

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF NORTHERN KENTUCKY)	
WATER DISTRICT FOR AN ADJUSTMENT)	CASE NO.: 2010-00094
OF RATES, ISSUANCE OF BONDS, AND)	
TARIFF CHANGES)	

BRIEF OF INTERVENER, NORTHERN KENTUCKY TEA PARTY,
OBJECTING TO PROPOSED ADJUSTMENT OF RATES, ISSUANCE OF BONDS,
AND TARIFF CHANGES

PRELIMINARY STATEMENT

In June of 2010 the Northern Kentucky Water District (“NKWD”) petitioned the Commonwealth of Kentucky Public Service Commission (“PSC”) for a phased in increase of rates and the issuance of bonds for financing. On October 26, 2010 the PSC granted the Northern Kentucky Tea Party (“NKTP”) the right of limited intervention in this matter. The NKTP, by counsel, did participate in a hearing before the PSC on October 27, 2010 and now respectfully submits this Brief to the PSC requesting denial of the requested rate increase and issuance of bonds.

The only justification submitted by the NKWD for the requested rate increase and issuance of bonds is compliance with regulations by the United States Environmental Protection Agency (“EPA”). The EPA is a regulatory agency that is currently involved in a struggle with the Congress of the United States as to whether or not it has the power to issue regulations and impose taxes on the citizens of this Country. The United States Supreme Court has determined cases that hold the Tenth Amendment of the Constitution of the United States prevents the Federal Government from imposing unfunded mandates on the citizenry and various states.

The NKWD has not established there is a safety need that justifies the imposition of the requested rate increases. The NKWD has clearly indicated it is proceeding with this rate increase only because of EPA mandates.

No governmental agency has represented the interests of the customers of the NKWD on this issue. Intervener respectfully asks the PSC to be the governmental entity that does act in the interests of the NKWD's customers and deny this unnecessary rate increase.

The reasons behind this request for denial of the requested rate increase are as follows:

I. Is The Water Provided By The Northern Kentucky Water District Safe For Drinking?

At the PSC hearing on October 27, 2010, officers of the NKWD were asked on numerous occasions whether or not the water provided by the NKWD was safe for drinking. The officers of the NKWD refused to answer this question with a "yes" or a "no" but instead responded with a company line that the water quality met current regulations.

In 2009, the NKWD produced a pamphlet entitled "2009 Water Quality Report." In that brochure, the NKWD stated that its drinking water meets all of the EPA's health standards. The brochure goes on to state that the NKWD's lab gathers and analyzes water samples from over one hundred fifty (150) locations each month, which is far more than Federal and State regulations require, but they want to make sure that we have an accurate picture of the water quality. Since the NKWD has elected to exceed Federal standards and requirements for sampling, it would seem reasonable to assume that it should be able to simply answer yes or no as to whether or not its water is safe for drinking.

It is extremely hypocritical for the NKWD to avoid answering this question when in 2009 it spent between Thirty Five Thousand Dollars (\$35,000.00) and Thirty Six Thousand Dollars (\$36,000.00) to purchase water bottles for bottling tap water. To the staff of the PSC, the stated

purpose of this expense was for bottled water to promote the tap water produced and tap water consumption education and communication goal. The NKWD did not include the cost for employees to fill these water bottles, or the equipment to fill and seal the bottles, a cost that would likely mean this expense is in six (6) figures rather than the amount stated. If the water is not safe, why would the NKWD be putting it in bottles to promote the water it is producing and use it for education and communication goals? Is the NKWD claiming it is giving out water bottles of its product that are not safe for public consumption?

If the water from the NKWD is not safe for consumption, why are the customers of the NKWD not being warned of any dangers and in fact the NKWD is giving away bottled water to promote its product? Conversely, if the water is safe for drinking, then why is the NKWD imposing a significant tax on its consumers for a benefit that is unnecessary? Following a PSC public meeting on October 14, 2010, and in a NKWD Board meeting on October 19, 2010 officers of the NKWD stated the only reason the new treatment system was being installed is because it is mandated by the EPA. At no time has the NKWD provided any documentation that the new treatment is necessary or will make the water it produces for consumption any safer. Instead, the NKWD has consistently stated that its only concern is compliance with the EPA.

II. The Northern Kentucky Water District Has Not Acted In The Best Interests Of Its Customers.

In filings with the PSC, the NKWD stated it keeps in mind its Vision, Mission, Values, and more specifically Key Goals, when making expenditures. The NKWD claims its mission is to provide its customers a safe, clean and sufficient water supply through a reliable system that meets all State and Federal regulations at the lowest reasonable cost. As one of its values, the NKWD states that it operates in a cost effective manner resulting in the lowest reasonable rate. With the NKWD seeking to impose a twenty-five percent (25%) rate increase, and with even

higher rates on the horizon, it is hard to imagine how the NKWD can claim it is living up to its mission and values.

Another one of the NKWD's claimed values is that it is fair, honest and responsive in meeting customer expectations. This claim is almost laughable given the fact that the NKWD has made absolutely no effort to inform the public of the current request and the future rate increases or in any way justify why the rate increases would provide any health or safety benefit.

Before the PSC, the NKWD attempted to justify its actions by claiming it did all that it was required to do by law. That did not fool anyone including the commissioners of the PSC who indicated that merely doing the bare legal minimum would not in any way give notice to the average customer of the proposed rate increases or the reasons for such an increase. In addition, at a public hearing in the Northern Kentucky area the NKWD refused to provide any information about the rate increase or the reasons for it. Members of the public were allowed to make statements, but not ask any questions and the NKWD did not provide any information. Honesty? Fairness? Responsiveness? It is hard to imagine how the NKWD could claim this was fair, honest and responsive in meeting customer expectations. What is even more disconcerting is the fact that only at the hearing in front of the PSC on October 27, 2010 did the NKWD disclose it would be seeking additional and likely higher rate increases within two (2) to three (3) years. In other words, the NKWD did not want its customers to know this proposed twenty five percent (25%) rate increase was merely the tip of the iceberg.

One of the claimed key goals of the NKWD is continuous interaction with their customers, community, legislative bodies and regulatory agencies to inform and educate them as to how the NKWD operates and plans to meet their needs. In responding to inquiries from the staff of the PSC, the NKWD included expenses for membership in the AWWA, Metropolitan

Club, 2010 Northern Kentucky Chamber of Commerce, flying in an outside consultant, and the Municipal Government League of Northern Kentucky. The stated purpose of these expenditures is to monitor legislation that impacts on the operation of the NKWD, attend meetings with legislatures who control regulation and funds available for projects, education and communication, and outsource public relations to assist in the education and communication goals of the NKWD. There was even a charge for Aynie's Catering for a symposium involving a gathering of local government leaders where the NKWD could effectively communicate with many leaders at one venue to meet its education and communication goals and provide shared efforts with Sanitation District 1 and the Northern Kentucky Area Planning Commission.

The problem is that nowhere did this education and communication involve the customers of the NKWD nor even apparently local governments who were not made aware of the proposed rate increase or the reasons which would justify such an increase.

III. The Northern Kentucky Water District Has Not Justified Its Reasons For The Rate Increase Or That It Is Needed.

In support of its Petition for a rate increase, the NKWD called on four (4) advisors, Roger Peterman, who served as bond counsel for the NKWD, Adam Davey, a CPA for Von Lehman & Company, Inc. who provided auditing services and consulting services to the NKWD for the bond application, Paul Herbert who provided a rate design study for the rate increase, and Keith Brock, a financial advisor from a regional investment banking firm. In what has become all too common in government these days, none of these individuals had read any of the Petition for rate increase other than the information they provided. Mr. Davey, the CPA, admitted that his "audit" was nothing more than adding up numbers provided by the NKWD.

Testimony at the hearing before the PSC elicited an admission from the NKWD that it has on the books plans for One Hundred Sixty Three Million Dollars (\$163,000,000.00) in

construction in the next five (5) years. None of the above mentioned individuals knew anything about that. Not only would this information be extremely important to the customers of the NKWD who are going to have to pay for this future construction, but it would seemingly be of some interest to the bond counsel who would want to know about the ability of the NKWD to pay off its bonds, a CPA who would want to know the effect of these future costs, and a financial advisor who would want to know how these projects would affect the ability of the NKWD to obtain revenue and pay its expenses. Unfortunately, all three (3) of these individuals and their firms have ongoing relationships with the NKWD and apparently that was more of a concern to them.

The financial crisis of 2008 was not limited to banks and Wall Street firms that sold securities. Before AIG and Lehman Brothers, bond insurers such as MGIA and Ambac Financial Group needed bailouts and then added to the financial mess by suing entities such as Merrill Lynch and Countrywide Financial. Clearly, the ability of the NKWD to rely upon its customers to pay off bonds is a major concern, especially since potential future debt was not even considered by the bond attorney.

As mentioned above, the NKWD claims as part of its mission to provide a water supply that meets all State and Federal regulations at the lowest reasonable cost. The key word here is reasonable. At the PSC hearing, it was admitted the estimated cost per customer for the implementation of the regulations in question was approximately Five Dollars and 50/100 (\$5.50) per customer. The actual cost is One Hundred and Twenty Six Dollars (\$126.00) per customer, an increase by twenty three (23) times of the initial projected cost. Further, the NKWD admitted it had not performed a cost benefit study or examined any other options. Instead, the one and only concern of the NKWD was to comply with the regulations of the EPA.

It is very interesting to note that the only thing the NKWD employees seem to know for certain is what penalties they might face from the EPA. They did not know if there was a need for these regulations and they did not know the basis for any alleged health or safety reasons for these regulations. Given these facts, it is hard to imagine how the NKWD can claim with a straight face that one of its values is being fair, honest and responsive in meeting customer expectations. Presumably the officers and employees of the NKWD were not drafted into the positions they hold and if their primary concern is how much they might be fined, there is a solution to avoid facing these alleged penalties.

IV. What Is The Science?

The Federal and private agencies charged with evaluating risks and hazards to the general public by exposure to chemicals agreed that the data from studies involving exposure to at least the main by-products formed during the disinfection process by chlorination are inconclusive and agree that no discernable risk exists at current levels in drinking water. This includes the EPA's own data. Attached as an Exhibit is an article from the EPA entitled "Disinfection By-product Health Effects". At the end of the first paragraph, this article from the EPA states there is considerable uncertainty involved in the results of high-dose, toxicological studies of some by-products occurred in disinfecting drinking water to estimate the risks to humans from chronic exposure to low doses to these and other by-products. In paragraph two (2), the EPA states it cannot conclude there is a causal link between exposure chlorinated surface water and cancer but claims that studies have suggested an association, albeit small, between bladder, rectal, and colon cancer and exposure to chlorinated surface water. The EPA goes on to state there remains considerable debate in the scientific community on the significance of these contradictory findings concerning chlorinated water and disinfection by-products. The EPA report includes

that while additional information, especially on health effects is needed, regulations were considered the best course of action to reduce potential risks from disinfection by-products in the near term. In other words, the EPA is stating the basis for the regulations is only “potential” not clearly established risks documented by scientific evidence.

Uniform and mandated federal drinking water standards are forcing our community to make considerable sacrifices. People on fixed incomes are hard pressed to meet the rising regulatory costs associated with water, sewer and utilities. The mandating of standards and methods eliminates the ability of state and localities from setting localized drinking water standards that would allow them to spend their limited resources to maximize public health and well-being. The NKWD’s rate increase does not treat all customers equally. Customers served by hard piped systems will see a twenty-five percent (25%) rate increase. Customers served as bulk water customers by water haulers will see a fifty-four percent (54%) increase in rates. If the EPA’s risk assessment is at all accurate, the benefits of these regulations are so small that the costs will lead to a net reduction in public health and quality of life.

The Center for Disease Control data tracking the incidence and mortality rate from the types of cancer purported to result from exposure to disinfection by-products is not consistent with the claims made by the EPA. Bladder and colon-rectal cancers are decreasing or are the same in areas that use chlorination disinfection as compared to at least some communities that are rural and use untreated well water. Overall, these types of cancers in areas that use chlorination are decreasing since the inception of the chlorinated water treatment. Attached is a death rate report for Kentucky by county for the years 2003 through 2007 for bladder cancer. For Kenton County the rate is stable while for Campbell County the trend is falling. This report mirrors the national study which indicates rates of bladder cancer have been decreasing since

1975. This decrease in these types of cancers is occurring in the same time period when chlorination is increasing.

The studies that do show some weak link between disinfection by-products to specific types of cancers resulted from experiments that subjected laboratory rats to at least ten thousand (10,000) times higher exposure concentrations than the highest current exposures from drinking water. These studies are similar to the studies the Federal government used to make recommendations to stop eating eggs and saccharin, which were overturned later recognizing the fallacy of these flawed studies. As mentioned above, the EPA report itself states there is considerable uncertainty in the results of these high dose, toxicological studies which would estimate the risk to humans from chronic exposure to low doses of these and other by-products. Over more than twenty (20) years, the EPA, along with numerous other agencies, groups, organizations, and scientists have produced a voluminous amount of information that does not provide a clear and concise justification for the regulations which the NKWD is proposing to follow.

The EPA is known to be considering regulating carbon dioxide emissions based upon “scientific” evidence provided by the International Panel on Climate Control (“IPCC”). Attached is a copy of an interview with German economist and IPCC official Ottmar Edenhofer. In this interview, Mr. Edenhofer clearly admits the next world climate summit in Cancun has nothing to do with environmental protection and is instead an economic summit during which the distribution of the world’s resources will be negotiated. Like the IPCC, the EPA is not relying upon scientific evidence but is instead redistributing wealth by forcing exorbitant taxes upon citizens of the United States including the customers of the NKWD.

V. What Is The Law On Unfunded Mandates?

The NKWD claims it has no choice but to comply with the unfunded mandates of the EPA. That is not the law and the mandates of the EPA can and are being successfully challenged.

Article 1 § 7 of the United States Constitution mandates that all bills for raising revenue shall arise in the House of Representatives. The unfunded mandates of the EPA are clearly a tax upon the customers of the NKWD as well as other citizens of the Commonwealth of Kentucky when the regulations concerning the Clean Water Act are applied to them. These taxes have never been approved by Congress.

On June 27, 1997 the United States Supreme Court decided the important case of *Printz v. U.S.* (1997) 117 Sup. Ct. 2365. That case involved the constitutionality of the Brady Gun Control Act and directed state law enforcement officers to participate in the federally mandated program by requiring them to conduct background checks on prospective handgun purchasers. The Petitioners, chief law enforcement officers for counties in Montana and Arizona filed actions challenging the constitutionality of this provision. Specifically, they contended that the congressional action compelling state officers to execute federal laws was unconstitutional under the Tenth Amendment to the United States Constitution, which reads:

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

117 Sup. Ct. at 2384.

In its decision in *Printz*, the United States Supreme Court relied heavily upon environmental cases including *Brown v. EPA*, 521 F.2d 287, 838-842 (9th Cir. 1975).

In *Printz*, the Supreme Court specifically approved *Brown I*, *Brown II*, and related cases as follows:

“Finally, and most conclusively in the present litigation, we turn to the prior jurisprudence of this Court. Federal commandeering of State governments is such a novel phenomena that this Court’s first experience with it did not occur until the 1970’s, when the Environmental Protection Agency promulgated regulations requiring states to prescribe auto emissions testing, monitoring and retrofit programs, and to designate preferential bus and carpool lanes. The Courts of Appeals for the Fourth and Ninth Circuits invalidated the regulations on statutory grounds in order to avoid what they perceive grave constitutional issues. See, *Maryland v. EPA*, 530 F.2d 215, 226 (C.A. 4 1975); *Brown v. EPA*, 521 F.2d 287, 838-842 (C.A. 9 1975); and the District of Columbia Circuit invalidated regulations on both constitutional and statutory grounds, see *District of Columbia v. Train*, 521 F.2d 971, 944 (C.A. DC 1975). After we granted certiorari to review the statutory and constitutional validity of the regulations, the government declined to even defend them, and instead rescinded some and conceded the invalidity of those that remained, leading us to vacate the opinions below and remand for consideration of mootness. *EPA v. Brown*, 431 U.S. 99 (1977). Although we had no occasion to pass upon the subject in *Brown*, later opinions of ours have made clear that the federal government may not compel the states to implement, by legislative or executive action, federal regulatory programs. 117 Sup. Ct. at 2379-2380.

It is now clear that Congress and the EPA do not have unfettered constitutional power to require states to implement federal regulatory programs. The Clean Water Act requires states to implement federal standards and among other things, to adopt certain water quality standards. Based upon the above cases, the validity of these requirements is called into question.

In February of 2010, a CNN poll found that fifty six percent (56%) of the American people believe the Federal Government is so large that it threatens the freedoms of ordinary citizens. Congress is starting to get the message. The REINS Act (Regulations from the Executive In Need of Scrutiny Act) has been introduced in the House of Representatives, HR 3765, has fifty seven (57) co-sponsors. It has also been introduced in the Senate, S. 3826. This Act requires regulatory provisions which exceed a certain monetary value be put to an up or down vote in Congress before they are implemented. The provisions of the Clean Water act would well exceed this limit if implemented throughout the country.

The scale of the EPA's current assault on United States business and individuals is unprecedented. The EPA is a regulatory agency, not a legislative body and it has no authority under the constitution of the United States. Nevertheless, the EPA continues to pursue an agenda without legislative means which is harming business expansion, job creation and economic growth. According to the Wall Street Journal, fifty six (56) Senators in next year's congress are on record supporting bills that would strip the agency of its self delegated powers.

It is clear the NKWD is incorrect when it claims it has no option but to obey the unfunded mandates of the EPA.

VI. The Northern Kentucky Water District Has Failed To Justify Its Rate Increases Under Applicable Law And Regulation.

KRS 278.030 provides in relevant part, that every "utility may demand, collect and receive fair, just and reasonable rates for the services rendered or to be rendered by it to any person." Insofar as the PSC hearings are concerned, the burden of showing "the increased rate or charge is just and reasonable" shall be upon the utility (seeking the rate increase). *See*, KRS 278.190. "Ratepayers have a right to expect reasonable utility rates. Regulators and utilities alike should respect that right." *Kentucky Indus. Util. Customers, Inc. v. Kentucky Utils. Co.*, 983 S.W.2d 493, (1998). The justification proposed by the NKWD is based solely on compliance with the ("EPA's") Stage II Disinfectants and Disinfection Byproducts Rule. *See, also*, 40 CFR Part 141, Subpart V.

1. The Northern Kentucky Water District Failed To Contest The Environmental Protection Agency's Rulemaking At The Time And It Does Not Pursue Legal Avenues Available To It Today To Justify Not Raising Rates, Rendering Its Request Neither Just Nor Reasonable.

Incredibly, with significant rate increases on the horizon, the NKWD failed to contest this rulemaking even though it was one of the few water utilities in the country that apparently has to

invest in what the NKWD claims will be millions of dollars infrastructure improvements to comply with the requirements.¹ To wait until a regulation is promulgated and goes final that will impose millions and millions of dollars on ratepayers is neither just, nor reasonable. NKWD should not be rewarded for its lack of action in challenging the EPA rulemaking – and the very notion that its CEO is compensated hundreds of thousands of dollars for being asleep at the wheel only adds insult to injury.

NKWD has likewise failed to seek re-opening of the rule. There is no evidence, for instance, that it has petitioned the EPA for re-opening of the rule, in light of the gross understatement of the impact of ratepayers both locally and nationally. Nor is there any evidence that NKWD has sought legislative relief, petitioning Kentucky's Congressional Delegation (or for that matter, working through industry groups for more universal consensus building) to deal with the present impact of the EPA rulemaking.

Of course, both of these options depend upon NKWD's ability to seek Congressional action in a scenario that may or may not come to fruition. But what is an option – today – has likewise been completely left out of the NKWD's rate increase proposal – which is discussion, or lack thereof, of the NKWD's pursuit of exemptions, variances, or an extended compliance schedule given the impact on ratepayers – yet both of these mechanisms represent viable alternatives to the significant rate increases proposed by the NKWD. *See also*, 40 CFR 142.20; 42 USC § 300g 4 and 5. Interestingly, one of the mechanisms to qualify for the exemption or variance is that funding is not available to meet the requirements. Thus, if the PSC denies the NKWD's request, the net effect is that the NKWD can pursue the exemption route and obtain a

¹ See, http://water.epa.gov/lawsregs/rulesregs/sdwa/stage2/regs_factsheet.cfm (last visited November 28, 2010) (“The rule applies to approximately 75,000 systems; a small subset of these (about 4%) will be required to make treatment changes. The mean cost of the rule is \$79 million annually. Annual household cost increases in the subset of plants adding treatment are estimated at an average of \$5.53, with 95 percent paying less than \$22.40.”)

significant exemption or variance allowing additional time for compliance (or an open ended finding that the NKWD has already installed the best available technology in light of the lack of a public health impact from the latest regulations), and, consequently, providing for less rate increases, both now and in the future. 42 USC § 300g 4 and 5.

Unfortunately, the NKWD has not pursued any of these options – it did not challenge the EPA rulemaking when the rule was promulgating even though doing so was in the best interest of its ratepayers – and it does not today pursue its recourse to return to the well – the ratepayer well – and to ask the PSC to bless incredible rate increases and for the NKWD to take on significant debt service – all in the name of increasing the (“NKWD’s”) own bureaucracy and budget.

2. Northern Kentucky Water District Has Failed To Justify That Its Requested “Improvements” Are The Lowest Cost Mechanism For Compliance.

Equally importantly, the NKWD has failed to meet its burden in the present matter of justifying that the rate increases are just and reasonable. While the NKWD has pointed to certain infrastructure improvements that they claim are necessary to comply with EPA mandates, the EPA does not specifically require these improvements – to the contrary, the EPA requires compliance with set numeric water quality standards. 40 CFR 141, 620, *et. seq.* The methodology for meeting these standards is left up to the water provider. The NKWD has the burden of demonstrating that its requested increases are just and reasonable. The NKWD argues that EPA compliance is the sole justification, yet compliance does not require building the improvements that NKWD proposes, to the contrary, compliance requires meeting numerical water quality standards. The NKWD had the burden, and failed to meet its burden, to produce expert testimony justifying that the specific improvements it seeks are the lowest cost reasonable

option to meet those standards. The NKTP merely seeks to have the PSC hold NKWD to its burden, and to deny the proposed increases in the absence of such testimony.

VII. Action To Be Taken.

The Chief Executive Officer of the NKWD has claimed in the media that the intervener, NKTP, wants the NKWD to take no action. Nothing is further from the truth. The NKTP wants the NKWD to act and act immediately.

First, the NKWD must determine if there is a safety issue involved with the drinking water that is currently being produced. If there is a genuine safety issue, the NKWD needs to educate its consumers about the problem and the need for the expense involved. The NKWD has utterly failed to take any actions in this area to date and the only thing it has told its customers is that it has to comply with the EPA regulations. Clearly, the customers of the NKWD deserve better treatment.

If, as suspected, the NKWD cannot make a clearly compelling case based on conclusive science that there is a safety reason justifying the oppressive and significant rate increases requested at this time and which will be asked for in the future, then it needs to inform the customers as to why huge tax increases are going to be imposed on them and what can be done to fight these tax increases. This includes urging Congress, which is already leaning in the correct direction to stop the EPA from taking unconstitutional actions. Rather than wait for the EPA to attempt to impose penalties, the NKWD, in conjunction with water districts throughout the Commonwealth of Kentucky and throughout the country, can go to court and obtain a protective order. Recently, the Attorney General of the State of Texas filed a lawsuit against the EPA stating that its mandates are illegal and will cost Texas thousands of jobs by driving up energy costs. In addition, the lawsuit alleges the EPA is using “flawed science” as a basis for its

regulations. Arizona, shortly to be joined by several other states, is taking on the Federal Government over immigration. Numerous states are suing the Federal Government over the mandates of the recently passed health insurance reform bill. The NKWD, in conjunction with other water districts throughout Kentucky, should urge and pressure the Attorney General's office to sue the EPA with the support of the people of Kentucky.

Sitting back and doing nothing is not an option. The best option is for the NKWD to live up to its values and be fair, honest and responsive in meeting customer expectations. Customer expectations certainly would not include paying excessively increased taxes for something that is not necessary for safety. The NKWD and the people of Kentucky do not need to stand alone on this issue. The trend throughout the country is to put a stop to the unconstitutional actions of the EPA and there is certainly support in Congress and the Courts for such a position.

The NKWD has a choice: it can either act in the best interest of its customers or it can bow to unfunded mandates that do nothing more than justify the existence and bureaucracy of the NKWD, not the needs and expectations of its customers.

If the NKWD will not act in the best interests of its customers, the Fiscal Courts of Campbell and Kenton Counties need to replace the Commissioners whom they appoint with people who will replace the current officers and employees of the NKWD with people who will act in the best interest of the customers.

VIII. The Failure of Government.

The customers of the NKWD have been let down by the actions of government officials at all levels.

A. Federal Government.

The Federal Government has allowed to be put in place regulatory agencies which can impose significant unconstitutional tax increases without the approval of Congress. Congress is discovering the error of its ways and is starting to fight back and retake control of this issue. The NKWD, the Attorney General of the Commonwealth of Kentucky, and the people of the Commonwealth of Kentucky should join in this effort to restore the law mandated by the Constitution of the United States.

B. The Board of Commissioners of the NKWD.

The Board of Commissioners have an oversight responsibility for the actions of the NKWD. This involves more than being a rubber stamp for the actions of the officers and employees of the NKWD. It is hard to imagine how the Commissioners of the NKWD can in good conscious claim they have exercised their oversight responsibility to the customers of the NKWD when the NKWD has not established a health or safety need for currently requested major tax increases with significantly higher tax increases on the horizon. There is more to an oversight responsibility than a ceremonial function.

C. The Judge Executives and Fiscal Courts.

The Judge Executives and Fiscal Courts of Campbell and Kenton Counties appoint the Commissioners for the NKWD. What oversight have the Judge Executives and the Fiscal Courts performed after appointing these Commissioners? Why aren't the Fiscal Courts informing the public that there is a safety hazard or the taxpayers are facing massive tax increases because of unfunded mandates? The Judge Executives and the Fiscal Courts are the main governmental entities in Campbell and Kenton Counties. The taxpayers of these counties face not only tax increases from the counties themselves, but also from other entities including the NKWD,

Sanitation District No. 1, the County Library Boards, the fire districts, the extension districts, area planning, health and school districts. The ability of the taxpayers to pay tax increases to all of these entities cannot continue forever, especially in the current economy. At present, it appears as though the Judge Executives and Fiscal Courts are sticking their head in the sand on this issue and trying to claim it is someone else's responsibility even though it is these entities that put in place the Commissioners for the NKWD.

D. The Mayors and City Councils.

There are numerous mayors and city councils in Kenton and Campbell Counties and the tax increases requested by the NKWD and other agencies such as Sanitation District No. 1, the Library Boards, fire districts, the extension districts, area planning, health and school districts will have a definite impact upon the ability of these various cities to pay for the needs of their residents. The citizens elect their representatives to lead. It would appear that leadership would include the municipalities informing their citizens of a safety concern or the danger of an unnecessary significant tax increase. As of the date of the hearing of the PSC on the current rate increase requested by the NKWD, only one Mayor had submitted a letter opposing the proposed rate increase.

E. The State Legislators.

The governmental makeup of the Commonwealth of Kentucky is determined by the state legislature. It is the state legislature which has put in place the current system of numerous districts which have the ability to impose taxes without the citizens having any or much local control. The legislators have apparently been more interested in their own "pet" projects that will keep getting them re-elected rather than taking on these difficult issues which affect every tax payer in the Commonwealth of Kentucky.

A real question must be asked as to why the only entity that is speaking out on behalf of the customers of the NKWD is the NKTP. Where are all the governmental leaders in Campbell and Kenton County on this issue?

IX. Conclusion.

The NKTP thanks the PSC for being allowed to intervene and provide input on the rate increase requested by the NKWD. It is clear that no level of government has acted on behalf of the customers of the NKWD. Intervener respectfully submits the NKWD has not established sound reasons for its requested rate increase and requests that the PSC act in the best interest of the customers and deny the requested rate increase.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief was sent electronically to all parties.

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