

PUBLIC WATER AND WASTEWATER SYSTEM INFRASTRUCTURE TASK FORCE

Minutes of the 3rd Meeting of the 2019 Interim

September 18, 2019

Call to Order and Roll Call

The 3rd meeting of the Public Water and Wastewater System Infrastructure Task Force was held on Monday, September 18, 2019, at 1:00 PM, in Room 129 of the Capitol Annex. Representative Jim Gooch Jr., Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Phillip Wheeler, Co-Chair; Representative Jim Gooch Jr., Co-Chair; Senator Robin L. Webb; Representatives Derek Lewis and Ashley Tackett Laferty; Mike Gardner, Peter Goodmann, Orbrey Gritton, Gary Larimore, and Donna McNeil.

Guests: Robert F. Powelson, President and Chief Executive Officer, National Association of Water Companies, Sandy Neal, Director of Business Development, Bluegrass Water Utility Operating Company, Todd Thomas, Bluegrass Water Utility Operating Company, and John Greer, Utility Specialist, Tennessee Comptroller of the Treasury.

LRC Staff: Stefan Kasacavage, Janine Coy-Geeslin, Tanya Monsanto, and Susan Spoonamore, Committee Assistant.

The August 28, 2019, minutes were approved, by voice vote, upon motion made by Representative Lewis and seconded by Senator Wheeler.

Investing in Kentucky's Water and Wastewater Infrastructure

Robert Powelson, President and Chief Executive Officer, National Association of Water Companies, said that nationally, there are some chronic failures facing the water grid. He stated that his message is about ways to create consolidation so private capital can be deployed to solve some of the big problems with water systems. The latest infrastructure assessment reports identify a \$14 billion infrastructure funding gap for water and wastewater infrastructure in the Commonwealth of Kentucky.

Mr. Powelson said that there are 52,000 water systems in the United States and 85 percent of those systems are run by municipalities. There are approximately 1,500 drinking water systems deemed in violation of the Safe Water Act. The big challenge facing water systems is how to address what is actually a national problem. The American Society of

Civil Engineers (ASCE) gave the United States wastewater grid a D. The largest issue facing states is how to maintain viable sustainable water service to communities. According to the ASCE, it will take \$4.5 trillion by 2025 to fix and or maintain viable sustainable water services. As a result of insufficient infrastructure, increased cost of regulatory compliance, shrinking state budgets, limited bonding capacity, and limited government funds, many small and midsize utilities are choosing to sell their water and wastewater systems.

Mr. Powelson said that over the next 20 years, Kentucky water systems will be facing \$8.23 billion in drinking water infrastructure needs and \$6.24 billion in wastewater infrastructure needs. According to the Associated General Contractors of America, every \$1 billion invested for water infrastructure would support 28,500 jobs. In 1974, Kentucky had approximately 2,100 public water systems and now there are roughly 437 systems. American Water had invested heavily in their research and development operation by using predictive analytics. American Water had also done a great job of replacing infrastructure and delivering on safety, reliability, and affordability to their customers. If Kentucky continued to move towards regionalization of water and wastewater assets, it could create 410,000 potential jobs. Grid modernization drives job investment, and it also addresses reliability and safety metrics for industrial, small business, and residential customers.

In order to help municipalities capitalize their assets, Kentucky must first enact Fair Market Value (FMV) legislation. FMV legislation would establish a transparent process for independent valuation experts to calculate a reasonable and fair value for a water system's assets subject to approval of the Public Service Commission. It is a voluntary program that would allow water and wastewater systems to maximize the value of their assets. It would also create a straightforward process for determining the actual value of an asset. Under the FMV program, it would allow a willing seller and a willing buyer to agree on a purchase price. The seller and the buyer would choose an independent appraiser, then those two appraisers would choose a third appraiser, by mutual agreement. All three appraisers have to be certified and are paid by the acquiring utility. The fair market value would be the average of the three appraisals. An acquisition by a member of the National Association of Water Companies would not take away local control, cause loss of jobs, or rates to skyrocket.

In response to Senator Webb, Mr. Paulson stated that 11 states have Fair Market Value legislation. American Water was the largest investor-owned utility in the country. Kentucky American Water can use single tariff pricing, which would spread the cost among the universal rate base – everybody would pay. Of course, a rate increase case would need to be presented before the Public Service Commission for approval.

In response to Senator Wheeler, Mr. Paulson said he did not know how much water rates increased after being purchased by American Water. He stated that he could provide

that information. He explained that the proceeds of a sale go directly to the municipality to use however they see fit.

In response to Mr. Goodman, Mr. Paulson said there are infrastructure systems throughout the United States that would be better served in a regional investment structure.

Safe Water, Healthy Communities

Todd Thomas, Vice President of Central States Water Resources (CSWR), a/k/a Bluegrass Water Utility Operating Company stated that CSWR purchases water systems that no one else wants. CSWR consolidates desperate systems that are spread apart. CSWR's mission is to bring safe, reliable, and environmentally-responsible water resources to every community in the United States and to be the best water utility in the U.S. at providing service to small communities. "Small" could mean as few as 20 people on the system. The vision is to transform communities, large or small, by using technology and innovation to quickly invest in reliable infrastructure to meet the needs and protect the river and streams of the state. Some systems lack managerial, technical, and financial capabilities. There are systems that have been in operation for decades and were not designed to meet the new regulatory requirements for water or wastewater. No bank will offer any money to repair these old systems without a personal mortgage or personal property.

Mr. Thomas said that CSWR's investments into water resources are also investment into communities at-large, ultimately enhancing value and driving outside investment. CSWR engages with community owners and leaders in need of help, purchases utility assets, and partners with communities to improve service and value. He said that repairing outdated water and wastewater systems increases the value of each community it serves. Mr. Thomas said water quality has a direct impact on home values.

Mr. Thomas said that CSWR works with the Kentucky Division of Water and the Public Service Commission (PSC) to identify communities that are in desperate need of critical water infrastructure investment. CSWR recently obtained PSC approval to acquire nine water utilities in Kentucky and is in the process of filing to acquire six more. CSWR is a private solution to a public problem and is an option of last resort for many communities. Customers are offered several payment options, including an 800 number, for billing issues or reporting problems CSWR uses local contractors, local water and wastewater contractors, and a cloud-based management system.

In response to Mr. Gardner, Mr. Thomas said that fair market value would be a good option since some of the systems have nothing else to offer. He also said that CSWR would like to use a statewide unified rate. CSWR typically buys from private individuals not municipalities.

In response to Mr. Larrimore, Mr. Thomas said CSWR had no complaints about the acquisition process with the PSC in cooperation with the Kentucky Division of Water.

Addressing Failing Systems in Tennessee

Mr. John Greer, Utility Specialist, Tennessee Comptroller of the Treasury, and Technical Secretary to both the Water and Wastewater Financing Board (WWFB) and the Utility Management Review Board (UMRB) explained that the Office of the Comptroller of the Treasury (COT) does not work for private investor-owned utilities, only government utilities. The COT office is housed within the Tennessee state legislature so, he is an employee of the legislative branch. The WWFB and the UMRB were created in 1987 to protect the state's revolving loan fund, but in 2007 they were moved to the COT. The WWFB oversees the water and wastewater systems for 260 municipalities, 12 counties, and 10 regional authorities. The UMRB oversees 179 utility districts (rural water districts). Mr. Greer said that the UMRB and WWFB consists of nine members, two ex-officio, and seven members appointed by the Governor. The boards have representatives from different industries, but all are local government experts. The purpose of the boards is to correct financial losses through user rate increases, expense decreases, negotiating regional consolidation for public-to-public utilities. Under Tennessee law, water and wastewater facilities are required to be self-supporting. The UMRB acts for the public welfare and carries out the General Assembly's intent that utility districts be operated as a self-sufficient enterprises.

Mr. Greer explained that both boards follow regulatory procedures that consist of a formal review, board investigation (five years of financial data and five years of water loss and operational data), informal hearings, contested cases, and litigation. All of the procedures are conducted informally, without lawyers, unless the failing system fails to comply.

In response to Senator Webb, Mr. Greer said that if an official of the water or wastewater utility missed a training, then the county judge could not reappoint them to the local board. If a commissioner has a breach of their fiduciary responsibility in running the system, the COT will start ouster proceedings that go through an administrative law judge. If, for example, a mayor were to miss training, the entire entity would get referred to the COT.

In response to Representative Gooch, Mr. Greer stated that training is mandatory in Tennessee. Within one year from an official's appointment, they must obtain 12 hours of on-line training, and then 12 hours of continuing education every three years for as long as the official serves the utility.

Mr. Greer stated that all government utilities in Tennessee must submit an annual audit by an independent certified public accountant. A two-year operating loss, or a default

on a debt instrument would get the utility or entity referred to the board. New utilities must obtain approval from the board prior to beginning operation. If a utility loses 20 percent or more of their operating cost in water loss, the entity must submit a Water and Wastewater Analysis (WWA) reporting worksheet.

Mr. Greer said the board partners with local utilities for education, financial planning, and managerial and technical assistance. The board also collaborates with local, state, and federal agencies.

Mr. Greer noted that after a utility gets referred to the board, the utility will have a five year capitol asset plan. The COT continually provides information to utilities through its Web site, bulletins, and twitter.

In response to Representative Gooch, Mr. Greer stated that he has been the only staff member for the boards for the past three years, but another person had just been hired. He said once the communication barriers with other state agencies are dissolved, it makes the job easier by having information available.

In response to Mr. Gardner, Mr. Greer said that audits are not expensive for most of the utilities because the auditor has to be approved by COT. A \$22 million community development block grant was given to water and wastewater systems last year in blocks of \$550,000. He also stated that giving money to poorly run systems does not help. Mr. Greer said that Tennessee found funds at the federal and state level through matches for only small distressed communities. The State Revolving Funds (SRF) help to encourage mergers.

In response to Mr. Gardner, Mr. Greer stated that the model developed by the COT had helped to change lives. The model is designed to take governments and fix them, leaving money in the local community and local government.

In response to Mr. Larrimore, Mr. Greer said the biggest distinction between the two boards and the PSC is the formality. The utility would be paying attorneys' fees and dealing with the Office of the Attorney General for rate increases. Going through the Water and Wastewater Financing Board and Utility Management Review Board is a more informal process. Each board has the expertise to deal with the entities that they regulate.

In response to Mr. Larrimore, Mr. Greer stated that the boards are not in the business of setting rates without having all the data presented. Mr. Greer did not know how much it would cost an entity going before the PSC, but there are no fees charged by the boards unless an outside consultant would be needed to do a rate study. Even at that, both boards can have a rate study done for local governments for approximately \$1,000.

In response to Ms. McNeil, Mr. Greer stated that the boards work with the SRF program by placing all audits on-line and sending background information to the SRF. Working closely with the SRF, it helps to eliminate bad loans and confirm that entities are eligible. Mr. Greer said that the University of Tennessee is researching an Ability to Pay Index and Affordability Index study along with rate metrics.

In response to Ms. McNeil, Mr. Greer said that if any utility defaults on debt, has a technical default, does not meet bond covenants, or just forgets to make a payment, they instantly get referred to the COT.

Meeting adjourned.