COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC COMMISSION

In the Matter Of:

APPLICATION OF NORTHERN KENTUCKY WATER DISTRICT FOR AUTHORITY TO ISSUE REVENUES BONDS, FOR APPROVAL OF FINANCING, FOR APPROVAL OF CONSTRUCTION, AND FOR ADJUSTMENT IN WATER RATES	)	2005-00148

NORTHERN KENTUCKY WATER DISTRICT'S SUPPLEMENTAL RESPONSE TO THE COMMISSION STAFF'S INFORMATION REQUEST, DATED 10-17-2006

Northern Kentucky Water District, by counsel, submits the attached supplemental responses to items 6 and 7 of the Order of October 17, 2006.

Submitted by:
John N. Hughes

Attorney for Northern Kentucky Water District.

Certificate of Service:

A copy of this supplemental response was delivered to the Attorney General's Office, 1024 Capital Center Dr., Frankfort, KY 40601 on February 1, 2007.

John N Hughes

Q6. Administrative Regulation 807 KAR 5:066, Section 1(6), defines "service connection" as "the line from the main to the customer's point of service" and "include(s) the pipe fittings and valves necessary to make the connection." State whether NKWD is proposing to amend this definition to "the line from the main to the customer's point of service at the boundary line of the customer's property." Explain.

A6. Witness: Harrison

RESPONSE: No. The District is not proposing to rewrite any regulation. The District is requesting an interpretation of the regulation to the effect that the District is not responsible for the maintenance and replacement of the service line from the main through the customer's property and into the building, simply because the meter is installed inside the building being served. An interpretation to the contrary would inappropriately separate the normal relationship between ownership and maintenance responsibility, since the customers or property owners, and not the District, installed and own such lines. If the regulation does require such responsibility on the part of a utility, Northern requests a deviation pursuant to 807 KAR 5:066, section 18.

807 KAR 5:066(12)(2) defines the customer's responsibility as furnishing and installing the pipe to make the connection from the point of service to the place of consumption. The point of service is the outlet of the meter, which in the case of a meter installed inside a building is also the point of consumption. **807 KAR 5:066(12)(1)(b) states that in areas having well defined streets and roads the customer's point of service shall be located near the right of way or property line.** It is apparent that the intention of the regulation is to have the meter near the main with a service line extending from the meter to the building. The District is then responsible for the tap from the main to the meter and the customer is responsible for the service line from the meter to the building. The Commission's order could be interpreted to mean that the connection from the main to the meter inside the building is part of the service connection and the cost of that portion of piping would be included in the determination of the tap fee allowed by KRS 278.0152.

The District is simply seeking consistency for all customers. In those situations where the meter is located inside the building, the District should be responsible only for that portion of service line from the tap to the normal point of service as currently defined in the regulation, i.e. that point near the right of way or property line. The customer would, then, be responsible for the portion of the line from the property line to the meter, just as all other customers, whose meters are not located inside the building.

The District's concern is that the service lines in question are being treated as if they were either installed by the District or were acquired by the District at the time of the take over of the acquired utility. Neither assumption is correct. Obviously, the lines were not installed by the District, they were installed by the customers of the predecessor utility. The lines were, thus, owned by those customers. The acquisition of the utility by Northern did not change the nature of the ownership and did not include the transfer and acquisition of title of those service lines from the predecessor utility. Northern could not acquire what the predecessor did not own and the Commission cannot take ownership of the service lines from the customers and merely declare that those lines are now the responsibility of the District.

Just as the predecessor did not have responsibility for maintenance of the customer's service line, Northern does not have responsibility for its customers' service lines. The Commission's Order singles out a group of customers for special treatment that no other customers are afforded – free maintenance and replacement of their service lines, based only on the fact that Northern purchased the predecessor utility's distribution system. There is nothing in 807 KAR 5:066 (12) that supports such a result.

Had the situation developed differently with the District requesting authorization to assume maintenance of these service lines at the time of their acquisition, but not all other service lines, KRS 278.170 would seem to prohibit the advantage given to this group of customers. Yet, the Commission is now advocating just such an advantage, based on a literal reading of a regulation that does not fit the circumstances of the situation and which creates a dual regulatory treatment of similarly situated customers – all customers, whether originally District customers, or customers acquired from other utilities, installed and maintain their service lines.

When these service lines in question were installed, they were presumably installed according to the utility's requirements. Those requirements were not regulated by this Commission. Regardless of what the Commission's regulations define as "service line", the prior utility's regulations appear to have defined it differently. Up until the District brought the matter to the Commission's attention, everyone, the District, the customers and the Commission, assumed that these lines were owned and maintained by the customers. The Commission now wants to retroactively apply its regulations to the installation of service lines that were not subject to its regulation at the time they were installed and to force the District to treat these service lines as if they had been installed pursuant to Commission regulations. There can be no retroactive application of service tariffs any more than there can be retroactive imposition of rates. The only reasonable resolution of this matter is to declare the obvious: service lines installed by customers on their property are owned by and should continue to be maintained by those customers, not Northern. The location of the meter should not change this. Literally applying the words of a regulation to a situation not contemplated by that regulation will result in an unfair advantage for a group of customers and an unfair burden on the District.

That burden may escalate in the near future if water quality standards dictate an accelerated replacement of lead lines. Although the District is currently in compliance with all applicable regulations, stricter controls may force remedial action. All such remediation would be at the expense of the District, not the individuals that installed and now own the service lines, if the Commission's Order stands. The only means of recovering that cost is through general rates. Customers acquired by the District would, therefore, benefit from free replacement of service lines at all other customers' expense.

Q7. Administrative Regulation 807 KAR 5:066, Section 1(7), defines "service line" as "the water line from the point of service to the place of consumption." State whether NKWD is proposing to revise this definition to "the water line from the boundary of the customer's property to the inlet side of the meter and from the outlet side of the meter to the place of consumption." Explain.

A7. Witness: Harrison

RESPONSE: No. The District is not proposing to rewrite any regulation. The District is requesting an interpretation of the regulation to the effect that the District is not responsible for the maintenance and replacement of the service line from the main through the customer's property and into the building, simply because the meter is installed inside the building being served. If the regulation does require such responsibility on the part of a utility, Northern requests a deviation pursuant to 807 KAR 5:066, section 18.

As discussed in Response 6, the District is simply seeking to make the definitions of these terms consistent for all customers. The interpretation that the District believes should apply would be that the service line extends from the point of service ***as defined in 807 KAR 5:066(12)(6)(b)*** to the point of consumption. This would make the responsibility for all customers the same as far as the ownership and maintenance of the service line.

807:KAR 5:066 (12)(2) says that the customer **shall** keep in good repair the service line from "the point of service to the place of consumption." Obviously, the regulation contemplates that the customer not the utility maintains the service line. 807 KAR 5:066(12)(1)(b) says "point of service **shall** be located as near the customer's property line as possible" Because both of these sections contain the mandatory "shall", it is apparent that the intent of the regulation is for the customer to install, own, repair or replace the service line from the property line to the meter. Conversely, the regulation intends that the utility not have that responsibility. This interpretation is consistent with the provisions in 807 KAR 5:022(17) relating to the installation, location of and maintenance of gas service lines. In prior cases, the Commission granted gas companies a deviation from the regulation so that they, not the customer, would own and maintain the service line. See for example, Case No. 890041, order of August 17, 1989, involving Delta Gas Company.

Northern is seeking clarification of the regulation to the effect that the customer, in fact, owns, and therefore has maintenance responsibility for, the portion of the line defined as the "service line." If the interpretation contained in the Order is applied, there is no "service line", as such, because the connection from the main to the meter would be part of the tap and meter set required of 807 KAR 5:066(12)(1).

Assuming the Commission's interpretation is correct for discussion purposes raises the question of the validity of not granting the District a deviation based upon the Commission's stated intent for the regulation as mentioned by the Commission staff in the informal conference. The staff mentioned that the purpose was to control water loss from the service lines on private property between the right-of-way and the meter located in buildings. This concern appears unjustified

when compared to the Commission's position in the District's last rate order dated April 28th, 2006 regarding the use of metering equipment for fire protection services. The District tried to document the need to utilize by-pass meters for fire lines to help control water loss and demonstrated an actual loss to the Commission through existing by-passes. These lines are typically larger diameter lines than the current residential service lines that have the meters in the buildings. In Administrative Case No. 385 the Commission found that the "use of metering equipment for fire protection services is generally not cost effective and should not be required absent compelling circumstances."

The distance between the end of the right-of-way and the meter location within buildings is typically less than 50 feet in length. It is unclear why the Commission is concerned that leakage in this short section of unmetered residential service line should be considered compelling enough to require the District to be forced to move 14,000 meters outside of the buildings to a point near the right of way at an estimated cost of $7 to 9.5 million to measure this water, when the Commission found that requiring any metering on large diameter fire lines was not practical. This seems to be very inconsistent. District meter readers walk these service lines four times a year and any observed leaks are required to be repaired by the customer. Very few leaks are found to exist. The only way to absolutely control this type of water loss by the District is to relocate the meters outside to the right-of-way. This appears to be far more impractical and less cost effective than metering fire-lines because the service lines are typically 3/4 inches in diameter when compared to fire lines of 3 inch to 12 inches in diameter. The most economical use of resources would be to meter fire protection services to detect potentially much larger water loss than to spend even more money to move residential meters to the curb to avoid rather minimal line loss.