

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN EXAMINATION OF EXISTING WATER) ADMINISTRATIVE
DISTRIBUTION MAIN EXTENSION POLICIES) CASE NO. 386

ORDER

Administrative Regulation 807 KAR 5:066, Section 11, establishes the current policy for water distribution main extensions in Kentucky.¹ This regulation requires a water utility to extend its distribution mains 50 feet without charge to serve an applicant for water service. 807 KAR 5:066, Section 11(1). It permits a water utility, for water main extensions that exceed 50 feet in length per applicant, to require an applicant or group of applicants to deposit the “total cost of the excessive footage over 50 feet per customer” but directs reimbursement of this deposit as additional customers connect to the main extension. 807 KAR 5:066, Section 11(2)(a). The regulation also permits water utilities initially to impose the entire cost of a water distribution main extension to real estate subdivision developments upon the subdivision’s developer; however, water utilities must refund to such developers, for a period of not less than 10 years “a sum equal to the cost of fifty (50) feet of the extension installed for each new customer connected during the year whose service line is directly connected to the extension.” 807 KAR 5:066, Section 11(3).

¹ The complete text of Administrative Regulation 807 KAR 5:066, Section 11, is set forth in Appendix A.

The basic provisions of Administrative Regulation 807 KAR 5:066, Section 11, have been in effect for over 40 years with only modest changes.² While the regulation has not changed significantly, the water utility industry in Kentucky and the nature of the Commission's jurisdiction have. At the time the regulation was promulgated, the Commission's jurisdiction did not extend to water districts or water associations.³ The number of such entities was still small. Virtually all water utilities subject to Commission jurisdiction were investor-owned utilities operating within urban areas. Treated water was unavailable to large portions of Kentucky. Suburban development in Kentucky had not yet occurred on a large scale. When promulgating the regulation, the Commission sought to encourage the extension of water service and to achieve a fair allocation of cost of these extensions.

Today the majority of water utilities subject to Commission regulation are water districts and water associations.⁴ Most operate in rural areas and have a low customer density. Many are heavily dependent upon financial assistance from federal and state government to extend water service. In recent years, the areas in which these utilities operate have seen increasing urbanization and development.

² We promulgated our regulation dealing with water distribution main extensions, which is currently codified as Administrative Regulation 807 KAR 5:066, Section 11, on November 28, 1959. The only significant change revision to this regulation occurred in 1992 when the Commission permitted water utilities to use an alternative refund plan. See 807 KAR 5:066, Section 11(2)(b)(2); 19 Ky. Admin. Reg. 1968, 3368 (1992).

³ Water districts were statutorily exempted from Commission jurisdiction prior to 1964. 1936 Ky. Acts 299.

⁴ In 1964 the General Assembly eliminated this exemption and declared that water districts were public utilities subject to Commission jurisdiction. 1964 Ky. Acts 722. In 1972, it made a similar declaration regarding water associations. 1972 Ky. Acts 1462.

In recent years water utilities have increasingly questioned the Commission's policies regarding water main extensions. In Administrative Case No. 375,⁵ several water utilities argued that the existing extension policy places an unreasonable burden on existing customers and should therefore be modified. Other water utilities have sought deviations, on a case-by-case basis, to reimbursement provisions.⁶ Moreover, the recent efforts to expand the delivery of water service to Kentuckians have suggested that existing policies require reexamination.⁷

As a result of these developments, we find that a formal investigation should be initiated to examine the issue of water distribution main extensions. This investigation will allow the Commission to collect information regarding water main extensions, to catalog and examine the present extension practices of water utilities, to identify any deficiencies with these practices and the extent, if any, to which these deficiencies are caused by Administrative Regulation 807 KAR 5:066, Section 11, and to determine what revisions, if any, are required to Administrative Regulation 807 KAR 5:066, Section 11. The Commission's ultimate goal is to ensure that our regulatory policies encourage reasonable extensions of water service in Kentucky and fairly and equitably allocate the cost of such extensions.

⁵ Administrative Case No. 375, An Investigation into the Design and Use of System Development Charges.

⁶ See, e.g., Case No. 98-468, Proposed Revisions to the Mainline Extension Policy of Northern Kentucky Water Service District (Sept. 4, 1998); Case No. 99-050, North Marshall Water District's Proposed Rules for Water Main Extensions to Real Estate Subdivisions (April 10, 2000).

⁷ See, e.g., Ky. Exec. Order 96-1339 (Oct. 3, 1996); SB 409, 2000 Kentucky General Session (2000).

The first stage of this investigation will be the collection of information regarding water distribution main extensions and utility practices and policies regarding such extensions. The second stage will be to identify perceived problem areas and potential solutions. The final stage will be the identification of necessary revisions to administrative regulations and, if necessary, the promulgation of administrative regulations to implement these revisions.

IT IS THEREFORE ORDERED that:

1. This proceeding is opened to examine the distribution main extension policies of water utilities within the Commonwealth of Kentucky and to review this Commission's administrative regulations on water distribution main extensions.

2. All utilities⁸ that provide water service to the public are made parties to this proceeding.

3. Each party to this proceeding shall file with the Commission within 60 days of the date of this Order, the original and 8 copies of its response to the questions set forth in Appendix B. Each response should be placed in a bound volume with each item tabbed. When a number of sheets are required for a response, each sheet should be appropriately indexed, for example, Item 1(a), Sheet 2 of 6. Careful attention shall be given to copied material to ensure its legibility.

4. Any party wishing to withdraw as a party to this proceeding may file a notice of withdrawal with the Commission within 75 days of the date of this Order. All

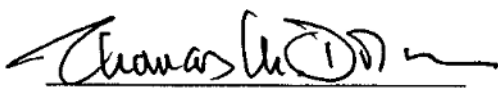
⁸ The term "utilities" applies only to those entities meeting the definition of utility as set forth in KRS 278.010(3)(d) and does not include municipalities or municipally owned entities.

utilities, regardless of any filing of a notice of withdrawal, shall comply with Ordering Paragraph 3 of this Order.

Done at Frankfort, Kentucky, this 2nd day of November, 2000.

By the Commission

ATTEST:

A handwritten signature in black ink, appearing to read "Thomas H. [unclear]", written over a horizontal line.

Executive Director

APPENDIX A

AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN ADMINISTRATIVE CASE NO. 386 DATED NOVEMBER 2, 2000

ADMINISTRATIVE REGULATION 807 KAR 5:066, SECTION 11

(1) Normal extension. An extension of fifty (50) feet or less shall be made by a utility to its existing distribution main without charge for a prospective customer who shall apply for and contract to use service for one (1) year or more.

(2) Other extensions.

(a) When an extension of the utility's main to serve an applicant or group of applicants amounts to more than fifty (50) feet per applicant, the utility may if not inconsistent with its filed tariff require the total cost of the excessive footage over fifty (50) feet per customer to be deposited with the utility by the applicant or the applicants, based on the average estimated cost per foot of the total extension.

(b) Each customer who paid for service under such extension shall be reimbursed under one (1) of the following plans, which shall be included in the utility's filed tariff:

1. Each year, for a refund period of not less than ten (10) years, the utility shall refund to the customer or customers who paid for the excessive footage the cost of fifty (50) feet of the extension in place for each additional customer connected during the year whose service line is directly connected to the extension installed and not to extensions or laterals therefrom. Total amount refunded shall not exceed the amount paid the utility. No refund shall be made after the refund period ends.

2. As an alternative to the refund plan outlined in subparagraph 1 of this paragraph, the utility may use the following plan: for a period of five (5) years after construction of the extension, each additional customer whose service line is directly connected to the extension installed, and not to extensions or laterals therefrom, shall be required to contribute to the cost of the extension based on a recomputation of both the utility's portion of the total cost and the amount contributed by the customers. The utility shall refund to those customers that have previously contributed to the cost of the extension that amount necessary to reduce their contribution to the currently calculated amount for each customer connected to the extension. All customers directly connected to the extension for a five (5) year period after it is placed in service shall contribute equally to the cost of construction of the extension. In addition, each customer shall pay the approved tap-on fee applicable at the time of his application for the meter connection. The tap-on fee shall not be considered part of the refundable cost of the extension and may be changed during the refund period. After the five (5) year refund period expires, any additional customer shall be connected to the extension for the amount of the approved tap-on fee only. After the five (5) year refund period expires, the utility shall be

required to make refunds for an additional five (5) year period in accordance with subparagraph 1 of this paragraph.

(3) An applicant desiring an extension to a proposed real estate subdivision may be required to pay the entire cost of the extension. Each year, for a refund period of not less than ten (10) years, the utility shall refund to the applicant who paid for the extension a sum equal to the cost of fifty (50) feet of the extension installed for each new customer connected during the year whose service line is directly connected to the extension installed by the developer, and not to extensions or laterals therefrom. Total amount refunded shall not exceed the amount paid to the utility. No refund shall be made after the refund period ends.

(4) Nothing contained herein shall be construed to prohibit the utility from making extensions under different arrangements if such arrangements have received the prior approval of the commission.

(5) Nothing contained herein shall prohibit a utility from making at its expense greater extensions than herein prescribed, provided like free extensions are made to other customers under similar conditions. The conditions under which such extensions will be made shall be stated in the utility's filed tariff.

(6) Upon complaint to and investigation by the commission a utility may be required to construct extensions greater than fifty (50) feet upon a finding by the commission that such extension is reasonable and that an extension of fifty (50) feet or less is unreasonable under the circumstances.

APPENDIX B

AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN ADMINISTRATIVE CASE NO. 386 DATED NOVEMBER 2, 2000

1. Using the format shown in Table I, provide for each of the last 5 calendar years:
 - a. Total amount of water distribution main extended (in linear feet) *(column 1)*.
 - b. A breakdown of water distribution main extensions (in linear feet) based upon main size *(columns 2 – 8)*.
 - c. Total amount of water distribution main extended (in linear feet) whose cost was borne by the utility *(column 9)*.
 - d. Total amount of water distribution main extended (in linear feet) whose cost was borne by applicants *(column 10)*.
 - e. Total amount of water distribution main extended (in linear feet) whose cost was borne by applicants who were real estate subdivision developers *(column 11)*.
 - f. Total amount of water distribution main extended (in linear feet) whose cost was borne by applicants who were non-real estate subdivision developers *(column 12)*.
 - g. Total customers served upon completion of water distribution main *(column 13)*.
 - h. Total cost of water distribution main (includes utility and non-utility contribution) *(column 14)*.

i. Total cost of the utility for the water distribution main extensions (column 15).

j. Total cost of water distribution main extensions paid by applicants who were real estate subdivision developers (column 16).

k. Total cost of water distribution main extensions paid by applicants who were not real estate subdivision developers (column 17).

2. For water distribution main extensions constructed in the last 5 calendar years (1995 -1999) and for which the utility bore a portion of the cost, list each source of funding (e.g., Rural Development loan, Community Development Block Grant) and the total amount of funding received from each source for each year. Use the format shown in Table II.

3. For each water distribution main extension constructed in the last 5 calendar years (1995 -1999) in which federal, state or local government funding was involved and using the format shown in Table III, state:

a. Name of or identifier for the water distribution main extension.

b. Year in which construction was completed.

c. Total cost of the water distribution main extension.

d. Total length of the water distribution main extension (in linear feet).

e. Total number of applicants for service.

f. Total contribution by applicants.

g. Total governmental contribution in the form of grant.

h. Total governmental contribution in the form of a loan.

i. Whether all applicants for service were required to contribute the same amount.

j. If required contributions were not at the same level, the reasons for differing treatment.

4. a. What portion of the cost of a water distribution main extension is an applicant for water service required to bear when your utility uses federal, state or local government funds to make a water distribution main extension?

b. How does this arrangement differ from those associated with water distribution main extensions in which no federal, state or local governmental funding is involved?

5. Should water distribution main extensions that are financed with federal, state or local governmental funds be treated in the same manner as non-governmental funded extensions (i.e., the applicants' share of the cost for water distribution main extension are calculated and enforced in the same manner)? Explain.

6. Describe your utility's current policy toward water distribution main extensions.

7. When making water distribution main extensions, does your utility follow the requirements of Administrative Regulation 807 KAR 5:066, Section 11? If no, why not?

8. Administrative Regulation 807 KAR 5:066, Section 11, currently permits a water utility to deviate from its requirements upon a showing of good cause. What grounds should serve as the basis for granting a deviation from the regulation's

requirements? For each ground listed, explain why it is an appropriate basis for granting a deviation.

9. What effect, if any, do the water main extension policies set forth in Administrative Regulation 807 KAR 5:066, Section 11, have on land development in your community or the state at large?

10. When a water utility constructs a water distribution main extension to serve a group of applicants for service, it may occasionally upsize the main to provide for future growth.

a. Has your utility engaged in this practice?

b. If yes, how does your utility determine the applicants' share of the cost of the water distribution main extension?

c. If no, how should the applicants' share of the cost of the water distribution main extension be determined?

d. Should Administrative Regulation 807 KAR 5:066, Section 11, be revised to address this issue? Explain.

11. a. Does your utility permit a real estate subdivision developer to construct a water distribution main extension to his development and then donate the extension to your utility?

b. If yes,

(1) How does your utility determine the cost of the water distribution main extension?

(2) What approval(s), if any, must the developer obtain from your utility prior to commencement of construction?

(3) Describe the review of the developer's plans and specifications, if any, that your utility performs before the developer begins construction.

(4) Does your utility prescribe the specifications for the water distribution main extension? Are these specifications set forth in your utility's filed rate schedules?

(5) List the documents that a developer must submit to your utility prior to the utility's acceptance of the water distribution main extension.

(6) What actions, if any, does your utility take to ensure that the water distribution main extension is constructed in accordance with accepted engineering standards?

(7) What, if any, warranties must be provided before your utility accepts donation of the water distribution main extension?

(8) What analysis of the cost of maintaining and operating a proposed extension and the potential revenues from the extension, if any, does your utility perform before accepting the donation of a water distribution main extension?

c. If no, describe the procedures that your water utility uses to construct the water distribution main extension and ensure that the cost of construction is reasonable. Include in this response a description of how contractors are selected and how plans and specifications for the water distribution main are prepared.

12. a. If a water distribution main extension to a real estate subdivision requires a water utility to upgrade its existing facilities, who should bear the cost of such upgrades? Explain why.

b. If in your response to Question 12(a) you stated that at least a portion of the cost of the upgrade should be borne by the real estate subdivision developer, explain how your utility would allocate this cost.

13. Administrative Regulation 807 KAR 5:066, Section 11, currently provides a water utility with two options for allocating the cost of a water distribution main extension to persons receiving service from that main. Under the primary option (“Option A”), applicants who will immediately receive water service deposit with the water utility the cost of the main extension that exceeds the water utility contribution. Persons who subsequently connect to the water distribution main extension make no direct contribution toward the cost of the main. Administrative Regulation 807 KAR 5:066, Section 11(2)(b)(2), permits a water utility to require each customer who connects to the main within 5 years of its construction to bear an equal portion of the cost of the water main extension that exceeds the water utility’s contribution (“Option B”).

a. Which option does your utility use to allocate the cost of water distribution main extensions? Why? Why was the other option not selected?

b. Assume that the Commission proposed to eliminate Option A and require all water utilities to use Option B. What is your utility’s position on such proposal?

14. For each of the past 5 calendar years, provide a schedule that lists each refund for water distribution main extension that your utility has made. This schedule shall also list the date and amount of each refund, the amount of feet of water main extension for which the refund is made, and whether the recipient of the refund was a real estate subdivision developer.

15. Administrative Regulation 807 KAR 5:066, Section 11, requires a water utility for the 10 years following the construction of a water distribution main extension to refund an applicant's contribution toward the cost of the extension when a new customer connects to the extension.

a. How many water distribution main extensions is your utility, as of the date of this Order, tracking for refunding purposes?

b. How does your utility record and track water distribution main extensions and required refunds?

c. Describe any problems that your utility has experienced recording and tracking water distribution main extensions and required refunds.

d. How would your utility describe the recordkeeping requirements associated with Administrative Regulation 807 KAR 5:066, Section 11?

e. Describe your utility's recordkeeping abilities (e.g., personnel, computer equipment) and how they have affected your utility's ability to comply with the refund requirements of Administrative Regulation 807 KAR 5:066, Section 11.

f. In the last 5 calendar years, has your utility had to transfer to the Kentucky Secretary of State any unclaimed monies that are refunds for a water distribution main extension? If yes, state the amount for each calendar year.

16. a. Has your utility ever been cited for violating, or threatened with a citation for violation of, a regulation of the Natural Resources and Environmental Protection Cabinet due solely to its efforts to comply with Administrative Regulation 807 KAR 5:066, Section 11?

b. If yes, describe each incident. Include with your description the time period and the nature of the violation for which the utility was cited or threatened with citation.

17. Should the requirement of Administrative Regulation 807 KAR 5:066, Section 11(1), that a water utility must extend a water distribution main up to 50 feet for service to a new applicant at no cost be revised? If yes, state how the requirement should be revised and explain why this revision should be made.

18. Should Administrative Regulation 807 KAR 5:066, Section 11(3), be revised to limit refunds to real estate subdivision developers to the cost of extending a water distribution main to their subdivisions and not include water distribution mains located within the subdivisions? Why?

19. a. Should Administrative Regulation 807 KAR 5:066, Section 11(3), be revised to eliminate any requirement for refunds to real estate subdivision developers? Why?

b. If the requirement for refunds to real estate subdivision developers is eliminated, should the requirement for refunds for non-real estate subdivision developers (e.g., applicants seeking water service to his or her residence) also be eliminated?

20. Administrative Regulation 807 KAR 5:066, Section 11(3), is criticized for requiring water utilities to make refunds to real estate subdivision developers. Critics contend that this regulation allows developers to recover the cost of water distribution main extensions twice – first through the sale of the real estate lot and then through the water utility's refund. Does your utility agree with this criticism? Why?

21. Should the length of the 10-year refund period established in Administrative Regulation 807 KAR 5:066, Section 11, be revised? If yes, state how should it be revised and explain why.

22. Under what circumstances should a water utility be obligated to extend a water distribution main at no charge? Explain.

23. List and describe all problems that your utility has experienced as a result of Administrative Regulation 807 KAR 5:066, Section 11.

24. List and describe all revisions, if any, that should be made to Administrative Regulation 807 KAR 5:066, Section 11. Explain why each revision is necessary.

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TABLE II

Funding Source	1995	1996	1997	1998	1999
Rural Development Loan					
Rural Development Grant					
Community Development Block Grant					
Appalachia Regional Commission Grant					
Economic Development Administration Grant					
Abandoned Mine Lands Trust Fund					
Internally Generated funds					
Loan from Commercial Banks					
Revenue Bonds/Bond Anticipation Notes					
Loan from Kentucky Association of Counties					
Other Sources					

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TABLE III

Name/Identifier for Extension	Year Constructed	Total Cost	Total Length	Number of Applicants	Governmental Contribution (Grant)	Governmental Contribution (Loan)	Total Applicant Contribution	Were All Ap Require Contribut Amour (i)
<i>(a)</i>	<i>(b)</i>	<i>(c)</i>	<i>(d)</i>	<i>(e)</i>	<i>(f)</i>	<i>(g)</i>	<i>(h)</i>	<i>(i)</i>