

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF NORTHERN KENTUCKY	)	
WATER DISTRICT FOR (A) AN ADJUSTMENT OF	)	
RATES; (B) A CERTIFICATE OF CONVENIENCE	)	CASE NO. 2005-00148
AND NECESSITY FOR IMPROVEMENTS TO	)	
WATER FACILITIES IF NECESSARY; AND (C)	)	
ISSUANCE OF BONDS	)	

O R D E R

Northern Kentucky Water District (“NKWD”) requests a deviation from 807 KAR 5:066, Section 12(1)(a). At issue is whether the present version of that administrative regulation applies to water service connections installed prior to June 7, 1992 or acquired from non-jurisdictional utilities on or after that date and that have metering devices located inside a building. Finding in the negative, we deny as moot NKWD’s request as it applies to such service connections, but grant a limited deviation for service connections constructed or installed on or after that date.

PROCEDURE

On July 1, 2005, NKWD applied for a general rate adjustment and for approval of certain revisions to its existing rate schedules, rules, and regulations. On April 26, 2006, the Commission authorized an adjustment in NKWD’s rates for water service, but rejected certain proposed revisions in NKWD’s rules that would apparently shift responsibility for certain customer service lines from the water utility to its customers.

On May 18, 2006, NKWD petitioned for hearing of the Commission's Order of April 26, 2006 with respect to those provisions that addressed NKWD's responsibility for customer water service lines. NKWD requested that the Commission reconsider its interpretation of 807 KAR 5:066, Section 12(1)(a), to preclude the imposition of responsibility for the installation and maintenance of customer service lines that connect to metering devices located inside buildings.

On June 6, 2006, the Commission granted NKWD's petition for rehearing for "the limited purpose of determining the applicability of 807 KAR 5:066, Section 12(1)(a), to NKWD's operations and the need for a deviation from that administrative regulation . . . and re-examining the reasonableness of the proposed tariff revision that addressed NKWD's liability for the installation and maintenance of the customer's service line."

After conducting additional discovery, the Commission held a hearing in this matter on August 8, 2007. Richard Harrison, NKWD's Vice President of Engineering/Distribution, was the only witness to testify at this hearing. At the conclusion of this hearing, upon agreement of the parties,<sup>1</sup> the matter stood submitted for decision by the Commission.

### BACKGROUND

NKWD, a water district organized pursuant to KRS Chapter 74, is a utility subject to Commission jurisdiction.<sup>2</sup> It provides retail water service to 80,386 customers in Boone, Campbell, Grant, Kenton and Pendleton counties, Kentucky<sup>3</sup> and wholesale

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<sup>1</sup> The Attorney General is the only intervening party in this proceeding.

<sup>2</sup> KRS 278.010(3)(d); KRS 278.015; KRS 278.040.

<sup>3</sup> Report of Northern Kentucky Water District to the Kentucky Public Service Commission for the Year Ended December 31, 2007 at 5 and 27.

water service to Bullock Pen Water District, Pendleton County Water District, and the city of Walton, Kentucky.<sup>4</sup>

NKWD was formed on January 1, 1997 when Kenton County Water District No. 1 and Campbell County Kentucky Water District merged.<sup>5</sup> Kenton County Water District No. 1, the Commonwealth's first water district, was created in 1926<sup>6</sup> shortly after the General Assembly enacted a statute authorizing the creation of water districts.<sup>7</sup> Campbell County Kentucky Water District was created in 1974 from the merger of four water districts serving Campbell County, Kentucky.<sup>8</sup> Throughout their existence, NKWD and its predecessors have acquired several municipal water systems.<sup>9</sup>

NKWD's typical service connection is depicted in Figure 1 below. To install such connection, NKWD taps into a water distribution main and extends a copper pipe to the customer's property line.<sup>10</sup> The water distribution main is generally located in a public street.<sup>11</sup> This pipe is joined to the water distribution main with a small valve commonly

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<sup>4</sup> *Id.* at 30.

<sup>5</sup> Case No. 1996-00234, The Joint Application of Kenton County Water District No. 1 and Campbell County Kentucky Water District for Authority to Merge Into Northern Kentucky Water Service District, and for Authority for the Combined District to Operate (Ky. PSC August 22, 1996). See also Report of Northern Kentucky Water District, *supra*, at 4.

<sup>6</sup> Annual Report of Kenton County Water District to the Public Service Commission for the Year Ended December 31, 1964 at 1.

<sup>7</sup> 1926 Ky. Acts 666.

<sup>8</sup> These four water districts were: Campbell County Water District No. 1; Campbell County Water District No. 2; Campbell County Water District No. 3; and Mentor Water District. See Case No. 5742m, Proposed Merger of Campbell County Water District No. 1 and Campbell County Water District No. 3 (Ky. PSC April 30, 1973); Case No. 5770m, Proposed Merger of Campbell County Water District No. 1 and Mentor Water District (Ky. PSC April 30, 1973).

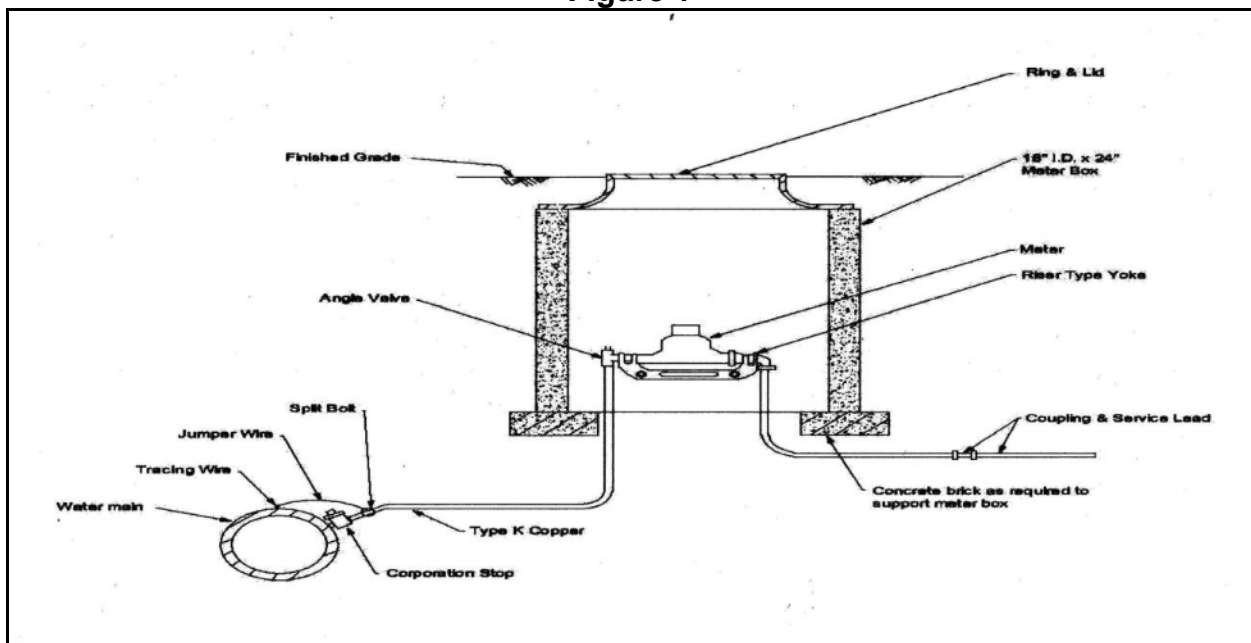
<sup>9</sup> See *infra* note 43 and accompanying text.

<sup>10</sup> Prefiled Testimony of Richard Harrison at 4.

<sup>11</sup> Transcript of 8/8/2007 Hearing at 11-12.

known as a “corporation stop,”<sup>12</sup> which is buried below street level and is inaccessible from ground surface. At the customer’s property line, NKWD generally installs a meter riser, shut-off valve,<sup>13</sup> and meter with a meter box that houses the meter assembly. It places the meter assembly within a utility right-of-way or easement.<sup>14</sup> The customer is responsible for the installation of the service line from the meter box to the residential or commercial structure.

Figure 1



NKWD serves approximately 14,000 residential or commercial structures for which the water meter is located inside the structure.<sup>15</sup> Approximately 12,542 of these

<sup>12</sup> *Id.* at 44.

<sup>13</sup> As shown in Figure 1, the “Angle Valve” is used to shut off water service. NKWD personnel access this valve at street level to discontinue the flow of water to a structure. *Id.* at 13 and 44.

<sup>14</sup> *Id.* at 48.

<sup>15</sup> *Id.* at 39.

structures<sup>16</sup> were originally served by a municipal utility that NKWD or one of its predecessors subsequently acquired. Of the remaining 1,500 structures, NKWD or one of its predecessors apparently authorized the installation of metering equipment inside the structure.<sup>17</sup>

As shown in Figure 2 below, the configuration of a service connection for buildings with an inside meter differs significantly from the typical service line connection. In lieu of a meter box that houses the meter assembly, NKWD installs near or on the utility right-of-way a curb stop - a small, in-line valve with vertical tubing that is capped at ground level.<sup>18</sup> The curb stop controls the flow of water to a structure. The service line then runs from the curb stop into the residential or commercial structure where the meter is located. This portion of the service line is generally not located on any utility easement or subject to NKWD's control.<sup>19</sup> While retaining ownership of the metering equipment located inside a building,<sup>20</sup> NKWD has limited control over the

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<sup>16</sup> *Id.* See also NKWD's Response to Commission Staff's Information Request of October 17, 2006, Item 1.

<sup>17</sup> Transcript of 8/8/2007 Hearing at 39-40. NKWD Witness Harrison testified:

NKWD currently installs meters in a customer's building. These meters are predominately installed during replacement during routine meter testing for change outs. However, in rare instances, where there is no available installation space between the sidewalk and the customer's building for large meter installations that would require a meter pit, such as in more urban locations, the District will allow the meter to be located in the buildings. There are probably less than 5 of these installations annually.

*Prefiled Testimony of Richard Harrison at 4.*

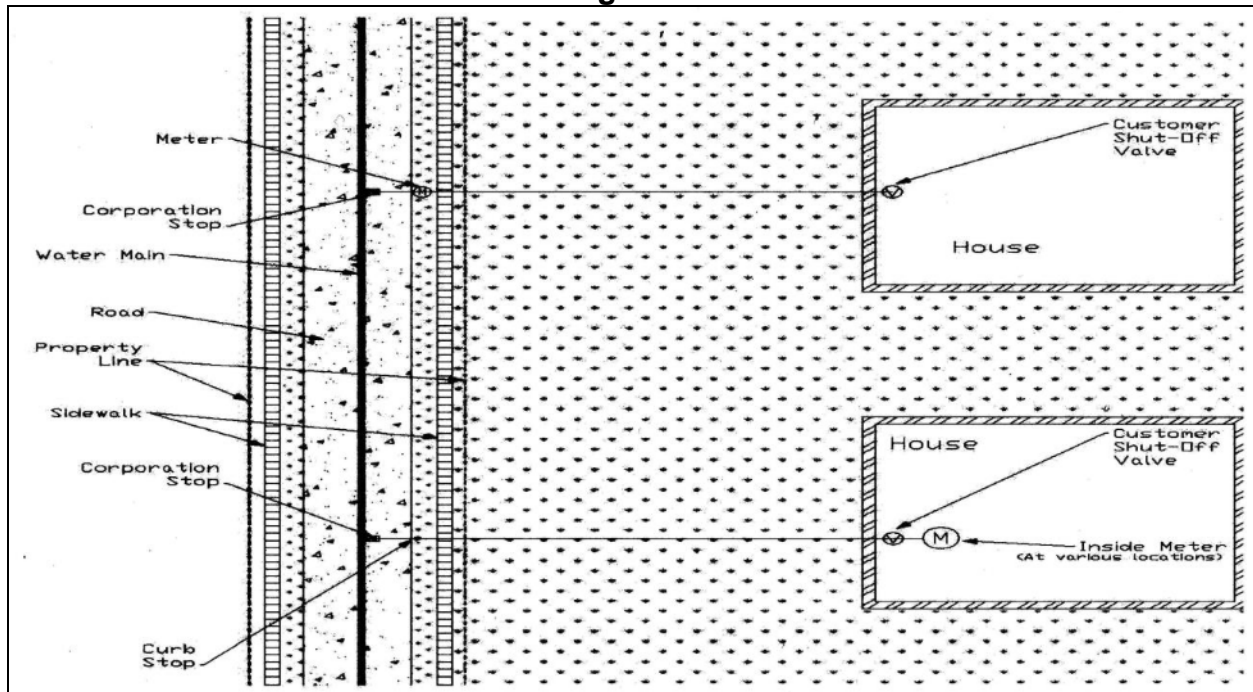
<sup>18</sup> Transcript of 8/8/2007 Hearing at 46.

<sup>19</sup> NKWD Witness Harrison testified that NKWD has no control over or knowledge of the specifications for this portion of the service line, including the material of which the service line is constructed or the depth that the service line is buried underground. *Id.* at 19 and 63.

<sup>20</sup> *Id.* at 48.

location of the meter.<sup>21</sup> NKWD Witness Harrison testified that meters have been discovered in a number of unusual places that are difficult to access.<sup>22</sup> NKWD has installed automated meter reading equipment in each of these buildings to obtain meter readings without physical entry into the building.<sup>23</sup>

**Figure 2**



NKWD's predecessors had long-established rules that expressly disclaimed utility responsibility for the ownership and maintenance of service lines beyond the curb stop or meter box. In 1964, Kenton County Water District No. 1 issued rules that

<sup>21</sup> *Id.* at 49. When NKWD submitted its application, its rules permitted the water district to "determine or approve all meter locations." See NKWD Tariff, P.S.C. No. 2, Sheet No. 12 (effective June 1, 2000). This rule appears to have applied only to new meter installations and would not have been applicable to structures and customers that NKWD had acquired through the purchase of other water systems.

<sup>22</sup> Transcript of 8/8/2007 Hearing at 16-21. See also *Prefiled Testimony of Richard Harrison* at 10. NKWD Witness Harrison testified that customers were very creative in their location of meters. NKWD discovered meters located in window sills, behind heavy machinery, in concrete floors and under restaurant kitchen sinks.

<sup>23</sup> Transcript of 8/8/2007 Hearing at 49. See also NKWD's Response to Commission Staff's Fifth Information Request, Item 9.

required the water utility to “retain possession of, and maintain the service line from the main to the service cut off” and required a property owner to be responsible “for maintenance and repair of the service line from the service cut off to and throughout the premises.”<sup>24</sup> It republished these rules in 1991<sup>25</sup> and 1992.<sup>26</sup> Campbell County Kentucky Water District published similar rules in 1980<sup>27</sup> and republished them in 1992<sup>28</sup> and 1995.<sup>29</sup>

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<sup>24</sup> Kenton County Water District No. 1 Tariff, PSC Ky. No. 1, Original Edition Sheet No. 5 (filed Aug. 25, 1964). These rules provided:

4. After the tapping fee has been paid the District shall tap the main and run the service connection branch from the main to a location behind the curb or a point to be determined by the Kenton County District, and an adequate service cut off will be placed at that point.

5. The portion of the service branch from the service cut off to the building shall be installed and maintained by the customer at no cost to the District. All service branches shall be subject to inspection and approval by the Water District before water service will be turned on for use.

6. The Water District shall retain possession of, and maintain the service line from the main to the service cut-off.

7. The customer shall be responsible for maintenance and repair of the service line from the service cut-off to and throughout the premises.

<sup>25</sup> Kenton County Water District No. 1 Tariff, PSC Ky. No. 1, First Edition Sheet No. 5 (effective Nov. 8, 1991).

<sup>26</sup> Kenton County Water District No. 1 Tariff, PSC Ky. No. 1, 2nd Revision Sheet No. 5 (effective July 28, 1992).

<sup>27</sup> Campbell County Kentucky Water District Tariff, PSC No. 1, Original Sheet No. 12 (effective Jan. 1, 1980).

<sup>28</sup> Campbell County Kentucky Water District Tariff, PSC No. 2, Original Sheet No. 12 (effective Sep. 5, 1992).

<sup>29</sup> Campbell County Kentucky Water District Tariff, PSC No. 2, Original Sheets No. 12 and No. 13 (effective Mar. 1, 1995).

In 1997, NKWD published rules that adopted verbatim its predecessors' rules regarding service connections.<sup>30</sup> These rules expressly limited NKWD's responsibility to that portion of the service connection "from the main line to the edge of the public right-of-way or edge of easement" and provided that the water district would "install or maintain a means of shut-off" at the point where its responsibility terminated.<sup>31</sup>

On July 1, 2005, NKWD applied for a general rate adjustment and submitted a revised tariff that included revisions to its existing rules for meter locations and service connections. For locations in which a meter was located inside a building, NKWD proposed to limit its responsibility to the "meter and meter connection nut only" and to disclaim any responsibility for "any piping making connection to the meter."<sup>32</sup> NKWD further proposed to limit its responsibility for a service connection to that portion of the connection that ran from the distribution main to the "point of service," which NKWD defined as the customer's curb stop or meter vault,<sup>33</sup> and to place upon the customer all responsibility for any water leak that occurred beyond a curb stop.<sup>34</sup>

On April 28, 2006, the Commission approved an adjustment in NKWD's rates, but rejected NKWD's proposed rules that would have redefined responsibility for

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<sup>30</sup> NKWD Tariff, PSC No. 2, Original Sheet No. 15 (effective Sept. 4, 1998).

<sup>31</sup> *Id.*

<sup>32</sup> NKWD Tariff, PSC No. 3, Sheet No. 11 (Proposed) (filed June 1, 2005).

<sup>33</sup> *Id.* ("The District shall retain possession of and be responsible for the service connection from the distribution main to the point of service (curb stop), if applicable, or any piping material within the meter vault.")

<sup>34</sup> *Id.* ("Where a curb stop is applicable and the District determines that a leak is on the customer's service line beyond the point of service by shutting the curb stop off [sic], the cost to repair such leak will be the responsibility of the customer.")



customer service lines. The Commission found that these provisions conflicted with 807 KAR 5:066, Section 12(1)(a).<sup>35</sup>

## DISCUSSION

NKWD's application for rehearing presents the following issues:

1. Does 807 KAR 5:066, Section 12, permit a water utility to place responsibility on its customers for ownership and maintenance of any portion of the service connection from the distribution main to the meter when the meter is located inside a building?
2. Does 807 KAR 5:066, Section 12, require NKWD to assume responsibility for the ownership and maintenance of service connections that were constructed prior to June 7, 1992 or acquired from non-jurisdictional water suppliers and that run from a curb stop to a meter located inside a building?
3. Did the Commission grant NKWD a deviation from 807 KAR 5:066, Section 12, by allowing NKWD and its predecessors to publish rules that disclaimed responsibility for those portions of service connections beyond the curb stop or cut off?
4. Has NKWD demonstrated good cause for the requested deviation from 807 KAR 5:066, Section 12?

### Requirements of 807 KAR 5:066, Section 12

Administrative Regulation 807 KAR 5:066, Section 12, delineates the responsibilities for a utility and a customer regarding service connections. It provides that a water utility "shall furnish and install at its own expense for the purpose of connecting its distribution system to the customer's premises that portion of the service connection from its main to and including the meter and meter box."<sup>36</sup> It further provides that a customer must "furnish and lay the necessary pipe to make the connection from

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<sup>35</sup> Order of April 28, 2006 at 21-22.

<sup>36</sup> 807 KAR 5:066, Section 12(1).

the point of service to the place of consumption and . . . keep the service line in good repair.”<sup>37</sup>

The literal language of the regulation places responsibility on the water utility for the service connection regardless of the meter’s location. This responsibility extends to “the meter and the meter box.” Section 12(1)(a) makes no exception for meters that are located within buildings. Moreover, Section 12(2) establishes the customer’s responsibility as beginning at the “point of service.” Commission regulations define “point of service” as “the outlet of the customer’s meter.”<sup>38</sup>

Section 12(2) further places responsibility on the customer to keep the “service line in good repair.” Our regulations defined “service line” as “the water line from the point of service to the place of consumption.”<sup>39</sup> As “point of service” is the outlet of the meter, Section 12(2) effectively requires the customer to maintain the pipe from the meter to the place of consumption. The water utility would by implication have responsibility for that portion of the service connection before the meter outlet.

NKWD argues that this interpretation of 807 KAR 5:066, Section 12, ignores the regulation’s intent. It asserts that 807 KAR 5:066, Section 12, was intended to address typical meter installations only, not those instances when a meter is located inside a building. It points to 807 KAR 5:066, Section 12(1)(b), which 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. The intent of the regulation, NKWD argues, is for a meter to be located “near the main with a service line extending from the meter to the

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<sup>37</sup> 807 KAR 5:066, Section 12(3).

<sup>38</sup> 807 KAR 5:066, Section 1(5).

<sup>39</sup> 807 KAR 5:066, Section 1(7).

building.”<sup>40</sup> The water utility is then responsible for the connection from the main to the meter and the customer is responsible for the service line from the meter to the building. The regulation, NKWD suggests, was not intended to apply to meters within a building.

The history of Section 12 fails to support this interpretation. Prior to the most recent revision of 807 KAR 5:066, the regulation made no reference to “meter” or “meter box” and expressly limited a water utility’s responsibility to furnishing and installing the service connection to the “curb box” or “curb stop.”<sup>41</sup> Furthermore, it expressly stated that the customer’s responsibility to install his or her service line began from the curb stop.<sup>42</sup> If the Commission intended a water utility’s responsibility to end at the utility right-of-way, no revision in the regulation was necessary and no reference to the meter or meter box was required. The Commission’s revision to Section 12 reflects a clear and unambiguous intent to make the metering point the demarcation line for utility and customer responsibilities.<sup>43</sup>

Based upon our review of the regulation, we find that 807 KAR 5:066, Section 12, requires a water utility to install and maintain the service connection from the distribution

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<sup>40</sup> NKWD’s Response to Commission Staff’s Fifth Information Request, Item 6; NKWD’s Petition for Rehearing at 2-3.

<sup>41</sup> See *infra* notes 49-54 and accompanying text.

<sup>42</sup> See *infra* notes 50 and 53 and accompanying text.

<sup>43</sup> The revision also appears intended to reduce disputes over the amount of water lost through defective or poorly maintained service connections. Under prior versions of Section 12, a customer was responsible for any water loss that resulted from a break in the service line after the curb stop. If a meter is located beyond the curb stop and after the leakage point, determining the amount of the loss for which the customer is responsible is difficult and subject to dispute. By making the customer responsible for the portion of the service connection after the metering point, any water loss resulting from a poorly maintained service line on the customer’s side of the meter would be registered by the meter and reflected in the customer’s bill. See, e.g., Case No. 1992-00214, G. Ted Latham v. Kentucky-American Water Company (Ky. PSC Sept. 21, 1992) at 3.

main to the meter and meter box and specifically reject the position that the regulation requires a different result when a meter is located inside a building or other structure.

#### Acquired Service Connections and Pre-June 7, 1992 Connections

While the present Section 12 clearly applies to service connections installed on or after June 7, 1992 (the date on which the present Section 12 became effective), NKWD questions its applicability to service connections acquired from other water suppliers or installed prior to that date. As shown in Table I below,<sup>44</sup> NKWD acquired approximately 12,542 of the connections at issue from municipal water suppliers<sup>45</sup> that were not subject to Commission jurisdiction.<sup>46</sup> These suppliers did not assume responsibility for service connections beyond the curb stop and did not possess legal

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<sup>44</sup> NKWD's Response to Commission Staff's Fifth Information Request, Item 1. NKWD also includes water distribution systems formerly owned by the cities of Independence, Crestview, and Wilder. See Case No. 1989-00211, The Application of Kenton County Water District No. 1 (A) For Authority to Merge the City of Independence Water Distribution System as Provided by an Existing Contract; (B) For Certificate of Public Convenience and Necessity to Operate the Merged System Under the Uniform Rates of the District; and (C) For Authority to Defeas the Remaining Bond Indebtedness of the City Water System in the Approximate Principal Amount of \$269,000 With Funds Held by the District (Ky. PSC Nov. 1, 1989); Case No. 1990-00219, Notice of the Proposed Merger of City of Crestview, Kentucky Water Distribution System by Campbell County Kentucky Water District (Ky. PSC Oct. 2, 1990); Case No. 1998-00053, Transfer of Certain Water Distribution Facilities, Serving 70 Retail Customers, by City of Wilder to Northern Kentucky Water Service District, as a Mutual Convenience to These Adjoining Systems (Ky. PSC April 7, 1998). NKWD does not report any inside building meters located on these systems.

While Table I indicates that NKWD acquired the city of Newport's facilities in 2002, most of the service connections that were acquired were of significant vintage. Newport began operating a water system in 1873. There is no evidence in the record to suggest that the city undertook any major renovation of these connections in the 10 years preceding the transfer of its water system to NKWD. See City of Newport, Kentucky Water Works Department, Rules and Regulations at 21 (May 21, 2000) (attached to *Prefiled Testimony of Richard Harrison*).

<sup>45</sup> Transcript of 8/8/2007 Hearing at 39; NKWD's Response to Commission Staff's Fifth Information Request, Item 1.

<sup>46</sup> The retail water distribution operations of all cities have been exempted from Commission jurisdiction since 1936. 1936 Ky. Acts 300. *But see City of Olive Hill v. Public Service Commission*, 203 S.W.2d 68 (Ky. 1948); *overruled by McClellan v. Louisville Water Company*, 351 S.W.2d 197 (Ky. 1961).

title or ownership of service connections beyond that point.<sup>47</sup> Noting that it “could not acquire what the predecessor did not own,” NKWD asserts that it cannot assume maintenance or ownership of these connections merely because of Section 12.<sup>48</sup> It further notes that most of these connections were installed prior to June 7, 1992.

<b>TABLE I</b>			
<b>System</b>	<b>Acquiring Utility</b>	<b>Inside Building Meters</b>	<b>Year Acquired</b>
Covington	KCWD1	562	1977
Highland Heights	CCKWD	313*	1992
Silver Grove	CCWD1	0*	1983
Dayton	CCWD1	1,410	1955
Fort Thomas	CCWD1	3,943	1955
Bellevue	CCWD1	2,161	1955
Newport	NKWD	4,153	2002
*Number of meters for Silver Grove is included in the total number for Highland Heights.			

Of equal concern to NKWD are the approximate 1,500 service connections with inside building meters that NKWD or its predecessors allowed.<sup>49</sup> Many of these connections were authorized and installed prior to the present version of Section 12.<sup>50</sup> NKWD asserts that these service connections were installed in accordance with the Commission’s then-existing regulation.

Based upon our examination of the history of Section 12 and of NKWD’s acquisition of water supply systems, we find that most of NKWD’s service connections that involve inside metering were installed prior to June 7, 1992 and generally conform

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<sup>47</sup> NKWD Witness Harrison made inquiries to the cities of Covington and Newport regarding their practices prior to transferring their distribution facilities to NKWD or its predecessors. Each reported that it did not own, repair, or replace service lines that extend from the main to a meter inside a building. *Prefiled Testimony of Richard Harrison* at 8.

<sup>48</sup> NKWD’s Response to Commission Staff’s Fifth Information Request, Item 6.

<sup>49</sup> *See supra* note 16 and accompanying text.

<sup>50</sup> *Id.*

to the Commission's regulation in effect at the time of their installation. NKWD's current practice of limiting its maintenance and ownership responsibility for these service connections to the portion of the connection before the curb box or curb stop appears consistent with Commission regulations in effect prior to June 7, 1992.

In 1935, less than a year after the Commission's creation, the Commission promulgated Rule 62, which addressed service connections for water utilities. Rule 62 required a water utility to install at its own cost and retain ownership of "[t]he pipe between its main and the customer's curb line, a street connection, stop cock and curb box."<sup>51</sup> As to the customer's responsibility, it provided:

The customer shall furnish and lay the necessary pipe to make the connection from the curb line to the place of consumption and shall keep the service line from the street connection stop cock to the place of consumption in good repair; but the utility shall pay the expense of any repairs to that portion of the service line between the street connection stop cock and the curb line.<sup>52</sup>

Rule 62 termed this customer-furnished pipe as the "customer's service line"<sup>53</sup> and required that it "extend to the curb line and to that point thereon easiest of access to the utility from its existing distribution system."<sup>54</sup>

In 1959, the Commission revised this rule to clarify the responsibilities for the ownership of service connections. The revised rule provided:

(a) Utility's responsibility. In urban areas with well-defined streets the utility shall furnish and install at its own expense for the purpose of connecting its distribution system to the

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<sup>51</sup> Administrative Order No. 5, Rules and Regulations for the Government of Electric, Gas and Water Utilities (effective April 1, 1935), Rule 62(b).

<sup>52</sup> *Id.*, Rule 62(c).

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*, Rule 62(e).

customer's premises **that portion of the service line from its main to and including the curb box, if curb box is used, otherwise to the curb stop.** The curb stop may be installed at a convenient place between the property line and the curb. All services shall include a curb stop.

(b) Customer's Responsibility. The customer shall furnish and lay the necessary pipe to make the connection from the curb stop to the place of consumption and shall keep the service line in good repair and in accordance with such reasonable requirements of the utility as may be incorporated in its rules and regulations.<sup>55</sup>

This rule for service connections remained in effect until 1992.<sup>56</sup>

On June 7, 1992, the present version of Section 12 became effective. It provided:

(1) Ownership of service.

(a) Utility's responsibility. The utility shall furnish and install at its own expense for the purpose of connecting its distribution system to the customer's premises that portion of the service connection from its main to and including the meter and meter box. The utility may recoup this expense from the customer in accordance with KRS 278.0152.

(b) In areas where the distribution system follows well-defined streets and roads, the customer's point of service shall be located at that point on or near the street right-of-way or property line most accessible to the utility from its distribution system. In areas where the distribution system does not follow streets and roads, the point of service shall be located as near the customer's property line as practicable. Prior to installation of the meter the utility shall consult with the customer as to the most practical location.

(2) Customer's responsibility. The customer shall furnish and lay the necessary pipe to make the connection from the point of service to the place of consumption and shall keep

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<sup>55</sup> PSC-W, Rule XIII(1) (effective Nov. 28, 1959) (emphasis added).

<sup>56</sup> The Commission's administrative regulations governing the provision of water service were amended or recodified in 1979 and 1982. On neither occasion, however, were the provisions related to water service connections revised.

the service line in good repair and in accordance with such reasonable requirements of the utility as may be incorporated in its rules and administrative regulations.

The 1992 revision redrew the line of demarcation for ownership and maintenance responsibilities. It eliminated the terms “curb stop” and “curb box” from the regulation and shifted emphasis to the meter and meter box. A utility’s responsibility for the service connection now included the service connection up to and including the meter and the meter box. The regulation established the customer’s responsibility as commencing at the “point of service,” which it defined as “the outlet of the customer’s water meter.”<sup>57</sup>

To hold NKWD responsible for the maintenance and ownership of the portion of the service connection from the curb stop to the meter requires retroactive application of the present version of Section 12 to the service connections in question. “Regulations, like statutes, are ordinarily presumed not to have retroactive effect.”<sup>58</sup> We find no evidence of any intent to apply the revision to then-existing service connections. To the contrary, references in Section 12 to a water utility’s obligation to furnish and install connections strongly suggest the regulation was to apply to new service connections that were not presently in existence. Moreover, when reporting the fiscal impact of the proposed revision, the Commission noted no costs associated with the acquisition or replacement of service connections to comply with the proposed revision.<sup>59</sup> Retroactive

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<sup>57</sup> 807 KAR 5:066, Section 1(5).

<sup>58</sup> *Bauer v. Varsity Dayton-Walther Corporation*, 118 F.3d 1109, 1111 n.1 (6th Cir. 1997). See also *United Sign Ltd. v. Commonwealth*, 44 S.W.3d 794 (Ky. App. 2000); KRS 446.080(3).

<sup>59</sup> Public Service Commission, Regulatory Impact Analysis (filed with Legislative Research Commission Nov. 15, 1991).



application of the revisions would have required such acquisition and entailed significant costs.<sup>60</sup>

In the absence of any evidence for retroactive application, we find any attempt to apply Section 12 retroactively to the service connections in question would be unlawful. In those instances where a meter is located inside a building and the service connection in question existed prior to June 7, 1992, the present Section 12 does not make NKWD responsible for the portion of the service connection beyond the curb stop or curb box.<sup>61</sup>

We further find that Section 12 should not apply to service connections with inside building metering that NKWD acquired from non-jurisdictional water suppliers regardless of the date of installation. Because Commission regulations are not applicable to non-jurisdictional entities, Section 12 would not have governed these entities' efforts to furnish and install service connections. Furthermore, it appears that most of these connections were installed prior to June 7, 1992 and, therefore, the present Section 12 would not have applied to their installation had they been subject to Commission jurisdiction. Finally, to require NKWD to assume responsibility for portions

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<sup>60</sup> The lack of opposition to the proposed revision further suggests that neither the Commission nor the water utility industry considered that the revisions would be retroactively applied. Despite the significant changes that the revision represented, no person objected to the proposed revision. The Commission received only one comment on the proposed revision. Neither of NKWD's predecessors submitted written comments or presented testimony at the hearing on the proposed revision. See Statement of Consideration Relating to 807 KAR 5:066 (filed with Legislative Research Commission Jan. 7, 1992). Some opposition to the proposed revision would likely have been present if the proposed revision were to be applied retroactively.

<sup>61</sup> Our interpretation will not affect NKWD's responsibility for service connections in which its metering equipment is located outside of a building or structure. NKWD's responsibility will run from the distribution main to the meter or meter box. The prior version of Section 12 required the curb stop to be placed between the "property line and the curb." NKWD's typical meter installation places the meter in that vicinity. As the meter box houses a valve to shut off water service to the customer, the meter box effectively serves as the curb stop. See *supra* notes 10-13 and accompanying text. Should NKWD subsequently replace an existing service connection, the present version of Section 12 will govern NKWD's responsibilities for ownership and maintenance of that connection. To the extent that a meter is placed inside a building as part of that new service connection, NKWD's responsibility will run from the distribution main to the meter.

of service connections for which it lacks an ownership interest is unreasonable and inconsistent with the literal language of Section 12.

Deviation from 807 KAR 5:066

Commission Regulation 807 KAR 5:066, Section 18, authorizes the Commission to permit deviations from 807 KAR 5:066. In failing to require revisions to the water districts' rules to conform with the 1992 revision to Section 12 and permitting the water districts to republish rules inconsistent with that revision, the Commission effectively granted to NKWD and its predecessors a deviation from that revision.

The 1992 revision to Section 12 significantly altered a water utility's responsibilities for the maintenance and ownership of service connections. Its promulgation effectively voided the published rules of Campbell County Kentucky Water District and Kenton County Water District No. 1 that limited utility responsibility to the portion of the service connection from the distribution main to the curb stop. These water districts, however, did not amend their rules to conform to the revised Section 12, but instead republished their existing rules.<sup>62</sup> The Commission accepted these republished rules and permitted them to become effective without comment.

Similarly, upon its formation, NKWD published rules regarding service connections that differed from the requirements of Section 12 and then republished them on two additional occasions. In each instance, the Commission took no action to prevent these rules from becoming effective.<sup>63</sup>

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<sup>62</sup> See *supra* note 25-29 and accompanying text. NKWD Witness Harrison testified that the service connections could be brought into compliance with Section 12 only by moving the meters in question. He estimated the cost of moving the 14,000 meters at approximately \$7 to \$10 million. *Prefiled Testimony of Richard Harrison* at 12.

<sup>63</sup> See *supra* note 30-31 and accompanying text. See also NKWD Tariff, P.S.C. No. 2, Original Sheet No. 15 (effective Oct. 1, 1999); NKWD Tariff, P.S.C. No. 2, Original Sheet No. 15 (effective June 1, 2000).

While KRS 278.280(2) permits the Commission to prescribe regulations for the provision of utility service and requires a utility's compliance with these regulations, the Commission's failure to suspend or otherwise strike the water district's non-conforming rules constituted a grant of a deviation from the requirements of Section 12. Once the water district's non-conforming rules became effective, KRS 278.160 required their enforcement.<sup>64</sup> The Commission still possessed the authority to revoke the deviation and require the water districts' compliance with Section 12, but only after reasonable notice and a formal hearing.<sup>65</sup>

We find that the Commission authorized NKWD and its predecessors to deviate from the requirements of Section 12 from June 7, 1992 to the present. That the Commission on six separate occasions permitted the water districts to publish rules for service connections that did not conform to Section 12 can only be interpreted as the grant of a deviation from those requirements.

#### Continuation of the Deviation

While NKWD's request for deviation has focused primarily on service connections installed prior to the Order of April 26, 2006, it has also sought a deviation for future service connections when the connection's metering equipment is located inside a building. While it has supplied several arguments for permitting a deviation from the requirements of Section 12 for service connections installed prior to April 26, 2006, it has offered only one argument for post-April 26, 2006 connections. It asserts that in urban areas the lack of adequate space between a street and a customer's

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<sup>64</sup> See, e.g., Case No. 1993-00380, Kentucky Power Company: Alleged Violations of KRS 278.160 and Commission Regulation 807 KAR 5:041 (Ky. PSC Oct. 18, 1993) ("KRS 278.160 requires a utility to enforce the rules and regulations set forth in its filed tariffs.")

<sup>65</sup> KRS 278.260(1); KRS 278.280(1).

proposed building may prevent the installation of a large meter outside a building and require its location inside a building.<sup>66</sup> NKWD Witness Harrison conceded that this problem can be addressed through a redesign of the proposed building to address the limited space for metering equipment.<sup>67</sup>

Policy considerations outweigh this argument. If a water utility owns and installs the service connection to the meter, responsibility for any water loss due to a poorly maintained or conditioned service line can be properly allocated. The customer is responsible for and is billed for all water running through his or her water meter. If his portion of the service line leaks, he pays for the cost of the lost water and has an economic incentive to repair the line. Conversely, if the loss occurs prior to the meter, the water utility has an incentive to repair the line.

Contrast that result to the scenario wherein the water utility's responsibility ends prior to the meter. In that instance, a leak may occur on that portion of the service line for which the customer is responsible. Since the lost water does not run through the meter, however, the customer is never billed for its cost. Should the customer discover the leak, he has little incentive to repair or replace the service line. If he repairs the service line, he incurs the costs of repair, but achieves no savings on his bill. If he ignores the leak and makes no repairs, his bill remains unaffected.

Section 12 promotes the proper economic signals to the water utility and to the customer to ensure a more efficient use of water. It creates incentives for reducing water loss from leaking and poorly maintained service lines and encourages customers and water utilities to perform preventive maintenance measures.

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<sup>66</sup> *Prefiled Testimony of Richard Harrison* at 4.

<sup>67</sup> Transcript of 8/8/2007 Hearing at 64.

In light of these policy considerations, we find that NKWD should not be permitted any further deviations from Section 12 absent a showing of good cause. In those instances in which NKWD determines that a deviation for a service connection is appropriate, it should apply for a deviation for that service connection.

The Commission further finds that NKWD should develop a plan for the elimination of existing metering arrangements that do not comply with the current version of Section 12. We recognize that elimination of these arrangements can occur in a cost-effective manner only if performed over an extended period of time. The development and implementation of such a plan should begin immediately. Failure to plan for such elimination will result in NKWD and its ratepayers incurring the costs of easily avoidable water losses. In view of the expected additional demands to be placed on NKWD in the future, elimination of these losses may reduce expected increases in general service rates or at least forestall such increases. Finally, elimination of these arrangements is likely to reduce litigation between the water utility and customers over responsibility for such losses.

#### SUMMARY

Having reviewed the evidence of record and being otherwise sufficiently advised, the Commission HEREBY ORDERS that:

1. NKWD's request for a deviation from the requirements of Administrative Regulation 807 KAR 5:066, Section 12(1)(a), is granted in part and denied in part.
2. The portion of NKWD's request that pertains to service connections made to the water distribution mains of NKWD or its predecessors prior to June 7, 1992 or to service connections made to water distribution mains that NKWD acquired from

municipal utilities and made prior to the date of NKWD's acquisition of those mains is denied as moot.

3. The portion of NKWD's request that pertains to service connections made to NKWD water distribution mains on or after the date of this Order is denied.

4. The portion of NKWD's request that pertains to service connections with inside building metering made to NKWD water distribution mains from June 7, 1992 through the date of this Order is granted.

5. For any service connection constructed and installed after the date of this Order for which NKWD wishes to place responsibility upon a customer for ownership or maintenance for any portion of that service connection running from NKWD's distribution main to the customer's meter, NKWD shall apply to the Commission for a deviation from Administrative Regulation 807 KAR 5:066, Section 12(1)(a). NKWD shall explain in its application why the requested relief is necessary and why, in light of the Commission's Order of April 26, 2006, NKWD permitted the service connection to be made in a manner that would require a deviation.

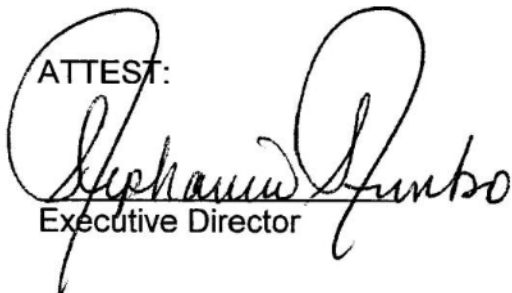
6. Within 30 days of the date of this Order, NKWD shall file revised tariff sheets with the Commission that clearly set forth the responsibilities of the utility and the customer for the ownership and maintenance of its service connections as established by this Order.

7. No later than October 31, 2008, NKWD shall file with the Commission a written plan for the gradual elimination of service connections that presently require the placement of a registering meter inside a building or other structure.

Done at Frankfort, Kentucky, this 18<sup>th</sup> day of July, 2008.

By the Commission

ATTEST:

Handwritten signature of Stephanie Gumbo in cursive script, written over a horizontal line.

Executive Director