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August 24, 2007

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1024 Capital Center Drive  
Suite 200  
Frankfort, Kentucky 40601-8204

Re: Case No. 2006-00315  
Northern Kentucky Water District

Gentlemen:

The enclosed memoranda have been filed in the record of the above-referenced case. Any comments regarding these memoranda's contents should be submitted to the Commission within seven days of the date of this letter. Any questions regarding this matter should be directed to Gerald Wuetcher, Assistant General Counsel, at (502) 564-3940, Extension 259.

Sincerely,

Beth O'Donnell  
Executive Director

gw  
Enclosure

**INTRA-AGENCY MEMORANDUM**  
**KENTUCKY PUBLIC SERVICE COMMISSION**

**TO:** Case File No. 2006-00315

**FROM:** Gerald Wuetcher *GW*  
Assistant General Counsel

**DATE:** August 23, 2007

**RE:** Conference of August 8, 2007

On August 8, 2007, the Commission held a conference in this case in the Commission's offices in Frankfort, Kentucky. Present were:

David Spenard	-	Attorney General
Jack Bragg	-	Northern Kentucky Water District
Richard Harrison	-	Northern Kentucky Water District
John N. Hughes	-	Northern Kentucky Water District
Mark Lofland	-	Northern Kentucky Water District
Ronald Lovan	-	Northern Kentucky Water District
Eddie Beavers	-	Commission Staff
Mark Frost	-	Commission Staff
Jason Green	-	Commission Staff
Dennis Jones	-	Commission Staff
David Samford	-	Commission Staff
Sam Reid	-	Commission Staff
Gerald Wuetcher	-	Commission Staff

On July 13, 2007, the Commission ordered that the conference be convened.

Beginning the conference, Mr. Samford stated that Commission Staff would prepare minutes of the conference for the case record, that a copy of these minutes would be provided to all parties, and that all parties would be given an opportunity to submit written comments upon those minutes.

Mr. Samford noted the conference had originally been scheduled to discuss the technical aspects of Northern Kentucky Water District's (NKWD) proposed surcharge. The recent decision in *Commonwealth of Kentucky, ex rel. Gregory D. Stumbo, Attorney General, v. Public Service Commission and Union Light, Heat and Power Company*, Civil Action 06-CI-269 (Franklin Cir. Ct. Ky. Aug. 1, 2007), however, had changed the scope of the conference. Based upon its initial reading of this decision, Mr. Samford stated, Commission Staff is of the opinion that the holding of the decision could be

construed to prohibit all surcharges that are not specifically authorized by statute. As the proposed surcharge in this matter is not specifically authorized by statute, it is likely unlawful under the decision's holding.

Noting that the Attorney General's Office is still reviewing the decision and considering its ramifications, Mr. Spenard stated that Commission Staff's interpretation and application of the decision's holding appears reasonable. He further stated that KRS 278.280 may independently authorize the proposed surcharge.

Mr. Hughes sought to explore other options for NKWD to use to finance water main extensions. He noted KRS 74.395. He also inquired whether the proposed surcharge could not be considered an extension of service policy or plan rather than a surcharge. The amount assessed on the subdistrict customer, he noted, was merely to recover the cost of extending water mains and was in essence the repayment of a loan that the water district was providing to the customers for the cost of the construction of the water mains.

The participants agreed that additional time was needed to examine the decision. Mr. Hughest questioned whether the decision rendered further proceedings moot or whether the scheduled hearing should continue. Mr. Lovan inquired about the decision's effect on existing NKWD surcharges. Mr. Samford suggested a teleconference the following week to discuss these questions. All agreed.

The conference then adjourned.

cc: Parties of Record

**INTRA-AGENCY MEMORANDUM**  
**KENTUCKY PUBLIC SERVICE COMMISSION**

**TO:** Case File No. 2006-00315

**FROM:** Gerald Wuetcher  
Assistant General Counsel

**DATE:** August 23, 2007

**RE:** Conference Call of August 21, 2007

On August 21, 2007, Commission held a conference call in this case. Participating were:

Dennis Howard	-	Attorney General
David Spenard	-	Attorney General
Jack Bragg	-	Northern Kentucky Water District
Richard Harrison	-	Northern Kentucky Water District
John N. Hughes	-	Northern Kentucky Water District
Ronald Lovan	-	Northern Kentucky Water District
Eddie Beavers	-	Commission Staff
Mark Frost	-	Commission Staff
J.R. Goff	-	Commission Staff
Jason Green	-	Commission Staff
Dennis Jones	-	Commission Staff
David Samford	-	Commission Staff
Sam Reid	-	Commission Staff
Gerald Wuetcher	-	Commission Staff

At their informal conference of August 8, 2007, the participants had agreed to the conference call to discuss *Commonwealth of Kentucky, ex rel. Gregory D. Stumbo, Attorney General, v. Public Service Commission and Union Light, Heat and Power Company*, Civil Action 06-CI-269 (Franklin Cir. Ct. Ky. Aug. 1, 2007).

Beginning the conference, Mr. Samford stated that Commission Staff would prepare minutes of the conference for the case record, that a copy of these minutes would be provided to all parties, and that all parties would be given an opportunity to submit written comments upon those minutes.

Mr. Spenard and Mr. Howard noted that the Attorney General (AG) had reviewed the decision. Mr. Howard noted that the AG had requested at a meeting that the Commission convened on August 16, 2007, that no further surcharges be initiated pending the review of the Franklin Circuit Court decision. Mr. Howard further stated that

the AG's request did not address existing surcharges. In response to Mr. Hughes' inquiry regarding whether a new surcharge could be proposed as part of NKWD's pending case for rate adjustment, Mr. Howard stated that unless a statute expressly authorized the surcharge, the surcharge was unlawful even if reviewed and approved within a general rate adjustment proceeding.

Mr. Spenard suggested that KRS 278.280(3) possibly authorized the proposed surcharges. He noted that this statute permitted "any person or group of persons . . . to come before the commission and by petition ask that any utility subject to its jurisdiction be compelled to make any reasonable extension." As NKWD is a "person," it could apply for a surcharge as part of a reasonable extension proposal.

Mr. Wuetcher responded that Mr. Spenard's interpretation was strained. He noted that the clear intent of KRS 278.280(3) was to permit applicants for service to apply to the Commission for extensions that utilities were not otherwise willing to make. It made no sense, he argued, for a utility to petition the Commission to order an extension of service that the utility already thought was reasonable and willing to make. The statute, he further noted, dealt with service and not rates. The proposed surcharge had all the appearances of a rate.

Mr. Hughes inquired whether applicants within the subdistrict could apply to the Commission for an extension under the proposed terms. Mr. Spenard and Mr. Wuetcher agreed that they could. Mr. Wuetcher cautioned that any monthly payment based upon receiving service could still be interpreted as a rate for service (a surcharge) and not as merely a term of an extension policy.

Mr. Hughes noted that, under the AG's interpretation of and proposed application of the Franklin Circuit Court decision, NKWD's only option is to insist upon full payment of the water main extension before constructing the water main.

Mr. Spenard stated that the AG's interpretation did not prevent any extension of water mains. He noted that the Commission had already rejected the proposed surcharge and that the subsequent Franklin Circuit Court decision had not altered that result. Mr. Hughes disagreed. He noted that the Commission had granted NKWD's application for rehearing and was affording NKWD the opportunity to address the perceived problems with the proposed surcharge. The Franklin Circuit Court decision effectively deprived NKWD of that opportunity and prohibited any hearing on the merits of its proposal as a matter of law.

After some discussion about other alternative means for extending water mains, Mr. Samford stated that, before the Commission could proceed further, it must address the implications of the Franklin Circuit Court decision on the case at bar and that the

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parties would need to be afforded an opportunity to address that issue. Mr. Spenard stated that, should the Commission continue with the proceeding, the AG would object on the basis that the Franklin Circuit Court decision rendered the proposed surcharge unlawful.

The conference then adjourned.

cc: Parties of Record