

COMMONWEALTH OF KENTUCKY
BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC TARIFF FILING OF THE CITY OF)	
AUGUSTA TO INCREASE THE WHOLESALE)	CASE NO.
WATER RATE CHARGED TO BRACKEN)	2024-00349
COUNTY WATER DISTRICT)	

REBUTTAL TESTIMONY OF JACK SCOTT LAWLESS, CPA

March 19, 2025

1 INTRODUCTION

2 **Q1. Please state your name and business address?**

3 A. My name is Jack Scott Lawless and my business address is 17111 Mallet Hill Drive,
4 Louisville, Kentucky 40245.

5 **Q2. By whom are you employed?**

6 A. I am the owner and operator of J S Lawless Consulting, PLLC.

7 **Q3. Please provide your qualifications.**

8 A. My curriculum vitae was provided in the City of Augusta’s (“Augusta”) January 16,
9 2025 Response to Item 51 of Bracken County Water District’s (“Bracken District”) First Request for Information.

11 **Q4. Did you review the operations of the water treatment facility owned by the City of
12 Augusta for the purpose of determining the reasonableness of its wholesale
13 water rates and did you prepare a report summarizing your findings?**

14 A. Yes. I performed a review and prepared the August 5, 2024 Wholesale Water Rate
15 Study (“Water Study”) that was filed with the Commission as part of Augusta’s
16 proposed wholesale tariff that is the subject of this proceeding.

17 **Q5. What is the purpose of your testimony in this matter?**

18 A. The purpose of my testimony is to:

- 19 1) discuss the reasonableness of the wholesale rate that results from the
20 formula included in the current wholesale purchase water contract (“2016

1 Contract”)¹ between the City of Augusta (“Augusta”) and Bracken County
2 Water District (“Bracken District”) as approved the Kentucky Public Service
3 Commission (“Commission”);

4 2) discuss the need for the City of Augusta’s Water Treatment Plant Department
5 (“Augusta Treatment”) to recover depreciation accruing on plant in service
6 through its wholesale water rate; and

7 3) discuss the “Equitable Interest” Bracken District had earned in Augusta’s
8 water treatment plant facilities at the time the 2016 Contract was executed.

9 **2016 Contract Formula – 64 Percent Debt Limitation**

10 **Q6. Does the 2016 Contract formula split Augusta Treatment’s costs between its two**
11 **customers, Bracken District and the City of Augusta’s Water Distribution**
12 **Department (“Augusta Distribution”), in a fair manner?**

13 A. No. The 2016 Contract fairly allocates Augusta Treatment’s costs between its
14 customers except debt service costs. All costs except for debt service are allocated
15 to each customer based on their percentage of water purchased from Augusta
16 Treatment. Debt service costs allocable to Bracken District are limited to 64 percent
17 of the Augusta Treatment’s total debt service costs.

18 **Q7. What effect does the debt service limitation have on the rates Augusta Treatment**
19 **charges Bracken District and Augusta Distribution?**

¹ The current wholesale water contract is attached to the Commission’s February 6, 2016 Order in Case No. 2015-00039 and was amended by an agreement attached to the Commission’s May 10, 2021 Order in Case No. 2020-00277.

1 A. As shown on page 21 of the Water Study, limiting debt service costs allocated to
2 Bracken District results in a rate for Bracken District in the amount of \$2.870 per
3 thousand gallons compared to a rate of \$3.322 per thousand gallons for Augusta
4 Distribution.

5 **Q8. Are the rates resulting from the debt service limitation fair, just and reasonable?**

6 A. No, the rates are not fair, just and reasonable. The rate calculated for Augusta
7 Distribution is \$.452, or 15.75 percent, higher than the rate calculated for Bracken
8 District while the service to Augusta Distribution is like and contemporaneous to the
9 service provided to Bracken District.

10 **Q9. Explain how the service provided to Bracken District is like and**
11 **contemporaneous to the service provided to Augusta Distribution.**

12 A. All water produced by Augusta Treatment is delivered to either Augusta Distribution
13 or Bracken District through water meters located immediately adjacent to the Water
14 Treatment Plant facilities. Augusta Distribution receives service through a 6-inch
15 meter connected to a 6-inch transmission line whereas Bracken District receives
16 service through an 8-inch meter connected to an 8-inch transmission main. Augusta
17 Treatment does not transmit or distribute water to any entity beyond the location of
18 these metering points.

19 **Q10. Are the rates resulting from the 64 percent limitation lawful?**

20 A. No. They are in direct violation of KRS 278.030 and KRS 278.170.

21 KRS 278.030 (1) states that "Every utility may demand, collect and receive fair, just
22 and reasonable rates for the services rendered or to be rendered by it to any person.

1 KRS 278.170 (1) provides that “No utility shall, as to rates for service, give any
2 unreasonable preference or advantage to any person or subject any person to any
3 unreasonably prejudice or disadvantage, or establish or maintain any unreasonable
4 difference between localities or between classes of service for doing a like and
5 contemporaneous service under the same or substantially the same conditions.”

6 **Q11. Does the Commission have the authority to set rates for Augusta Treatment that**
7 **do not follow the 2016 Contract formula?**

8 A. Yes, not only does the Commission have the authority, it has a duty to establish rates
9 that are lawful. In the Commission’s March 8, 2013 Order in Case No. 2012-00152,
10 the Commission stated that “a contract between a utility and a customer does not
11 limit the Commission’s authority to review and adjust the rate contained in that
12 contract. *BD. Of Education of Jefferson County v. William Dohrman, Inc.*, 620 S.W.2d
13 328 (Ky. App. 1981)(“the Commission had the right and **duty** to regulate rates and
14 services, no matter what a contract provided). The contract between the two utilities
15 does not prohibit or restrict the Commission’s authority to establish fair, just and
16 reasonable rates.”²

17 **Q12. Are you aware of the reason the 64 percent limitation is part of the 2016 Contract**
18 **formula?**

19 A. Yes. In Bracken District’s March 16, 2016 Response to Commission Staff’s First Joint
20 Request for Information, Item A-3.b., submitted in Case No. 2015-00039, Bracken

² Page 4 of the Commission’s Order.

1 District states that “the ceiling is a product of negotiations between the parties and
2 is consistent with the volume of water that Augusta must make available to Bracken
3 District on a daily basis.”

4 **Q13. Do you agree that the minimum volume of water Augusta Treatment must provide**
5 **to Bracken District should serve as the “ceiling” for allocating debt service**
6 **costs?**

7 A. No. The minimum delivery of a utility commodity included in a sales contract should
8 serve as the minimum, or floor, amount of costs allocated to the customer, not the
9 maximum, or ceiling. In other words, to reserve 64 percent of Augusta Treatment’s
10 plant capacity, Bracken District should pay a minimum of 64 percent of Augusta
11 Treatment’s debt costs. Instead, the formula does the opposite by limiting the
12 allocation to 64 percent.

13 **2016 Contract – Depreciation and Equitable Interest**

14 **Q14. Have you reviewed the testimony of Mayor John Laycock where he requests to**
15 **amend Augusta Treatment’s original wholesale tariff that is the subject of this**
16 **proceeding to include depreciation accruing on plant financed with long-term**
17 **debt? If yes, do you agree with Mayor Laycock?**

18 A. Yes. I have reviewed Mayor Laycock’s testimony and I agree that Augusta Treatment
19 should recover through rates depreciation accruing on all utility plant in service,
20 regardless of its original source of financing, to generate the maximum amount of
21 cash working capital allowable by the Commission. This working capital is essential
22 to funding a portion of the \$3,250,000 capital investments found necessary in the

1 Cann-Tech Study referred to in Mayor Laycock’s testimony. Furthermore, the request
2 for full rate recovery of depreciation is consistent with the Commission’s rate-making
3 practices applied to other municipal water utilities, water districts and water
4 associations that are subject to the Commission’s jurisdiction. In fact, Bracken
5 District requested, and the Commission authorized, full rate recovery of depreciation
6 expense in the amount of \$379,720 in Bracken District’s most recent rate case filed
7 with the Commission in Case Number 2021-00415.³

8 Additionally, the extra revenue generated by the additional recovery of
9 depreciation may extend the period of time that will occur between Augusta
10 Treatment’s wholesale rate increases. Extending this period of time would be a major
11 savings benefit to Augusta Treatment and Bracken District considering the
12 extraordinary level of rate case expense each party has incurred during the current
13 and prior cases brought before the Commission to adjust Augusta Treatment’s
14 wholesale rate.

15 **Q15. Should the Commission be concerned that Augusta may misappropriate**
16 **depreciation funds collected from Bracken District?**

17 A. No. The reporting and monitoring requirements of the 2016 Contract as discussed in
18 the testimony of Doug Padgett protects against the misappropriation of Augusta
19 Treatment’s depreciation funds.

³ See Bracken District’s March 12, 2024 Response to Augusta’s February 27, 2025 Initial Request for Information, Item 3.

1 **Q16. In Bracken District’s March 12, 2025 Response to Augusta’s Request for**
2 **Information, Item 5.b., Bracken District states that “Inclusion of the full amount**
3 **of depreciation would violate the contract and nullify the detrimental reliance**
4 **Bracken County Water District has relied upon and made previous concessions**
5 **and waivers to City of Augusta; including but not limited to waiver of equity in the**
6 **Water Treatment Plant.” Are you aware that Bracken District waived its right to its**
7 **equity interest in Augusta’s water treatment facility?**

8 A. Yes. Provision “2. Relinquishment of Equitable Interest.” of the 2016 Contract states
9 that “Bracken District relinquishes any equitable ownership interest in the Water
10 Treatment Plant that may exist pursuant to the terms of the 1993 Water Purchase
11 Contact, as amended by the 2008 Modification Agreement. Purchase of water service
12 under this Agreement shall not create any equitable ownership interest in the Water
13 Treatment Plant.”

14 **Q17. Has Augusta Treatment’s sale of water to Bracken District and Augusta**
15 **Distribution provided for equity growth for Augusta Treatment?**

16 A. No, the opposite is true. Sales to of water to Bracken District and Augusta Distribution
17 have eroded Augusta Treatment’s equity balance. As of the date of Augusta’s most
18 recent audit report, June 30, 2023, revenues received by Augusta Treatment have not
19 been sufficient to allow for the accumulation of equity. While the treatment facility’s
20 “Net Position,” or Fund Balance, totaled \$686,704 as of June 30, 2023 (See Page 15 of
21 Maddox & Associates’ Audit Report of the City of Augusta’s June 30, 2023 Financial
22 Statements filed as part of Augusta tariff filing of this proceeding), this amount

1 includes grant revenue in the amount of \$1,763,079, which is made of \$1,481,000 in
2 grant revenue Augusta Treatment received in 1996 to construct the water treatment
3 plant facility and \$282,079 in grant revenue received in 2005 to renovate the water
4 treatment plant lagoon. When the grant revenue is removed from the Fund Balance,
5 Augusta Treatment's equity account balance that accrued from water sales revenue
6 is negative (\$1,076,375).

7 **Q18. What was Augusta Treatment's equity account balance from water sales revenue**
8 **at the time Bracken District gave up its right to Augusta Treatment's equity**
9 **through execution of the 2016 Contract?**

10 A. Augusta Treatment's "Net Assets," or Fund Balance, as of June 30, 2014, was
11 \$986,737 (See Page 35 of Donna J. Hendrix Audit Report of the City of Augusta's June
12 30, 2014 Financial Statements filed as part of Augusta's March 30, 2015 Response to
13 the Kentucky Public Service Commission's Request for Information in Case No. 2015-
14 00039). Removing the \$1,763,079 grant revenues from this amount restates the Fund
15 Balance provided from water sales to a negative (\$776,342).

16 **Q19. How would the value of the equity interest Bracken District relinquished**
17 **pursuant to the 2016 Contract be calculated?**

18 A. It would be calculated based on the percentage of revenue Bracken District provided
19 to Augusta Treatment. Provision 17.) of the original May 4, 1993 purchase water
20 contract between Bracken District and Augusta states that "In the event of the
21 termination or revocation of this agreement due to any circumstances, equity in the
22 New Plant shall be determined in the same percentage that debt service was paid,

1 that is, if First Party has paid 37.5 percent of debt service, then First Party will be
2 entitled to 37.5 percent of equity, etc. etc.”

3 **Q20. What was the value of the equity interest Bracken District relinquished pursuant**
4 **to the 2016 Contract?**

5 A. No effort was made to calculate the value of the equity interest relinquished by
6 Bracken District since the value would have been a negative amount that is less than
7 \$0.

8 **2016 Contract – Pro Forma Adjustments**

9 **Q21. Does the 2016 Contract allow for adjustments to be made to Augusta Treatment’s**
10 **test year operating costs when calculating Augusta Treatments wholesale rate?**

11 A. Yes. Section 16.f. of the 2016 Contract states “Test period operating costs may be
12 adjusted to reflect known and measurable changes.”

13 **Q22. Does the 2016 Contract allow for adjustments to be made to Augusta Treatment’s**
14 **test year revenue?**

15 A. The 2016 Contract makes no mention of adjustments that may or may not be made
16 to Augusta Treatment’s revenues.

17 **Q23. Are pro forma adjustments made to Augusta Treatment’s revenues and expenses**
18 **as shown in the Water Study.**

19 A. Yes. Many adjustments were made to revenues and expenses for known and
20 measurable changes. The adjustments, along with an explanation for each
21 adjustment, are shown as Schedule A in the Water Study.

1 **Q24. Can you explain why adjustments were made to Augusta Treatment’s test year**
 2 **sales to Augusta Distribution and Bracken District?**

3 A. Yes. Bracken District began purchasing water from Western Mason Water District
 4 during the test year⁴ resulting in a reduction to test-year purchases of 18,673,862
 5 gallons. Also, in January of the test year, Augusta Distribution repaired a major leak
 6 that reduced test year purchases by 10,105,936 gallons in pro forma operations. The
 7 combined reduction to Augusta Treatment’s test year sales volume was 28,779,798
 8 gallons as detailed below.

Customer	Gallons		
	Pro Forma	Test Year	Difference
Augusta Distribution	42,433,508	52,539,444	(10,105,936)
Bracken District	<u>154,489,118</u>	<u>173,162,980</u>	<u>(18,673,862)</u>
Total	<u>196,922,626</u>	<u>225,702,424</u>	<u>(28,779,798)</u>

9
 10 **Q25. Do Augusta Treatment’s sales continue to remain at the reduced level?**

11 A. Yes. As shown below, sales for the year ended December 31, 2024, totaled
 12 196,956,298 gallons, which is very near sales for pro forma operations. However, it
 13 should be noted that Augusta Distribution increased purchases that was offset by
 14 Bracken District’s further decrease to purchases.

⁴ Bracken District’s March 11, 2025 Response to Augusta’s Request for Information, Item 2.

<u>Customer</u>	<u>Gallons</u>
Augusta Distribution	53,974,289
Bracken District	<u>142,982,009</u>
Total	<u><u>196,956,298</u></u>

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Q26. Test year revenues were adjusted to account for the decrease in sales volume. Were expense accounts affected by the decrease in water sales volume also adjusted?

A. Yes. Expenses that fluctuate with the level of sales volume (purchased power for pumping and chemicals) were also adjusted following the Commission’s longstanding application of the Matching Principle.

Q27. Does the 2016 Contract formula require that Augusta Distribution’s wholesale rate be calculated by dividing adjusted operating costs by test year gallons sold?

A. Yes. Provision 16.i. of the 2016 Contract provides that “the adjusted wholesale rate to Bracken District shall be the sum of the debt service costs and operation costs allocated to Bracken District divided by the Water Treatment Plant’s **test period sales** to Bracken District.

Q28. Is application of Provision 16.i. reasonable in this instance?

A. No. Application of Provision 16.i. in this instance is not reasonable as it would not allow Augusta Treatment the opportunity to recover revenues that are equal to its revenue requirement in the amount of \$584,359. Dividing Augusta Treatment’s revenue requirement by test year sales, as provided for in Provision 16.i., results in a wholesale rate of \$2.589 per thousand gallons ($\$584,359 / 225,702,424 \times 1,000$).

1 Applying this rate to pro forma gallons sold results in revenues of only \$509,831
2 (196,922,626 gallons x \$2.589 / 1,000), or \$74,528 less than its revenue requirement.

3 **Q29. What effect would a \$74,528 annual revenue shortfall have on Augusta**
4 **Treatment's operations?**

5 A. Augusta Treatment would not have sufficient revenue to effectively operate its plant
6 and would be required to immediately incur the cost to seek another tariff revision.

7 **Q30. Does this conclude your testimony?**

8 A. Yes.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by electronic mail this 19th day of March, 2024, to the parties of record listed below.

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