

**COMMONWEALTH OF KENTUCKY**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

**PROPOSED ADJUSTMENT OF THE                    )**  
**WHOLESALE WATER SERVICE RATES OF        ) CASE NO. 2015-00039**  
**THE CITY OF AUGUSTA                            )**

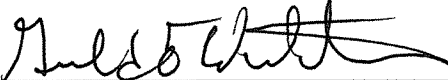
**RESPONSE OF BRACKEN COUNTY WATER DISTRICT**  
**TO**  
**COMMISSION STAFF'S FIRST REQUEST FOR INFORMATION MADE**  
**JOINTLY TO THE CITY OF AUGUSTA, KENTUCKY**  
**AND BRACKEN COUNTY WATER DISTRICT**  
**DATED MARCH 16, 2016**

**FILED: MARCH 29, 2016**

**VERIFICATION**

**COMMONWEALTH OF KENTUCKY** )  
  ) **SS:**  
**COUNTY OF FAYETTE**                    )

The undersigned, Gerald E. Wuetcher, being duly sworn, deposes and says that he is special counsel for Bracken County Water District, and that he has personal knowledge of the matters set forth in the responses for which he is identified as the witness, and the answers contained therein are true and correct to the best of his information, knowledge and belief.

  
\_\_\_\_\_  
Gerald E. Wuetcher

Subscribed and sworn to before me, a Notary Public in and before said County and State, this 29<sup>th</sup> day of March 2016.

  
\_\_\_\_\_  
Notary Public (SEAL)

My Commission Expires: 7-21-2017  
ID # 491122

**BRACKEN COUNTY WATER DISTRICT**

**Response To Commission Staff's First Joint Request For Information  
March 16, 2016**

Case No. 2015-00039

Question No. 1

Witness: Gerald E. Wuetcher

**Q-1.** Refer to the New Water Purchase Contract ("New Contract") attached as Exhibit A to the Settlement Agreement and Stipulation, which is attached as Exhibit A to the Joint Motion for Approval of Settlement Agreement and Stipulation and Water Purchase Contract.

a. Numbered paragraph 2 of the New Contract states that Bracken District is relinquishing any equitable ownership interest it may have in the Augusta water treatment plant. Explain why Commission approval of the relinquishment of interest pursuant to KRS 278.020(5) is not required.

b. Did Bracken District record an amount in its Annual Report to the Public Service Commission for the year ended December 31, 2014, for an equitable interest in the Augusta water treatment plant? If so, provide the amount and the account name and account number on the Balance Sheet that contains the amount.

**A-1.** a. Paragraph 17 of the 1993 Water Purchase Contract provides: "In the event of the termination or revocation of this agreement due to any circumstances, equity in the New Plant shall be determined in the same percentage that debt service was paid, that is, if the First Party has paid 37.5 percent of debt service, then the First Party will be entitled to 37.5 percent of equity . . ." Based upon this section, Bracken County Water District ("Bracken District") asserted in this proceeding and in negotiations with the City of Augusta ("Augusta") an equity interest in the Augusta Water Treatment Plant. No court of law has adjudged Bracken District's claims. Augusta holds legal title to the Augusta Water Treatment Plant and, as demonstrated by evidence adduced at the hearing in this matter, has exercised sole control over its management and operations for an extended period. Under Paragraph 2 of the New Contract, Bracken District has agreed to waive any further claims to an equitable interest in the Augusta Water Treatment Plant.

Assuming that Bracken District's waiver of its claims constitutes a transfer of ownership in the facilities, KRS 278.020(5) does not require approval of the transfer. KRS 278.020(5) provides:

No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of

stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.

The relinquishment of any claim regarding the Augusta Water Treatment Plant will not transfer control or ownership of Bracken District's operations to another person. Bracken District's Board of Commissioners will continue to control, manage and operate all of Bracken District's assets and will retain control over the rates that Bracken District charges for water service. All persons receiving water service from Bracken District prior to the effective date of the New Contract will continue to receive their water service from Bracken District after the New Contract becomes effective. Bracken District's relinquishment of its claim does not confer any authority or right to manage, control, or operate any of Bracken District's facilities.

b. No.

**BRACKEN COUNTY WATER DISTRICT**

**Response To Commission Staff's First Joint Request For Information  
March 16, 2016**

Case No. 2015-00039

Question No. 2

Witness: Gerald E. Wuetcher

- Q-2. Refer to the New Contract, numbered paragraph 6, which states in pertinent part: "For the first 120 months following the Effective Date of this Agreement, Bracken District shall purchase a minimum of 6,500,000 gallons of water each month ('Agreed Monthly Minimum Volume'). At the end of this 120-month period, Bracken District shall not be required to purchase the Agreed Monthly Minimum Volume."
- a. State the basis for the number of gallons included in the Agreed Monthly Minimum Volume and explain why this number of gallons is reasonable.
  - b. State the basis for the period of time, 120 months, that is assigned to the Agreed Monthly Minimum Volume and explain why this period of time is reasonable.
  - c. The original 1993 contract between the parties was an integral part of Rural Development's ("RD") decision to fund the construction of, and improvements to, Augusta's water treatment plant. State whether RD has been notified of the proposed modifications to the existing agreement.
- A-2.
- a. The number of gallons was the product of negotiations between the parties. The parties deemed the duration of the contract to be reasonable. Other Commission-approved wholesale contracts contain similar provisions.
  - b. The time period was the product of negotiations between the parties. The parties deemed the establishment of a minimum volume in exchange for elimination of the capital charge and for significant revisions in the methodology used to establish a wholesale rate to be reasonable. Other Commission-approved wholesale contracts contain similar provisions.
  - c. The parties informed Rural Development of the negotiations and inquired as to the need for Rural Development approval of any agreement. State Rural Development officials advised by e-mail that Rural Development approval of any revised contract was not required. A copy of this e-mail message is attached.

## Wuetcher, Gerald

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**From:** Hollinsworth, Anthony - RD, Lexington, KY <anthony.hollinsworth@ky.usda.gov>  
**Sent:** Tuesday, January 19, 2016 5:43 PM  
**To:** Wuetcher, Gerald  
**Subject:** RE: Contact Information  
**Attachments:** augusta1993.pdf; augusta2003.pdf; 1942.18(f).pdf

Jerry:

Attached are the water purchase contracts for Augusta. Before I called you back a while ago, I have gone to the 2003 file and pulled the Letter of conditions from that file/loan. It is the 2003 LOC attached above. It is the one I referred to when I said that it only required “The wholesale water rate charged to Bracken County Water District will be continue to be determined by the existing Water Purchase Contract and any Amendments thereto.” There was no specific requirement for as to the water purchase contract other than that.

After our call, I decided to look even further, and went back to the 1993 loan file. The original LOC is attached above as augusta1993. The 1993 LOC states in item 23 that “The City will obtain a Water Purchase Contract with Bracken County Water District No. 1 for approval by FmHA before advertising for construction bids”. It then states some things about the format of the agreement and that it must meet the requirements of our regulations. This original LOC did specify the wholesale rates in item 22.

However, please note that this was a requirement for approving the loan ... we needed to see the actual contract and agree to it before the project was bid – that was to determine and verify repayment ability, or we wouldn’t close the loan.

I have also attached the applicable instructions (1942.18(f)) to indicate what we were looking for at the time to determine/insure feasibility of the loan. One of those main criteria was item (4) which specifics that the contract must run the term of the loan (we didn’t want to make a 40 year loan and they only have a short term contract to guarantee revenues...)

In this present case, the loans are made, Both Augusta and BCWD are already indebted to us and have pledged revenues for repayment. So, as to the amendment to the water purchase, just let them come to agreement. Of course they both need to protect themselves. Both have loans and commitments to us. The mayor and chairman both need to feel assured that revenues are sufficient for both parties. Just let them come to agreement as to what is needed and submit to PSC. They only need to provide us a courtesy copy after it is finalized.

Call if you have any questions,

Anthony Hollinsworth  
Community Programs Specialist | KY State Office  
Rural Development  
United States Department of Agriculture  
Phone: (859) 224-7316 | Fax: (855) 661-8335  
[www.rd.usda.gov](http://www.rd.usda.gov) | “Committed to the future of rural communities”

USDA is an equal opportunity provider and employer.

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**From:** Wuetcher, Gerald [<mailto:Gerald.Wuetcher@skofirm.com>]  
**Sent:** Tuesday, January 19, 2016 5:03 PM  
**To:** Hollinsworth, Anthony - RD, Lexington, KY <[anthony.hollinsworth@ky.usda.gov](mailto:anthony.hollinsworth@ky.usda.gov)>  
**Subject:** Contact Information

Anthony:

Thank you again. My v-card is attached.

Jerry

Gerald E. Wuetcher  
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Lexington | Louisville | Frankfort | Evansville | Greater Pittsburgh | Hodgenville | [skofirm.com](http://skofirm.com)

The following message, and any documents or previous e-mails attached to it, may contain confidential information protected by the attorney-client privilege. If it was sent to you in error, do not read it. Please inform the sender that you received it and then delete it. Thank you.



**BRACKEN COUNTY WATER DISTRICT**

**Response To Commission Staff's First Joint Request For Information  
March 16, 2016**

Case No. 2015-00039

Question No. 3

Witness: Gerald E. Wuetcher

- Q-3. Refer to the New Contract, numbered paragraph 16d, which states: "Bracken District shall not be assigned more than 64 percent of the Water Treatment Plant's total annual debt service."
- a. Explain whether it is Bracken District's position that this provision entitles Bracken District to be assigned less than 64 percent of the Water Treatment Plant's total debt service.
  - b. Explain how the amount of the 64 percent ceiling was determined.
- A-3.
- a. Paragraph 16d of the New Contract places a ceiling on the portion of the Augusta Water Treatment Plant's debt service that may be assigned to Bracken District. Given that the New Contract obligates Augusta to make available to Bracken District up to 921,600 gallons of water daily, which is 64 percent of the Augusta Water Treatment Plant's current capacity, and that Bracken District is not aware of any plan to expand the capacity of the Augusta Water Treatment Plant and to issue debt to finance that expansion, Bracken District does not expect less than 64 percent of the plant's total debt service to be allocated to it.
  - b. The ceiling is a product of negotiations between the parties and is consistent with the volume of water that Augusta must make available to Bracken District on a daily basis.



**BRACKEN COUNTY WATER DISTRICT**

**Response To Commission Staff's First Joint Request For Information  
March 16, 2016**

Case No. 2015-00039

Question No. 4

Witness: Gerald E. Wuetcher

- Q-4. Refer to the New Contract, number paragraph 16g, which states: "Depreciation expense shall be included in calculation of the Water Treatment Plant's operating costs, but only such depreciation expense on plant and facilities whose cost is not financed through the issuance of debt and that are in service at the time of the proposed rate adjustment."
- a. Explain how Augusta will separate depreciation expense accrued on plant that was funded with debt from that which was not funded with debt. This explanation should include an example using financial information for the year ended June 30, 2014.
- b. If the Commission authorizes the proposed contract to go into effect with part g included, explain whether Bracken District will commit to removing depreciation expense accrued on debt-funded plant from its revenue requirements in its next application to adjust rates. If it is not willing to make this commitment, explain why it is reasonable for Augusta to forfeit recovery of depreciation accrued on debt-funded plant, but not Bracken District.
- A-4. a. Bracken District has not yet discussed this issue with Augusta, but expects to do so in the future. Please note that only existing debt involves the construction of the Augusta Water Treatment (Augusta's Water System Revenue Bonds 1995 Series A and B) and a
- b. Bracken District objects to this question on grounds of relevance. Bracken District's rates for water service are not the subject of this proceeding and have no bearing on the rate that Augusta assesses Bracken District for water service. Bracken District further objects to the suggestion that Augusta has forfeited recovery of depreciation accrued on debt-funded plant. The provision at issue was the product of fair and free negotiations between two equal parties, both of which bargained aggressively to protect their interests and compromised to reach a mutually agreeable resolution.

To the extent that the New Contract's proposed rate methodology will result in a different revenue requirement level than the methodology that the Commission uses to establish a water district's rates for service, the Commission has previously held that a municipal utility has some latitude in establishing its rates and is not required to charge rates that will generate the level of revenue that the Commission's ratemaking

methodology would produce. *See, e.g.,* Case No. 2009-00373, *Proposed Adjustment of the Wholesale Service Rates of Hopkinsville Water Environment Authority* (Ky. PSC July 2, 2010) at 5, fn. 8. The Commission has afforded the same latitude to water districts. *See, e.g.,* Case No. 2013-00154, *Application of Henderson County Water District for An Alternative Rate Adjustment* (Ky. PSC Nov. 14, 2013); Case No. 2012-00517, *Application of Symsonia Water District For Approval of A Certificate of Public Convenience And Necessity For Construction of Water Facilities, Financing And Increased Rates For Water And Sewer Service* (Ky. PSC Sept. 3, 2013); Case No. 2012-00278, *Application of Graves County Water District For an Adjustment in Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities* (Ky. PSC Sept. 5, 2012); Case No. 2006-00410, *The Application of Hardin County Water District No. 1 for a General Rate Adjustment Effective On and After December 2, 2006* (Ky. PSC Aug. 2, 2007); Case No. 98-398, *Adjustment of Rates of Kentucky Turnpike Water District and the Imposition of an Impact Fee* (Ky. PSC June 30, 1999). Bracken District has not found any statute, regulation, or Commission Order that requires a wholesale customer of such municipal utility or public utility to forfeit its right to rates based upon Commission's rate methodology because its water supplier used a different methodology.

Please also note that the 1993 Water Purchase Contract does not permit the consideration of any depreciation expense in establishing Augusta's wholesale rate. Despite this feature of 1993 Water Purchase Contract, the Commission has on at least two occasions established rates for Bracken District that are based upon a revenue requirement that included depreciation expense on Bracken District assets whose construction or purchase was funded through the issuance of debt. *See* Case No. 2010-00184, *Application of Bracken County Water District for an Adjustment of Rates* (Ky. PSC Aug. 10, 2010); Case No. 2002-00395, *The Application of Bracken County Water District For (1) A Certificate of Public Convenience And Necessity To Construct; (2) Finance; and (3) Authority To Adjust Rates For A Water Main Improvements Project* (Ky. PSC Aug. 14, 2003).

**BRACKEN COUNTY WATER DISTRICT**

**Response To Commission Staff's First Joint Request For Information  
March 16, 2016**

Case No. 2015-00039

Question No. 5

Witness: Gerald E. Wuetcher

- Q-5. Refer to the New Contract, numbered paragraph 31a, which states; "Any Dispute related to an adjustment of the wholesale rate shall be governed by Paragraphs 11 through 16 of this Agreement, shall be subject to the jurisdiction of the Kentucky Public Service Commission, but shall not be subject to the procedures set forth in this Paragraph."
- a. Is it the parties' position that disputes concerning matters in the New Contract other than paragraphs 11 through 16 are not subject to the jurisdiction of the Commission?
- b. The New Contract, numbered paragraph 31f, states: "If the Parties cannot resolve for any reason . . . any such Dispute, either Party may initiate proceedings in an appropriate forum." Identify each part of the New Contract other than the parts governed by paragraphs 11 through 16 for which the parties believe that the Commission would be the appropriate forum for initiating proceedings.
- A-5. a. No. Disputes involving other provisions of the New Contract may be within the Commission's jurisdiction depending upon the provision in dispute and the circumstances surrounding the dispute. As paragraphs 11 through 16 expressly deal with the methodology and procedure to be used to adjust Augusta's wholesale rate, these provisions are clearly within the Commission's jurisdiction.
- b. Pursuant to KRS 278.200 and the Kentucky Supreme Court's decision in *Simpson County Water District v. City of Franklin*, 872 S.W.2d 460 (Ky. 1994), the Commission would be an appropriate forum for any dispute involving a provision of the New Contract related a rate or service standard.

**BRACKEN COUNTY WATER DISTRICT**

**Response To Commission Staff's First Joint Request For Information  
March 16, 2016**

Case No. 2015-00039

Question No. 6

Witness: Gerald E. Wuetcher

Q-6. The New Contract, numbered paragraph 20, requires Augusta to submit reports and records to Bracken District. The paragraph also specifies the corresponding periods in which the reports and records must be submitted. Numbered paragraph 21 describes the consequences if Augusta fails to make timely submission of any report or document required by numbered paragraph 20, which includes Bracken District's permanently withholding 10 percent of the total invoiced cost of water for the monthly period in which Augusta's failure is alleged to have occurred.

a. In the event that Bracken District permanently withholds 10 percent of the total invoiced cost of water by exercising a claim of right under numbered paragraph 21, how will Bracken District record the amount permanently withheld on its books? Provide the proposed journal entries.

b. In the event that Bracken District permanently withholds 10 percent of the total invoiced cost of water by exercising a claim of right under numbered paragraph 21, how will Bracken District refund the permanently withheld amount to its ratepayers?

c. Explain how the parties arrived at 10 percent as the amount that would be subject to a permanent withholding.

d. Is it Bracken District's position that funds permanently withheld are not subject to the jurisdiction of the Commission?

A-6. a. Bracken District consulted with its accountant and was advised that the following entries would be used to record any permanently withheld funds:

231	Accounts Payable	Debit
421	Non-Utility Income	Credit

b. Bracken District will not refund the permanently withheld amount. The withheld amount is not a refund of any purchased water cost. It is a damage award for Augusta's failure to comply with a term of the New Contract. Bracken District is not aware of any statutory or regulatory provision that requires a refund. The amount withheld is analogous to a court award of liquidated damages.

The only statutory or regulatory authority that requires Bracken District to refund monies to its customers is 807 KAR 5:068. Section 2 of this regulation requires a water district that has used purchased water procedures to increase its rate to reflect a supplier's increase to decrease its rate to reflect a decrease in the supplier's base rate. Bracken District's withholding of a portion of its payment to Augusta because of Augusta's failure to comply with reporting requirements does not represent a change in Augusta's base rate. Augusta's base rate remains constant.

Moreover, Section 7(1) of 807 KAR 5:068 provides: "A utility that receives a refund from its supplier for previously paid for water service **due to a reduction in the supplier's rate** shall notify the commission in writing of this refund within twenty (20) days of receipt of the refund and shall distribute the refund to its customers by reducing each of its rate schedules by a refund factor determined in accordance with subsection (2) of this section [emphasis added]." As the withheld monies are not a reduction in rate, but a penalty imposed for Augusta's failure to comply with the New Contract's provisions, the withheld funds are not subject to refund.

- c. The 10 percent penalty is a product of negotiations between the parties.
- d. No. The withheld funds would be considered as miscellaneous income which the Commission may considered when determining Bracken District's revenue requirement from rates.

**BRACKEN COUNTY WATER DISTRICT**

**Response To Commission Staff's First Joint Request For Information  
March 16, 2016**

Case No. 2015-00039

Question No. 7

Witness: Gerald E. Wuetcher

- Q-7. Provide Augusta's total rate case expense to date. Identify, in response, the portion of Augusta's total rate case expense that is attributable to legal fees for the rate issues in this proceeding.
- A-7. Bracken District is without knowledge of the current level of Augusta's total rate case expense.

**BRACKEN COUNTY WATER DISTRICT**

**Response To Commission Staff's First Joint Request For Information  
March 16, 2016**

Case No. 2015-00039

Question No. 8

Witness: Gerald E. Wuetcher

- Q-8. Provide Bracken District's legal fees for the rate issues in this proceeding.
- A-8. Bracken District objects to the question on the grounds of relevance. The current proceeding addresses the reasonableness of the rates that Augusta charges for wholesale water service. It does not address Bracken District's rates. As no provision of the Settlement Agreement or the New Contract provides for Augusta to reimburse Bracken District for Bracken District's legal fees or other litigation expenses arising out of this proceeding, none of the expenses that Bracken District has incurred as a result of its involvement in this proceeding are within the scope of this proceeding, are relevant to the issues presented by Augusta's proposed rate or the New Contract, or are a proper or lawful subject for discovery.

Notwithstanding these objections, Bracken District states that, as of February 29, 2016, it has incurred \$70,535.23 in legal fees directly related to PSC Case No. 2015-00039.