

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF CITY OF)
AUGUSTA REVISING ITS WHOLESALE) CASE NO. 2020-00277
WATER SERVICE RATES)

**JOINT MOTION FOR CANCELLATION OF HEARING
AND ACCEPTANCE AND APPROVAL OF SETTLEMENT AGREEMENT**

The City of Augusta (“Augusta”) and Bracken County Water District (“Bracken District”), (collectively “the Parties”) move the Public Service Commission to cancel the scheduled hearing in this matter and to accept and approve the Parties’ Agreement.

In support of their Joint Motion, the Parties state:

1. On May 3, 2021, the Parties’ representatives met in Augusta, Kentucky and reached an agreement regarding the proposed rate adjustment and several issues related to the provision of water service. This agreement was subsequently reduced to writing and submitted to the Parties’ governing bodies for their review and approval.

2. The Parties’ governing bodies have separately met, approved the Agreement and authorized their respective representative to execute the Agreement. A copy of the executed Agreement is attached.

3. The executed agreement represents a fair resolution of the issues presented by the City’s proposed rate adjustment.

4. The Commission has previously stated that the purpose of its “jurisdiction over a municipal utility’s wholesale transactions with a public utility is to ensure ‘that any water district consumer/customer that has contracted and become dependent for its supply of water from a city utility is not subject to either excessive rates or inadequate service’” and that such purpose has

been met when a public utility's objections to a proposed rate adjustment have been addressed by its municipal utility supplier through a mutual agreement on rates and service issues.¹

5. Given the Parties agreement on the issues presented by the City's proposed rate adjustment, the scheduled hearing in this matter is no longer necessary and, if held, would impose unnecessary expenses upon the Parties.

WHEREFORE, Augusta and Bracken District request the Commission

1. Accept for filing and expeditiously review the attached Agreement;
2. Cancel the scheduled hearing in this matter; and
3. Enter an Order approving the Agreement, directing the agreed rate set forth in the Agreement be effective for service rendered on and after May 1, 2021, and permitting Augusta to retain all amounts billed to and collected from Bracken District for wholesale water service provided from February 1, 2021 to April 30, 2021 at the then-authorized rate.

Dated: May 13, 2021

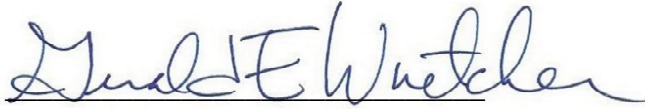
Respectfully submitted,

/s/ M. Todd Osterloh
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Counsel for City of Augusta

¹ *Proposed Adjustment of the Wholesale Water Service Rates of Frankfort Electric and Water Plant Board*, Case No. 2014-00254 (Ky. PSC Nov. 12, 2014) at 2 (quoting *Simpson County Water District v. City of Franklin*, 872 S.W.2d. 460, 465 (Ky. 1994).

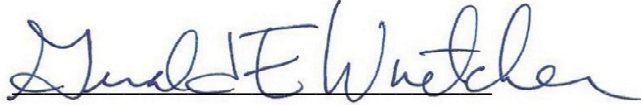


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Counsel for Bracken County Water District

CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, I certify that the electronic filing of this Joint Motion is a true and accurate copy of the same document being filed in paper medium; that the electronic filing was transmitted to the Public Service Commission on May 13, 2021; that there are currently no parties that the Public Service Commission has excused from participation by electronic means in this proceeding; and that within 30 days following the end of the state of emergency first announced in Executive Order 2020-215 this Joint Motion in paper medium will be delivered to the Public Service Commission.

A handwritten signature in blue ink that reads "Gerald E. Wuetcher". The signature is written in a cursive style with a horizontal line underneath the name.

Gerald E. Wuetcher

AGREEMENT

This Agreement is entered into this 10th day of May 2021 by the City of Augusta (“Augusta”) and Bracken County Water District (“Bracken District”) (collectively, “the Parties”).

WITNESSETH:

WHEREAS, on July 29, 2020, Augusta filed notice with the Public Service Commission (“the Commission”) that it would adjust the its rate for wholesale service to Bracken County Water District from \$2.35 per 1,000 gallons to \$2.50 per 1,000 gallons;

WHEREAS, on August 25, 2020, the Commission, finding that an investigation of the proposed rate was necessary, initiate a formal proceeding (Case No. 2020-00277) and ordered that the proposed rate be suspended for five months;

WHEREAS, Bracken District was permitted to intervene in Case No. 2020-00277 and is the sole intervening party in that proceeding;

WHEREAS, representatives of the Parties met on May 3, 2021 in Augusta, Kentucky for the propose of discussing settlement of all issues pending before the Commission in Case No. 2020-00277;

WHEREAS, the Parties hereto unanimously desire to settle all the issues pending before the Commission in Case No. 2020-00277;

WHEREAS, it is understood by all Parties hereto that this Agreement is subject to the approval of the Commission, insofar as it constitutes an agreement by the Parties for settlement, and, absent express agreement stated herein, does not represent agreement on any specific claim, methodology, or theory supporting the appropriateness of any proposed or recommended adjustments to Augusta’s rates, terms, or conditions;

WHEREAS, the Parties agree that this Agreement, viewed in its entirety, is a fair, just, and reasonable resolution of the issues presented in Case No. 2020-00277; and

WHEREAS, the Parties believe sufficient and adequate data and information in the record of these proceedings support this Agreement, and further believe the Commission should approve it without modifications or conditions;

NOW, THEREFORE, for and in consideration of the promises and conditions set forth herein, the Parties hereby stipulate and agree as follows:

1. Wholesale Rate. The rate for wholesale water service that Augusta provides to Bracken District shall be \$2.36 per 1,000 gallons effective for water service provided on and after May 1, 2021 and appearing the bill for service rendered on or after June 1, 2021.

2. Retention of Previously Collected Amounts. Augusta shall retain all amounts billed to and collected from Bracken District for wholesale water service provided from February 1, 2021 to April 30, 2021 at the currently billed rate. The Parties agree that the amount collected during this period is \$5,282.74 more than if a wholesale rate of \$2.36 had been in effect.

3. Replacement of High Service Pump Serving Bracken District. Augusta shall permit Bracken District to replace one of the two high service pumps at the Augusta Water Treatment Plant that pumps water to Bracken District. The replacement high service pump shall have the same specifications as the original high service pump. Bracken District shall be responsible for selecting which of the existing pumps shall be replaced and the procurement and installation of the replacement pump and shall consult and coordinate with Augusta's Water Treatment Plant Operations Manager regarding the selection and installation of the replacement pump. Augusta shall exercise all reasonable efforts to assist in the installation of the replacement

pump. Bracken District shall be responsible for all expenses associated with the purchase and installation of the replacement pump.

4. Ratemaking Treatment of Replacement High Service Pump. For ratemaking purposes, the replacement pump referred to in Paragraph 4 of this Agreement, shall be considered as contributed property. No depreciation expense related to the replacement pump shall be considered in calculating the wholesale rate to Bracken District.

5. Engineering Review of Water Treatment Plant Condition and Capital Improvement Needs. Within six months of the issuance of an Order by the Commission approving this Agreement, Augusta shall retain an engineering firm that will conduct a comprehensive evaluation and review of the Augusta Water Treatment Plant, including its existing condition, operating practices and capital improvement needs, and that will prepare a written report detailing the plant's current condition and operating practices, and identifying any changes in the method of operation and capital improvements required to improve the plant's efficiency and to ensure that the plant's operations comply with state and federal law and best industry practices. The report shall also address the priority of the capital improvement needs and possible funding options. The comprehensive evaluation and review and the report of such review shall be completed no later than March 31, 2022.

a. Augusta will issue a request for qualifications ("RFQ") for such engineering review and report within 90 days of the date of an Order from the Commission approving this Agreement.

b. Bracken District will prepare a list of areas to be included in the engineering study's scope and submit this list to Augusta for inclusion in the RFQ within 30 days of the date of an Order from the Commission approving this Agreement. Any contract that Augusta awards

to perform the engineering evaluation and review shall require the contracting firm to address these areas in its review and report.

c. Augusta shall provide a draft of the RFQ to Bracken District, allow Bracken District a reasonable time to submit written comments on the draft, and consider those comments in the development of the final version of the RFQ.

d. Augusta shall timely provide Bracken District with a copy of all responses to the RFQ, allow Bracken District a reasonable time to submit written comments upon the responses, and consider Bracken District's comments when awarding the contract for the engineering evaluation and review. Augusta's City Council retains exclusive authority to award of the contract.

e. Augusta shall require the selected engineering firm to interview and discuss with Bracken District officials Bracken District's concerns regarding the operation and current state of the Augusta Water Treatment Plant.

f. Augusta shall timely provide copies of all reports from the selected engineering firm regarding the status of the review and report.

g. Augusta shall timely furnish copies of preliminary drafts of the engineering report, allow Bracken District a reasonable time to comment upon those drafts, and instruct its engineering firm to consider Bracken District's written comments in the preparation of the final engineering report.

h. Within 14 days of its receipt of the final report, Augusta shall provide Bracken District with a copy of the final report and shall file a copy of the final report with the Commission.

6. Testing of Pumps. Bracken District may at its own expense conduct tests on the efficiency of the well pumps and the high service pumps at the Augusta Water Treatment Plant. Testing shall be performed at a reasonable time and in a reasonable manner so as not to interfere with the water treatment plant's operation. Augusta shall cooperate in the scheduling of such tests and shall not take any actions that would unreasonably interfere with the tests. Bracken District shall provide Augusta with a copy of the test results. If the test results show a variance in any pump's efficiency that is greater than 20 percent from the 2021 gallon-per-minute results listed in Appendix A, Augusta shall be responsible for 50 percent of the cost to perform the tests. In that event, Bracken District shall furnish a copy of the invoice for testing services and a request for payment and Augusta will issue a credit to Bracken District's next monthly bill for wholesale water service for the requested amount.

7. Right to Inspect Water Treatment Plant and Wells. Bracken District's representatives may annually, upon providing reasonable notice to Augusta, inspect the Augusta Water Treatment Plant's facilities, equipment and wells. Such inspections shall be coordinated with Augusta and its engineers, and conducted at reasonable times and in a reasonable manner so as not to interfere with the water treatment plant's operation. Augusta may not unreasonably refuse to permit access to Bracken District to make such inspections.

8. Revision to Section 16e of the Water Purchase Contract. Section 16e of the Water Purchase Contract shall be amended as follows:

The Water Treatment Plant's operating costs shall be allocated based upon the total annual volume of finished treated water delivered to Bracken District and to Augusta's distribution system at their respective delivery points located immediately adjacent to the Water Treatment Plant. Augusta shall measure the flow of finished treated water from the Water Treatment Plant to Augusta's water distribution system by meter located immediately adjacent to the Water Treatment Plant. **Augusta may deduct from this volume**

the volume of water its water distribution system provides to the Water Treatment Plant, provided such volumes are metered and recorded on at least a monthly basis. Bracken District shall be assigned the percentage of Water Treatment Plant operating costs that is equal to the percentage that results from dividing the volume of finished treated water delivered to Bracken District at the Point of Delivery during the test period by the total annual volume of finished treated water delivered to Bracken District and Augusta's distribution system. (For example, if the Water Treatment Plant delivered 75,000,000 gallons of finished treated water during the test period to Bracken District and the Water Treatment Plant delivered a total volume of 100,000,000 gallons to the Parties at their respective delivery points in the test period, 75 percent of the Water Treatment Plant's adjusted operating expenses would be allocated to Bracken District.)

9. Each Party is responsible for its legal fees and other expenses related to its participation in Case No. 2020-00277. Neither Party is responsible for such fees or expenses incurred by the other Party.

10. Except as specifically stated otherwise in this Agreement, entering into this Agreement shall not be deemed in any respect to constitute an admission by any of the Parties that any computation, formula, allegation, assertion or contention made by any other party in this rate proceeding is true or valid.

11. The Parties agree that the foregoing Agreement represents a fair, just, and reasonable resolution of the issues addressed herein and request that the Commission approve the Agreement.

12. Following the execution of this Agreement, the Parties shall cause the Agreement to be filed with the Commission no later than May 19, 2021, together with a request to the Commission for consideration and approval of this Agreement for rates to become effective for service rendered on and after May 1, 2021.

13. This Agreement is subject to the acceptance of, and approval by, the Commission. The Parties agree to act in good faith and to use their best efforts to recommend to the Commission

that this Agreement be accepted and approved. Each Party commits to notify immediately the other Party of any perceived violation of this provision so the other Party may have an opportunity to cure any perceived violation, and the Parties commit to work in good faith to address and remedy promptly any such perceived violation. In all events, counsel for the Parties will represent to the Commission that the Agreement is a fair, just, and reasonable means of resolving all issues in Case No. 2020-00277 and will clearly and definitively request the Commission to accept and approve the Agreement as such.

14. If the Commission issues an order adopting this Agreement in its entirety and without additional conditions, each Party agrees that it shall file neither an application for rehearing with the Commission, nor an appeal to the Franklin Circuit Court with respect to such order.

15. If the Commission does not accept and approve this Agreement in its entirety, then either Party may withdraw from the Agreement within the statutory periods provided for rehearing and appeal of the Commission's order by (1) giving notice of withdrawal to the other Party and (2) timely filing for rehearing or appeal. If either Party timely seeks rehearing of or appeals the Commission's order, the other Party will continue to have the right to withdraw until the conclusion of all rehearings and appeals.

16. If this Agreement is voided or vacated for any reason after the Commission has approved it, neither Party will be bound by it.

17. The Agreement shall in no way be deemed to affect or diminish the jurisdiction of the Commission of jurisdiction under Chapter 278 of the Kentucky Revised Statutes.

18. The Agreement shall inure to the benefit of and be binding upon the Parties hereto and their successors and assigns.

19. The Agreement constitutes the complete agreement and understanding among the Parties, and any and all oral statements, representations, or agreements made prior hereto shall be null and void.

20. The Parties agree that, for the purpose of the Agreement only, the terms are based upon the independent analysis of the Parties to reflect a fair, just, and reasonable resolution of the issues herein and are the product of compromise and negotiation.

21. The Parties agree that neither the Agreement nor any of its terms shall be admissible in any court or commission except insofar as such court or commission is addressing litigation arising out of the implementation of the terms herein, the approval of this Agreement, or a Party's compliance with this Agreement. This Agreement shall not have any precedential value in this or any other jurisdiction.

22. The terms of this Agreement that are not subject to the Commission's exclusive jurisdiction over rates and service may be enforced through legal proceedings in Bracken Circuit Court.

23. The signatories hereto warrant that they have appropriately informed, advised, and consulted their respective Parties in regard to the contents and significance of this Agreement and based upon the foregoing are authorized to execute this Agreement on behalf of their respective Parties.

24. The Parties agree that this Agreement is a product of negotiation among the Parties, and no provision of this Agreement shall be strictly construed in favor of or against any Party.

25. The Parties agree that this Stipulation may be executed in multiple counterparts.

**[REMAINDER OF THIS PAGE IS INTENTIONALLY BLANK
SIGNATURE PAGES FOLLOW]**

IN WITNESS WHEREOF, the Parties acting under the authority of their respective governing bodies, have caused this Agreement to be duly executed in multiple counterparts, each of which shall constitute an original.

CITY OF AUGUSTA, KENTUCKY

By: 
MICHAEL C. TAYLOR, MAYOR

ATTEST:


GRETCHEN USLEAMAN, CITY CLERK

BRACKEN COUNTY WATER DISTRICT

By: _____
ANTHONY HABERMEHL, CHAIRMAN

ATTEST:

TIMOTHY SWEENEY, SECRETARY

IN WITNESS WHEREOF, the Parties acting under the authority of their respective governing bodies, have caused this Agreement to be duly executed in multiple counterparts, each of which shall constitute an original.

CITY OF AUGUSTA, KENTUCKY

By: _____
MICHAEL C. TAYLOR, MAYOR

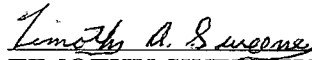
ATTEST:

GRETCHEN ENGLAND, CITY CLERK

BRACKEN COUNTY WATER DISTRICT

By:  _____
ANTHONY HABERMEHL, CHAIRMAN

ATTEST:

 _____
TIMOTHY SWEENEY, SECRETARY

APPENDIX A

Augusta Wells

	#1 GPM	#2 GPM	#3 GPM	#4 GPM
Design Capacity	350	250	500	800
Horse Power	25	25	50	40
Well Size	10"	10"	20"	20"
1998 Test	-	343	-	-
1999 Test	351	-	-	-
2005 New Well	-	-	-	800
2011 Repair	-	-	500	-
2015 Test	182	136	440	735
2018 Repair	350	-	-	-
2021 Test	285	200	715	765
Pump Performance	81.4%	80.0%	143.0%	95.6%

	BCWD HS #1	BCWD HS #1	Augusta HS #1	Augusta HS #2
Design GPM	700	700	500	500
2021 Test	534	650	476	476
Pump Performance	76.3%	92.9%	95.2%	95.2%