characters, but longer passwords are stronger, because of the greater number of characters to guess. Also, include uppercase and lowercase letters, numerals, and special characters. Change all default passwords upon installation of new software, particularly for administrator accounts and control system devices, and regularly thereafter. Implement other password security features, such as an account lock-out that activates when too many incorrect passwords have been entered. Organizations may also consider requiring multi-factor authentication, which entails users verifying their identities – via codes sent to devices they previously registered – whenever they attempt to sign-in.

- Choosing and Protecting Passwords (US-CERT)
- Supplementing Passwords (US-CERT)
- Check Your Password – Is it Strong? (Microsoft)

## 6) Maintain Awareness of Vulnerabilities and Implement Necessary Patches and Updates

Most vendors work diligently to develop patches for identified vulnerabilities. But even after patches and updates have been released, many systems remain vulnerable because organizations are either unaware of or choose to not implement these fixes. In its *2015 Data Breach Investigations Report*, Verizon observes that many breaches are enabled by not addressing these known vulnerabilities, noting that 99.9% of exploited vulnerabilities were compromised more than a year after public disclosure of the issue. Moreover, Cisco's *2015 Annual Security Report* points out that 40% of CISOs interviewed in a survey indicated they did not have system patching programs in place. These unpatched vulnerabilities amount to a “low-hanging fruit” that cyber criminals can easily take advantage of.

To protect one's organization from these opportunistic attacks, a system of monitoring for and applying system patches and updates should be implemented. WaterISAC regularly posts information on vulnerabilities and patches, which it receives from its partners at the U.S. Department of Homeland Security's ICS-CERT and United States Computer Emergency Readiness Team (US-CERT), other ISACs, and cybersecurity firms, among others. Where possible, organizations should also consider setting systems and software to auto-update to avoid missing critical updates. These updates are designed to fix known vulnerabilities and are encouraged for any Internet-connected device.

- Recommended Practice for Patch Management of Control Systems (ICS-CERT)

- Software Update Management Guidelines (Microsoft)
- Index of Advisories by Vendor (ICS-CERT)

## 7) Develop and Enforce Policies on Mobile Devices

The proliferation of laptops, tablets, smartphones, and other mobile devices in the workplace presents significant security challenges. The mobile nature of these devices means they are potentially exposed to external, compromised applications and networks and malicious actors. Further contributing to this challenge is the increasing trend of organizations allowing employees to use their personal electronic devices for work purposes, known as the “Bring Your Own Device (BYOD)” phenomenon.

Therefore, it’s important to develop policies on the reasonable limits of mobile devices in your office and on your networks. These measures should be strictly enforced for all employees, as well as for contractors. Devices should also be password protected to ensure only authorized users can log-in. Otherwise, an unauthorized user can gain access to restricted networks and files using an authorized user’s device. Similarly, employees should avoid or be cautious about using devices that do not belong to them as they cannot be sure these are properly protected or comply with established policy. Such devices may actually be infected, and using them could put the information and networks you access at risk.

- Cybersecurity for Electronic Devices (US-CERT)
- Guidelines on Cell Phone and PDA Security (NIST)
- Bring Your Own Device (BYOD) Design Considerations Guide (Microsoft)

## 8) Implement an Employee Cybersecurity Training Program

Cybersecurity for critical infrastructure sectors that operate industrial control systems, such as the water and wastewater sector, is extremely important given that these systems are increasingly being targeted. The *2015 Dell Security Annual Threat Report* reports a doubling of the number of attacks against SCADA systems in 2014 as compared to 2013. Like any security enterprise, cybersecurity requires teamwork with all members of an organization playing a part in identifying potential threats and vulnerabilities and bringing them to the attention of others. When employees aren’t involved in cybersecurity, not only can vulnerabilities and threats go unnoticed but the employees themselves can become conduits through which attacks are executed. Therefore, employees should receive initial and periodic cybersecurity training, helping to maintain the security of the organization as a whole.

While cybersecurity is an expansive field, there are certain topics that should be emphasized for general awareness. One such topic is social engineering, which continues to be a popular means for cyber criminals to prey upon unsuspecting employees. These methods involve emails (“phishing”), phone calls, or other types of personal interactions in which malicious actors attempt to entice employees into providing sensitive personal or corporate information, such as account passwords or details about information technology infrastructure. Alternatively, these actors might attempt to make employees perform specific actions, such as pay for alleged services, download infected

attachments, or visit malicious websites. Unsolicited emails, phone calls, and other correspondence from unknown senders should be viewed with particular caution.

Training should also incorporate the importance of smart Internet browsing practices. Visiting suspicious websites may expose users to infection by malware embedded on the site (a “drive-by-download” attack). Even legitimate websites, as well as the files on them, may be compromised. Cyber attackers employ a variation of this type of tactic, a “watering-hole” attack, to target the employees of a company they know will visit the website. Therefore, caution should be exercised no matter where a user navigates and the materials that are downloaded.

- Avoiding Social Engineering and Phishing Attacks (US-CERT)
- Recognizing and Avoiding Email Scams (US-CERT)
- Securing Your Web Browser (US-CERT)
- Incident Handling: Preparing for Incident Response (ICS-CERT)

## 9) Involve Executives in Cybersecurity

Despite the continued proliferation of cyber threats and the far-reaching effects cyber attacks can have, researchers have found that organizational leaders are often unaware of cybersecurity threats and needs. In a study of cyber incident response by the Ponemon Institute, researchers found that only 20% of IT security professionals surveyed regularly communicated with management about threats. Additionally, just 14% of these individuals reported that executive management participated in the incident management process. The study authors note that a deficit of involvement and awareness by organization executives may make it difficult to secure funding for cybersecurity measures and to get the support of leadership for company-wide efforts.

While organizations are increasingly elevating cybersecurity to the executive level by adding the role of Chief Information Security Officer (CISO), a recent report from ThreatTrack Security found that this position has yet to achieve a sufficient level of respect and acceptance. Specifically, it found that 44% of executives believe CISOs should be accountable for any organizational data breaches, but 54% believe CISOs should not be responsible for cybersecurity purchasing decisions. The report concludes that organizations must do a better job of understanding and utilizing this position.

Additionally, involving executives in cybersecurity now will help them to address cybersecurity in their interactions with external stakeholders, such as if they are questioned following an incident. In its report, *M-Trends 2015: A View from the Front Lines*, Mandiant discusses how the press, partners, investors, and consumers now demand more details about cyber breaches, including the type of malware used and how attackers gained access. Mandiant notes that victim organizations realized “how crucial strong, consistent communication is in the wake of major breaches” given the calls for timely information and the speculation that will arise when it is not provided.

- Cybersecurity Questions for CEOs (US-CERT)

## 10) Implement Measures for Detecting Compromises and Develop a Cybersecurity Incident Response Plan

Despite the many preventative measures organizations implement, many still experience compromises. Indeed, many cybersecurity experts have noted that experiencing a compromise is not really a question of “if,” but more of a question of “when.” When a compromise occurs, the organizations that fare the best will be those that quickly detect the issue and have a plan in place to respond.

Implementing such measures as intrusion detection systems (IDSs) and intrusion prevention systems (IPSs), anti-virus software, and logs (previously described in recommendation #4) can help to detect compromises in their earliest stages. Most IDSs and IPSs use signatures to detect port scans, malware, and other abnormal network communications. New viruses are discovered every day, and anti-virus programs are oftentimes set to automatically update themselves to look for the latest threat signatures. Still, administrators should not rely solely on anti-virus software for detecting infections. Logs from firewalls, intrusion detection and prevention sensors, and servers should be monitored for signs of infections.

Incident response plans are a critical yet underutilized component of emergency preparedness and resilience. An effective cybersecurity response plan will limit damage, increase the confidence of partners and customers, and reduce recovery time and costs. Plans should include measures for reacting to destructive malware in an ICS environment. In such situations, organizations should be prepared to “island” their ICS environments by disconnecting from non-ICS networks. They should also be capable of going to “manual operations” if network conditions impact visibility from the SCADA system, or if malware potentially renders control devices inoperable via an automated means.

Rather than being developed by a single entity, the plan should be a product of collaboration between all departments that would be stakeholders in a cybersecurity incident. This will ensure a cooperative and unified response that leverages all of an organization’s resources to the greatest extent possible. For enhanced responsive capability in the event of a cybersecurity incident, organizations should consider forming a Computer Security Incident Response Team (CSIRT).

This task is not complete once the plan has been developed; it needs to be operationalized as well. It is critical that plans be routinely reviewed and updated to ensure they remain relevant and useable for when they are actually needed. Furthermore, to truly understand their cybersecurity incident response plan, organizations must practice them through regular exercises. This will ensure that all stakeholders understand the procedures that would be implemented in the event of a significant cyber disruption or breach, enabling a more effective and efficient response.

- Malware Threats and Mitigation Strategies (US-CERT)
- Developing an ICS Cybersecurity Incident Response Capability (ICS-CERT)
- Ten Steps to Planning an Effective Cyber-Incident Response (Harvard Business Review)
- Create a CSIRT (CERT)
- Best Practices for Continuity of Operations (ICS-CERT)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF WATER

Michael Daniel  
The White House  
Washington, D.C. 20500

Dear Mr. Daniel:

The U.S. Environmental Protection Agency (EPA) is submitting this letter at the request of the National Security Council (NSC) pursuant to Executive Order (EO) 13636, Improving Critical Infrastructure Cybersecurity. Section 10(a) of the executive order requires agencies with responsibility for regulating the security of critical infrastructure "to engage in a consultative process with the Department of Homeland Security (DHS), the Office of Management and Budget (OMB), and the NSC to review the preliminary Cybersecurity Framework and determine if current cybersecurity regulatory requirements are sufficient given current and projected risks." Agencies were required to report to the President regarding whether "the agency has clear authority to establish requirements based upon the Cybersecurity Framework to sufficiently address current and projected cyber risks to critical infrastructure."

The EPA is responsible for regulating the security of critical infrastructure in the Water and Wastewater Systems sector. In response to section 10(a) of EO 13636, the EPA reported to the President on February 7, 2014, that the EPA has the authority to establish cybersecurity requirements for public (drinking) water systems under the Safe Drinking Water Act section 1401 and for publicly owned treatment works (wastewater systems) under the Clean Water Act sections 304, 308, 402 and 501. However, the EPA believes that a voluntary partnership model is a proven approach that will be effective for managing cybersecurity risks, including implementation of the Cybersecurity Framework, in the Water and Wastewater Systems sector.

Section 10(b) of EO 13636 states that if current regulatory requirements are deemed to be insufficient, agencies must propose prioritized, risk-based, efficient, and coordinated actions to mitigate cyber risk. Because the EPA determined under section 10(a) that current cybersecurity regulatory requirements in the Water and Wastewater Systems sector are sufficient, and that a voluntary partnership approach will be used to manage cybersecurity risks, the Agency is not proposing any regulatory actions under section 10(b).

#### Background

The Water and Wastewater Systems sector in the U.S. comprises approximately 155,000 public water systems that serve drinking water to more than 300 million people and approximately 16,500 publicly owned treatment works that treat wastewater from more than 227 million people as well as certain

industrial facilities. DHS used its Cybersecurity Assessment and Risk Management Approach to identify two critical functions for the Water and Wastewater Systems sector:

- (1) Provide drinking water that meets all applicable state and federal regulations in sufficient quantity to serve all customers with an uninterrupted supply and at sufficient pressures and flows for fire suppression.
- (2) Collect and transport wastewater to a facility where it is treated to meet all local, state and federal standards prior to discharge to the environment.

Water and wastewater facilities use industrial control systems and electronic networks to varying degrees to monitor and control surface-water intakes, groundwater wells, sewage collection, water and sewage treatment, distribution systems, effluent discharge and other processes. Consequently, operations at water and wastewater facilities could be disrupted by a cyber attack. Examples of potential disruptions include chemical overdosing or underdosing, disabling water distribution, discharging untreated sewage and blocking or sending false data to operators. Accordingly, cybersecurity is an important component of risk management for water and wastewater facilities.

The EPA regulates public water systems under the Safe Drinking Water Act and regulates publicly owned treatment works under the Clean Water Act. Further, under Presidential Policy Directive 21, Critical Infrastructure Security and Resilience, the EPA is designated as the sector-specific agency for the Water and Wastewater Systems sector. Accordingly, the EPA is responsible for regulating the security of critical infrastructure in the Water and Wastewater Systems sector.

#### Voluntary Activities to Reduce Cybersecurity Risks in the Water and Wastewater Systems Sector

The National Infrastructure Protection Plan promotes partnerships as a key mechanism for critical infrastructure risk management, including Sector Coordinating Councils and Government Coordinating Councils. Recognizing the potential for a cyber attack to disrupt critical functions at water and wastewater facilities, the Water Sector Coordinating Council, Water Government Coordinating Council and sector partners have taken important steps to reduce cybersecurity risks. Examples of notable activities are as follows.

- In 2008 the Water Sector Coordinating Council Cyber Security Working Group issued the “Roadmap to Secure Control Systems in the Water Sector.” This document establishes a 10-year vision that water- and wastewater-facility control systems will operate with no loss of critical function during a cyber attack and specifies goals and milestones to achieve that vision. The goals are consistent with functions in the Cybersecurity Framework.
- As recognized in the National Infrastructure Protection Plan, information sharing and analysis centers serve information dissemination functions, including between government and the private sector. Since May 2012, the Water Information Sharing and Analysis Center (ISAC) has hosted monthly cyber threat briefings in conjunction with the DHS Industrial Control Systems Cyber Emergency Response Team (ICS-CERT) and private cybersecurity firms via web conference. Further, the Water ISAC engages with DHS's National Cybersecurity and Communications Integration Center and ICS-CERT on cyber incidents and receives

cybersecurity advisories from other information sharing and analysis centers. The Water ISAC in turn disseminates this information to water and wastewater system owners and operators.

- Cybersecurity is one of three top priority activities in the “Roadmap to a Secure and Resilient Water Sector.” The Water Sector Coordinating Council and Water Government Coordinating Council jointly issued this document in May 2013 to provide an actionable path forward to improve the security and resilience of the water and wastewater systems sector.
- The 2008 “Roadmap to Secure Control Systems in the Water Sector” identified the need for guidance on detecting, responding to, and limiting the consequences of cyber attacks on control systems at water and wastewater facilities. In response, the American Water Works Association has issued “Process Control System Security Guidance for the Water Sector” and a supporting “Use-Case Tool.” This guidance identifies prioritized actions to reduce cybersecurity risk at a water or wastewater facility. The cybersecurity actions are aligned with the Cybersecurity Framework. This tool is serving as implementation guidance for the Cybersecurity Framework in the Water and Wastewater Systems sector.
- The Water Sector Coordinating Council and Government Coordinating Council have convened the CIPAC Water Sector Cybersecurity Strategy Workgroup to develop a strategy to promote and facilitate use of the Cybersecurity Framework. This workgroup has the following objectives:
  - (1) Recommend approaches to outreach and training that will promote use of the Cybersecurity Framework by all segments of the Water and Wastewater Systems sector;
  - (2) Assess gaps, if any, in available guidance, tools, and resources for application of the Cybersecurity Framework in the Water and Wastewater Systems sector; and
  - (3) Identify measures of success that can be tracked and reported by federal agencies to indicate the extent of use of the Cybersecurity Framework in the Water and Wastewater Systems sector.

Each of these efforts has occurred through voluntary partnerships between the private sector, the EPA, DHS and other government agencies. They demonstrate the success of the voluntary partnership model to reduce cybersecurity risks for water and wastewater systems. Based in part on this success, the EPA plans to continue a voluntary approach for implementing the Cybersecurity Framework in the Water and Wastewater systems sector.

#### Resilience in the Water and Wastewater Systems Sector to a Cyber Attack

Recent analyses performed by DHS through the Cyber Dependent Infrastructure Identification Working Group and other assessments identified resilience factors at water and wastewater facilities that can reduce the consequences of a cyber attack. These factors include the following:

- Should cyber dependent systems be compromised through a cyber attack, many water and wastewater facilities have the capability to employ manual overrides for critical systems. Manual overrides, storage in distribution systems and the ability to isolate systems from the Internet may allow water and wastewater facilities to maintain operation during a cyber attack.

- Water and wastewater facilities are generally stand-alone systems with little to no cyber connections between companies or municipalities. Further, because water and wastewater facilities have been custom designed over time, there are few common processes or software systems by which a cybersecurity incident could spread to multiple facilities.
- A cyber attack on a water or wastewater facility would not result in offsite release of onsite chemicals because this aspect of the system cannot be remotely controlled or because the design of the control system prevents operators from actions that could jeopardize containment.

Based on these factors, the Cyber Dependent Infrastructure Identification Working Group concluded that a cyber attack on water or wastewater facilities would not cause catastrophic regional or national effects on public health or safety, economic security or national security. A cyber incident could, however, disrupt the operations of water or wastewater facilities. Accordingly, cybersecurity is an important risk management objective for the water and wastewater systems sector.

#### Path Forward

Through the Water Sector Cybersecurity Strategy Workgroup, the EPA will work with the Water Sector Coordinating Council, the Water Government Coordinating Council, DHS, and other sector partners to develop approaches to outreach and training, determine whether there are important gaps in available guidance, tools, and resources, and identify measures of success for adoption of the Cybersecurity Framework in the Water and Wastewater Systems sector. The recommendations from this workgroup will guide EPA's work in partnership with the Water and Wastewater Systems sector to increase the resilience of water and wastewater facilities to cyber-attacks.


If the voluntary partnership model is not successful in achieving widespread implementation of the Cybersecurity Framework or, if warranted by a changing cybersecurity risk profile, the EPA can revisit the option of using general statutory authority to regulate cybersecurity in the Water and Wastewater Systems sector.

Respectfully,



Peter C. Grevatt, Director  
Office of Ground Water and Drinking Water



  
**STOLL KEENON OGDEN**  
PLLC

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**RECENT DEVELOPMENTS IN  
 UTILITY LAW**

**2015 Water Law Series  
 October 27, 2015**

|  |  |
|--|--|
| <p style="font-size: small;">             Damon Talley<br/>             Stoll Keenon Ogden PLLC<br/>             damon.talley@skofirm.com<br/>             (270) 358-3187         </p> | <p style="font-size: small;">             Gerald Wuetcher<br/>             Stoll Keenon Ogden PLLC<br/>             gerald.wuetcher@skofirm.com<br/>             (859) 231-3017         </p> |
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**STOLL KEENON OGDEN** 

**ORDER OF PRESENTATION**

- Recent Legislation of Interest
- Special Purpose Governmental Entities Update
- Related Party Transactions
- PSC Privacy & Notice Requirements
- PSC Ratemaking Trends
- Water Storage Tank Issues
- Other PSC Decisions of Interest
- House Bill 5 – Personal Information Security

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**STOLL KEENON OGDEN** 



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STOLL KENNON GARDEN 

**RECENT LEGISLATION**

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STOLL KENNON GARDEN 

**RECENT LEGISLATION**

- HB 235 (2014) – “CPCN Bright-Line Test” renewed
- HB 276 (2014) – SPGE office holders limited to one taxing SPGE
- HB 331 (2014) – mayor/city council offices incompatible with other offices
- SB 91 (2014) – Authorizes E-Service of PSC Orders
- SB 123 (2014) – Repeals KRS 278.185
- HB 276 (2015) – 30-year amortization for KIA wastewater loans

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STOLL KENNON GARDEN 

**SPECIAL PURPOSE  
GOVERNMENTAL ENTITIES (SPGE)  
UPDATE**

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STOLL KEENON OGDEN 

**SPGE UPDATE**

- House Bill 1 (2013) - Created KRS Chapter 65A
- House Bill 192 (2014) – Amended KRS Chapter 65A
- House Bill 348 (2015) – Further Amendments\*

Effective: 06/24/2015

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STOLL KEENON OGDEN 

**EFFECT OF HOUSE BILL 192**

- Corrects Technical Mistakes
- Clarifies Reporting Requirements
  - To Whom Do You Report?
  - What Fee Increases Must Be Reported?
- Budget Amendments Permitted

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STOLL KEENON OGDEN 

**NO REPORTING REQUIRED**

- Tap Fees
- Late Payment Fees
- Purchased Water Adjustments
- Any Fee or Rate Requiring PSC Approval

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**BUDGETS**

- KRS 65A.080(1) Requires
- Post On DLG Website
- Periodic Review of Budget
- Amend As Necessary
- Post Amended Budget on DLG Website

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**BUDGETS**

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

KRS 65A.080(1)

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**HOUSE BILL 348 (2015)**

- Clarifies that SPGE does NOT include
  - Chambers of Commerce
  - Public Housing Authority
- SFA 2 - Removes Financial Disclosure Exemption

**THIS AFFECTS YOU!**

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### FINANCIAL DISCLOSURE

- House Bill 1 Makes SPGEs Subject to Local Ethics Code – KRS 65A.070
- HB1 (KRS 65.003(3)(b)(2)) Exempted From Financial Disclosure
  - Board Members
  - Officers
  - Employees
- HB 348/SFA 2 - Removes Exemption

**Handout**

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## TALLEY'S TAKE AWAYS

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### TALLEY'S TAKE AWAYS

- Obtain/Review County Ethics Code
- Provide A Copy to
  - All Board Members
  - All Employees
- Review Financial Disclosure Forms
- Complete & File Forms with County Ethics Board (If Required)

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## REPORTING RELATED TRANSACTIONS

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### WHAT IS A RELATED TRANSACTION?

- Transaction > \$25
- Between Utility and . . .
  - Current/Former Employee
  - Director/Commissioner/Owner
  - Family Member
  - Business Enterprise of "Related Party"
- Employment of Family Member

ARF Form 3

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### WHAT IS A "FAMILY MEMBER"?

- Spouse
- Child
- Parent
- Parent-In-Law
- Son/Daughter-In-Law
- Grandparent
- Grandchild
- Member of Household

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STOLL KENNON OGDEN 

**REQUIRED REPORTING**

- Report Required For Rate Applications Under ARF Procedures
- Reported on ARF Form 3
- Each Commissioner/Director/CEO must complete Form 3 Under Oath
- Must List All Related Transactions > \$25 within previous 24 Months
- "Knowledge & Belief" Standard

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STOLL KENNON OGDEN 

**REQUIRED REPORTING**

- PSC Staff requesting completion of statements similar to ARF Form 3 in non-ARF rate cases as part of discovery process
  - Case No. 2012-00072
  - Case No. 2014-00342
  - Case No. 2015-00143
- Requests seeks transactions for last 5 years

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STOLL KENNON OGDEN 

**WHY REPORTING REQUIREMENT?**

- Law presumes Past Transactions Are Reasonable (B/P on Challenging Party)
- Exception: Transactions with Related Party (B/P on the Utility)
- Difficult for PSC Staff to Ascertain Related Transactions – Lacks Local Knowledge
- Effective Enforcement Mechanism (Perjury Statutes)

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STOLL KLEINON OGDEN 

**RECOMMENDED RESPONSE**

- Duty to Inquire Prior to Rate Filing
  - Concerns RE: Adverse Publicity
  - Nepotism Sections of Local Ethics Code
  - Place Language Into Procurement Documents Requiring Disclosure
  - Cross-Check with Sec/State’s Online Records

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STOLL KLEINON OGDEN 

**RECOMMENDED RESPONSE**

- Document All Aspects of Transaction in Rate Application
- Do Not Conceal Transaction - Focus on Controversial Expenditures
- Seek a Specific Finding From Staff
- View Disclosure in Rate Proceeding as A Benefit - Possible Inoculation from Critics

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STOLL KLEINON OGDEN 

**PSC PRIVACY RULES**

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**PSC PRIVACY RULES**

- Revisions to PSC Rules of Procedure Effective 10/31/2014
- Filer responsible for identifying and removing personal information
- Filer must redact personal information from filing
- Failure to redact personal information will result in **rejection** of filing

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**WHAT IS PERSONAL INFORMATION?**

- Combination of **Name** and:
  - Social Security Number
  - Taxpayer ID
  - Birth Month & Date
  - Driver’s License No. or Other Agency ID No.
  - Financial Account Numbers
  - Address, E-mail Address, or Telephone Number of non-party
- Name is **First & Last Name** or **Business Name**

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**RECOMMENDED ACTIONS**

- Carefully Review All Documents Before Submission
- When in Doubt, Redact

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### PSC ELECTRONIC NOTICE

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### Senate Bill 91 (2014)

- Authorizes PSC to serve its Orders upon parties by electronic mail
- PSC no longer required to obtain waiver of service by mail
- Party may request service by mail but must demonstrate "good cause"
- PSC Began Electronic Delivery – 7/16/2014 - All Orders/Case Docs Sent by E-mail

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### PSC REGULATION REVISION

- PSC Rules of Procedure Revised (10/31/2014)
- Revision Mandates Service of All Orders By E-Mail
- Intervening Party Must Request Service By Mail At Time of Intervention – Show Good Cz
- Link to Posted Documents will be E-mailed to the E-mail address listed on filed papers

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STOLL KENNEDY OGDEN 

**RECOMMENDED ACTIONS**

- List E-mail Address Correctly On All Papers
- Place the utility's E-mail address in initial paper (e.g., Application)
- Confirm with PSC that utility's correct E-mail address is on file
- Check the utility's E-mail box often
- Set Spam Filters to avoid blocking of PSC messages
- Set Forwarding Rules on Mail Application

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STOLL KENNEDY OGDEN 

**NOTICE OF RATE ADJUSTMENTS  
FOR SEWER UTILITIES**

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STOLL KENNEDY OGDEN 

**SENATE BILL 123 (2014)**

- Affects Sewer Utilities Only
- Eliminates requirement that a sewer utility provide notice of any rate adjustment to its customers by mail
- PSC has revised its regulations to eliminate any requirement for notice by mail for sewer utilities

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STOLL KLEINER OGDEN 

## PSC TRENDS

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STOLL KLEINER OGDEN 

### PSC TRENDS: RATE INDEXING

- What is Rate Indexing?
  - Adjusting Rates Per Published Index
    - CPI – W (Used by SSA)
    - CPI – U
    - Producer Price Index (formerly Wholesale Price Index)

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STOLL KLEINER OGDEN 

### PSC TRENDS: RATE INDEXING

- Not Favored By PSC
  - Case No. 2015-00019
    - Suspicion of CPI's Use Lead to Rate Investigation
    - PSC Staff Actively Discouraging Use
  - Case No. 2013-00148
    - PSC Rejects Use of CPI to Forecast Certain Costs – Not An Accurate Reflection of Costs

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**PSC TRENDS: DEPRECIATION**

- Depreciation Permits Recovery of the Cost of Capital Asset
- Annual Depreciation Expense = Asset Cost + Useful Life (years)
- Common Practice
  - Useful Life based upon life of loan/bonds
  - No depreciation study performed

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**PSC TRENDS: DEPRECIATION**

- Effect of Erroneous Useful Life
  - Generational Inequities (Earlier Generation pays for Asset that a Later Generation Uses)
  - Potentially Higher Rates
- Many Utilities Refusing to Claim Portion of Depreciation Expense in Rates
- "Money Left on Table" That Utility Never Recovers

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**PSC TRENDS: DEPRECIATION**

- Since 2012 Staff Focusing on Useful Lives
- Routinely Recommending Changes When Utility's Useful Life Outside Range in *NARUC Depreciation Practices for Small Utilities*
- PSC adopting recommendation & requiring Utilities to change useful lives for accounting purposes
- Consult with CPA/Engineer Before Responding to Staff Report

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**PSC TRENDS:  
REVENUE REQUIREMENTS**

**Current PSC Methodology:**

**Revenue Requirement =**

O&M Expenses + Depreciation +

Debt Service Coverage

**Debt Service Coverage = 1.20 x (3-YR  
Average Interest + Principal Payments)**

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**PSC TRENDS:  
REVENUE REQUIREMENTS**

- PSC Financial Analysis Staff questioning this methodology
  - No historical basis for methodology
  - Produces excessive revenue requirement
  - Bond coverages do not consider depreciation
  - Many WDs rejecting PSC Methodology & requesting lower revenues

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**PSC TRENDS:  
REVENUE REQUIREMENTS**

**PSC Financial Analysis Alternative:**

**"Cash Needs" Methodology**

- No additional working capital (1.0x, NOT 1.2x)
- DSC = 3-YR Average of Interest + Principal Payments
- Lower Revenue Requirement Results

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STOLL KLENNON OGDEN 

**WATER STORAGE  
TANK ISSUES**

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STOLL KLENNON OGDEN 

**WATER STORAGE ADVISORY**

- Re: Glass lined bolted steel standpipes
- Issued: July 2015
- 807 KAR 5:066 requires regular inspections
- "Special Vigilance" urged
- Thoroughly inspect tank's internals
- Review ALL inspection rpts/video/comments
- Implement remedial recommendations
- PSC Staff will review reports during its field inspections

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STOLL KLENNON OGDEN 

**WATER STORAGE TANK SITING**

- Cases No. 2012-00470/No. 2014-00084
- Water District seeks to construct 1MG Storage Tank in Residential Area – within 100 feet of existing homes
- Homeowner Association attempts to negotiate different location
- Negotiations fail
- Water District seeks Certificate for Tank

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**WATER STORAGE TANK SITING**

- Homeowner Association opposes
- After lengthy proceeding (14 Months), PSC denies – failure to demonstrate need for size of tank
- Water District redesigns tank (750K Gals) for same site
- Home Owners' Association opposes
- Length of 2d proceeding: 17 Months

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**WATER STORAGE TANK SITING**

- PSC approves proposed tank
- PSC Findings:
  - Bids not required to support CPCN Application
  - Proposed construction may be based upon future demand (10 years forward)
  - Current hydraulic analyses not necessary
  - Project's effects on nearby property values or aesthetics not relevant
  - Alternative sources need not be considered

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**POSSIBLE LESSONS LEARNED**

- Consider litigation costs & lost time before refusing negotiations
- Customer Relations/Public Relations – How important is utility's public image?
- Role of Viewshed/Aesthetic Concerns
- Consider Viability of Alternative Sites
- Hydraulic Analysis should be calibrated

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**EFFECTIVE STORAGE DECISION**

- Case No. 2014-00101 (May 30, 2014)
- PSC announces use of “effective storage standard”
- In assessment of need for proposed storage tank – nominal storage volume of standpipes not used. “Effective” storage volume of three storage standpipes considered instead

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**OTHER PSC DECISIONS OF INTEREST**

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**OTHER PSC DECISIONS OF INTEREST**

- Required RFP for Management Contracts
  - No. 2013-00050 (Hardin County WD #1)
  - No. 2014-00342 (Mountain WD)
- Abandonment/Appointment of Receivers
- Economic Development Surcharge - No. 2014-00396
- Billing for HomeServe USA – No. 2014-00420
- Threatening Customer Behavior & Refusal of Service – PSC Staff Opinion 2015-010

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## HOUSE BILL 5: PROTECTION OF PERSONAL INFORMATION

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### WHO IS SUBJECT TO HB 5?

- Executive Branch Agencies
- City & County Governments (Including urban-county, charter county, consolidated local & unified local governments)
- SPGEs, any boards, bureau, agency, committee of city or county government
- Public School Districts
- Every public institution of post-secondary education
- Non-Affiliated 3d parties w/access to agency info
- Water Districts are subject to requirements

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### WHAT IS PERSONAL INFORMATION?

- An Individual's first and last name combined with:
- Acct /credit card number that in combination with security code or PW would permit access to an account
  - Social Security Number
  - Driver's License Number
  - Taxpayer Identification No (if it contains SSN)
  - Passport No (or Other US Gov't ID Number)
  - Individually identifiable health information

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STOLL KLEINON OGDEN 

**DUTY TO SAFEGUARD PERSONAL INFORMATION (PI)**

- If it maintains or possesses PI, **regardless of the form**, an Agency must maintain and update procedures and practices to protect against security breaches
- SPGE's reasonable security & breach investigation procedures & practices must be **IAW with policies that DLG establishes**
- Commonwealth Office of Technology to provide assistance to any requesting agency

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STOLL KLEINON OGDEN 

**WHAT IS A SECURITY BREACH?**

The unauthorized acquisition, distribution, disclosure, destruction, manipulation, or release of **unencrypted or unredacted records or data** that compromises, or the agency or nonaffiliated third party reasonably believes may compromise, the security, confidentiality, or integrity of **personal information** and result in the likelihood of harm to one or more individuals; **OR**

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STOLL KLEINON OGDEN 

**WHAT IS A SECURITY BREACH?**

The unauthorized acquisition, distribution, disclosure, destruction, manipulation, or release of **encrypted records or data** containing personal information along with the confidential **process or key to unencrypt** the records or data that compromises, or the agency or nonaffiliated third party reasonably believes may compromise, the security, confidentiality, or integrity of **personal information** and result in the likelihood of harm to one or more individuals

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**REQUIRED ACTION IN  
EVENT OF SECURITY BREACH**

- Agency Notifies:
  - KSP Commissioner
  - Auditor of Public Accounts
  - Attorney General
  - **Commissioner, DLG**
- Commonwealth Office of Technology to develop Notification Form
- Notification must be ASAP but w/i 72 hours of notice or determination of security breach

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**REQUIRED ACTION IN  
EVENT OF SECURITY BREACH**

- W/i 72 hours of notice of breach, Agency begins a reasonable & prompt investigation IAW security & breach investigation procedures
- Scope of investigation: To determine whether breach has or is likely to result in misuse of personal information

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**IF SECURITY BREACH LIKELY  
TO RESULT IN MISUSE OF PI**

- W/i 48 hours of completion of investigation, Agency notifies:
  - KSP Commissioner
  - Auditor of Public Accounts
  - Attorney General
  - **Commissioner, Dept of Local Government**
  - **Commissioner, Dept of Libraries/Archives**

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STOLL KEENON OGDEN 

**IF SECURITY BREACH LIKELY TO RESULT IN MISUSE OF PI**

- With **35 days of notice to officials**, Agency notifies all persons affected by breach

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STOLL KEENON OGDEN 

**IF SECURITY BREACH LIKELY TO RESULT IN MISUSE OF PI**

If more than 1,000 persons must be notified, the Agency must:

- At least **7 days prior** to issuance of notification
- Notify **DLG AND Consumer Reporting Agencies Regarding Timing, Distribution, and Content** of the notice

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STOLL KEENON OGDEN 

**NOTIFICATION**

- Post Conspicuously on Agency's Website
- Notify regional or local media
- (If widespread) Notify major statewide media (including broadcast media)

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STOLL KENNON OGDEN 

**NOTIFICATION**

- Personal communication to individual may be:
  - Writing
  - E-mail
  - Telephone
- Method of communication will be most likely to result in actual notification

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STOLL KENNON OGDEN 

**CONTENTS OF NOTICE**

- Clear and Conspicuous
- Description of the categories of info breached
- Agency Contact Info (address, phone #)
- A description of the agency's actions to protect info from further disclosure
- Toll-free #s, addresses and website addresses for:
  - Major credit reporting bureaus
  - Federal Trade Commission
  - Office of Kentucky Attorney General

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STOLL KENNON OGDEN 

**NOTIFICATION**

- Made only after consultation with law enforcement
- No Notification if law enforcement makes written request for a delay B/C notice may impede a criminal investigation
- Notices shall be sent after law enforcement notifies in writing of criminal investigation's completion
- May delay notice if necessary to restore the reasonable integrity of system and AG approves delay in writing

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STOLL KENNON OGDEN 

### NO NOTIFICATION REQUIRED

- If determination that no misuse has occurred and is likely to occur – **NO NOTIFICATION REQUIRED**
- Must maintain records that reflect the basis for its decision for a specified retention period
- Notify following of determination:
  - KSP Commissioner
  - Auditor of Public Accounts
  - Attorney General
  - Commissioner, DLG

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STOLL KENNON OGDEN 

### OTHER PROVISIONS

- Waiver of Rights Void and Unenforceable
- AG may bring an action to enforce
- **Statute does not create a private right of action**
- KDLA to establish procedures for the appropriate disposal or destruction of records that include personal information
- Agency must still comply with other state & federal laws regarding release of information.
- Act became effective January 1, 2015

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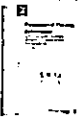
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STOLL KENNON OGDEN 

### DLG POLICY

- HB 5 Required DLG to Establish Policies and Procedures for Protection of Personal Information for Local Government Units
- Issued in December 2014
- Available at DLG Website
- Prescribes the responsibilities of Local Governmental Units
- Office of Attorney General Enforces the Policy




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**LOCAL GOVERNMENT UNIT'S RESPONSIBILITIES**

- Make Its Employees Familiar W/Policy
- Designate Point of Contact
  - Must Be Familiar with Policy
  - Ensures Employees Are Familiar With Policy
  - Serves As Contact Person With Other Agencies
  - Ensures Agency Compliance with Policy
  - Responsible for Responding to Security Breaches

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**LOCAL GOVERNMENT UNIT'S RESPONSIBILITIES**

- Must Encrypt All Digital Media
- Limit Access to Personal Information Authorized Persons Only
- Use Software That Creates An Access Audit Trail
- Allow Placement of PI on Portable Devices Only Where Necessary

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**LOCAL GOVERNMENT UNIT'S RESPONSIBILITIES**

- Require Written Acknowledgement from Employees Using Mobile Devices With PI
- Institute Appropriate Physical Security Rules
- Establish/Follow Appropriate Destruction of Records Policies
- Use Prescribed Destruction of Records Procedures

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STOLL KLENOW OGDEN 

**WHAT SHOULD YOU DO?**

- Develop/Implement a plan to protect PI
- Develop a plan for addressing Security Breaches
- Review/modify contracts to ensure that vendors implement and maintain procedures as stringent as required of water district
- Be alert for DLG issuances

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STOLL KLENOW OGDEN 

**WHAT SHOULD YOU DO?**

- Conduct an audit to determine the type and amount of information collected & its need
- Develop data retention and disposal policies
- Delete consumer data no longer need
- Use privacy enhancing technologies Audit existing insurance policies for coverage
- Obtain specialty coverage for data breach or cyber security

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STOLL KLENOW OGDEN 



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**QUESTIONS?**

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 270-958-9187

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 859-231-3017

## ETHICAL PROBLEMS FOR UTILITY BOARD MEMBERS AND ATTORNEYS

1. Commissioners Able, Baker, and Charlie of Daniel Boone Water District are holding a joint session with the members of the board of directors of Davey Crockett Water Association and the members of the Mingo City Utility Commission to discuss the possibility of joint water construction projects. As they discuss the project, the participants ask their lawyer, Lawyer Dewey of the law firm of Dewey, Cheatem and Howe, if they have the same ethical obligations and if different obligations might affect any joint projects.
2. Daniel Boone County has enacted a local ethics code to apply to all county elected and appointed officials, not to county employees. The Code specifically prohibits certain types of conduct that Commissioners Able, Baker, and Charlie of the Daniel Boone Water District would like to engage in. They visit Lawyer Dewey for an opinion regarding the applicability of the local ethics code to them.
3. Daniel Boone Water District is considered by the Public Service Commission to be a small utility since it has annual revenues of less than \$5,000,000. Daniel Boone District last year had annual revenues of approximately \$3.2 million. The PSC has an alternative procedure that small utilities may use to file for a rate adjustment in lieu of the procedures that larger utilities use. This procedure uses a printed form that "small utilities" can fill-in or check an applicable box. It also uses the small utility's last filed annual report as the test year for the rate adjustment. PSC regulations expressly state that non-attorneys may complete and sign the form, may answer any requests for information that are made in the alternative procedure proceeding, and can appear on behalf of the small utility at any conferences for the small utility. An attorney must appear at any hearing.

PSC Staff advises small utilities that it will "walk utilities through the process" and will assist in preparing the required notice that must be used to advertise the proposed rates. "You do not need an attorney for these cases," PSC staff states. "Why waste your money?" At a training session for water utilities, an assistant attorney general from Attorney General Dudley Doright's office urges water utilities to use this process, but has warned that if a utility using the alternative process retains an attorney to prepare the application, General Doright will intervene because of perceived waste of the ratepayer's money. "You will need to explain why you spent money for an attorney when there was no apparent need for hiring one," warns Assistant Attorney General Leroy Gibbs.

Commissioners Able, Baker and Charlie agree that Daniel Boone Water District should apply for a rate adjustment. It has been 8 years since the water district's last rate adjustment and numerous expenses have significantly increased. The Commissioners do not want to spend money needlessly and would like to avoid the cost of retaining an attorney. They believe that the water district's staff is

competent to complete the application and that they can rely upon PSC Staff if the need arises.

4. It is December and Christmas time is upon the Daniel Boone Water District. At the December meeting of the Board of Commissioners, General Manager Bernie Madoff recommends that all employees be given a Christmas bonus of \$100. Daniel Boone District has no salary/wage compensation policy. The few employment contracts that Daniel Boone District has are silent on the issue of bonuses. The Board approves the recommendation. Manager Madoff then notes that Commissioners Able, Baker, and Charlie have also worked long hours during the past year. Praising their efforts, Madoff recommends a Christmas bonus of \$100 for each commissioner also. Commissioner Able moves to approve the recommendation and Commissioner Baker seconds it. All of the Commissioners vote in favor.
5. Daniel Boone Water District is about to embark upon another expansion of its water distribution system to serve some unserved areas of Daniel Boone County. The water district has spent several years planning the extension project and obtaining the necessary financing. Throughout this process, Commissioners Able, Baker, and Charlie, as well as Cliff Clavin - the District's Manager, have relied extensively upon Ernie Engineer of Early and Under Engineering for information and guidance. They have not involved Lawyer Dewey in the process. While Lawyer Dewey is paid a retainer, he seldom attends the water district's board meetings. Dewey assumes that the Commissioners or Manager Clavin will contact him when they have a question. Moreover, he has been reluctant about attending meetings because the water district commissioners have questioned the value and expense of his presence at regular board meetings. As the construction is about to start and as loan agreements with Daddy Warbucks Bank are about to be executed, they ask Ernie Engineer if there are any regulatory approvals that remain to be obtained. Ernie Engineer responds that all have been obtained. He notes that the Division of Water has approved the construction plans and specs, all necessary building and construction permits were obtained, and that the While Ernie Engineer has an extensive history of water utility construction projects, he has mostly worked with municipal utilities that are not subject to PSC regulation. He is not aware that PSC approval is required for the construction project and the loan. Based upon Ernie's assurances, the Commissioners execute the loan documents and sign the contract for construction. The next day construction on the project begins.

One year later PSC auditors Harry Callahan and Popeye Doyle visit Daniel Boone County Water District to review the water district's records. They discover the loan agreement and the construction project and report their discovery to the PSC, which immediately initiates a proceeding against Daniel Boone Water District for issuing debt without PSC authorization and constructing facilities without a certificate of public convenience and necessity. In the same proceeding, the PSC orders each of the commissioners and Manager Clavin to show cause why he should not be penalized for aiding and abetting the water

district's violation of various provisions of KRS Chapter 278. Commissioner Able, Baker, and Charlie and Manager Clavin request that Lawyer Dewey represent them and the water district in the proceeding.

6. The Daniel Boone Water District is a proud member of the Daniel Boone Chamber of Commerce. The chamber has played a significant role in economic development for Daniel Boone County. Its efforts have attracted several new commercial and industrial firms to Daniel Boone County. These firms are large water users. Their addition to the water district's system has ensured the water district's financial viability and is a key factor in allowing the water district to expand to unserved parts of the water district's territory. The Chamber is conducting a fund-raising campaign to fund its economic development efforts. The chairman of the Chamber's fundraising drive appears at the water district's board meeting to request a contribution. Able, who is the Chamber's executive director, moves that the water district provide financial support in the form of contribution of \$5,000.
7. The following item recently appeared in the Mingo City *News-Times*:

American flags were flying and the big tents were up to welcome the customers of Daniel Boone Water District's Customer Appreciation Day last Friday on the front lawn of the utility's office in Mingo City. The patriotic red, white and blue décor bring on the warm summer days as the water district honors its customers. Hundreds of water customers joined in to help Daniel Boone Water District celebrate its 75 years of service.

After an early morning thunder shower, the weather was perfect for a fun-filled day for all attendees. The grill was hot with the all-time favorite Nathan's hot dogs and the fixings being served. And to top off the nice lunch, customers also enjoyed everyone's favorite deliciously refreshing Erhler's Dairy Ice Cream.

Terry Meiners was on site with WHAS Radio for a live radio remote as customers spinned the birthday wheel and the children received coloring books and crayons. Many vendors were on hand including Davey Crockett University Cooperative Extension Agency, and the Boone State National Guard who provided children with toy helicopters. The Mingo City Fire Department had the big red fire truck on-site for children to climb up in and have their pictures made. Others joining in and providing valuable information for customers as well as giveaways were Dr. Kildare Hospital, International Brotherhood of Electrical Workers Local 3695, and the Alfred G. Packer Deli and Food

Emporium. Customers attending received a limited edition Daniel Boone Water 75th anniversary limited edition tee shirt.

The water district commissioners and employees proudly unveiled their new water treatment plant.

Daniel Boone's Chairman of the Board welcomed everyone and Commissioner I.M. Able gave a brief summary of the water district's history. Guest Speaker Maynard T. Krebs with Boone State Rural Water Association was the guest speaker showing his association's support and singing the water district's praises. He noted that the water district had just won BSRA's Leaking Pipe Award for Outstanding Water System Management.

After the presentation, Daniel Boone District announced door prize winners, who include: Hazel Nut, Robyn Banks, Doug Graves, and Ted E. Baer. The winner of the \$100 water bill credit was Penny Wise. Daniel Boone District also recognized Stu Pitt, the recipient of the water district's annual \$2,500 college scholarship, which is awarded to the graduating Mingo City High School senior with the highest grade point average.

Daniel Boone District Commissioners I.M. Able, Chris P. Bacon, and Jack Pot and the water district's management extend a big thank you to all who attended the celebration and invite customers unable to attend the event to stop by the office to pick up a free limited edition tee shirt, while supplies last. Customer Appreciation Day is the one day a year that Daniel Boone District sets aside for its customers to show how much the water and its employees genuinely appreciate serving them.

8. Commissioner Baker is president of Simon Legree Bank, a local bank. Daniel Boone Water District has a checking account with Simon Legree Bank. The Bank has also purchased refinancing bonds that Daniel Boone Water District issued. When the water district negotiated the sale of the bonds with the bank, Baker did not take part in the negotiations.
9. Daniel Boone Water District is examining its insurance coverage and determines that a new and more comprehensive policy is required. It negotiates with Bobby Baker, Commissioner Baker's son and the only insurance agent in Daniel Boone County. At the conclusion of the negotiations (in which Commissioner Baker did not take part), a contract is presented to the Board of Commissioners for action.

10. Commissioner Able is a real estate agent with a client who has a parcel of property near a water district structure. At several board meetings and in private conversations with other board members, Able proposes to his fellow commissioners that the water district purchase this parcel. The board agrees and executes a contract for the purchase. Able's agency contract with the seller provides for a five percent commission on the purchase price. He expressly declines the commission, but arranges for the seller to donate an amount equal to the declined commission to a local charitable organization of which he is the chairman. Able did not vote on the resolution to purchase the parcel nor did he disclose his relationship to the board.
11. Daniel Boone County Judge Executive Boss Hogg recently appointed Commissioner Charlie to the Daniel Boone Water District's Board of Commissioners. The water district's territory covers all of Daniel Boone County with the exception of Mingo City. Its territory encompasses about 88 percent of Daniel Boone County. Approximately 90 percent of Daniel Boone County's population is within the water district's territory. The water district, however, currently only serves about 30 percent of the County's population. Charlie and several members of his extended family live in an area that does not currently receive water service. Charlie proposes that the water district engage in an extensive expansion campaign to build water mains and provide service to the unserved areas of Daniel Boone County. Among the first areas to which he proposes to extend service is the area where he and several family members live. He develops and presents to the Board of Commissioners a comprehensive proposal, which includes the issuance of revenue bonds, to construct the extension that includes his home.