

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

**RE: ELECTRONIC TARIFF FILING OF THE CITY OF
AUGUSTA TO INCREASE THE WHOLESALE
WATER RATE CHARGED TO BRACKEN
COUNTY WATER DISTRICT**

**INTERVENOR, BRACKEN COUNTY WATER DISTRICT’S (BCWD’S) POST-HEARING
(HEARING JULY 16, 2025) BRIEF**

CASE NUMBER 2024-00349

Comes now the intervening party, Bracken County Water District, (“BCWD”), by and through counsel, Mr. Jesse P. Melcher, Esq., and hereby files its post-hearing (hearing, July 16, 2025) brief, as follows:

PROCEEDINGS HEREIN:

1. City of Augusta filed a notice of intent to raise wholesale water rates, to impose a new wholesale water rate to BCWD, in the amount of \$2.967, by letter dated September 24, 2024. *See. Tariff Filing; 20240926_Augusta Tariff Filing.pdf.*
2. City of Augusta filed a notice of intent to raise wholesale water rates and tariff filing to impose a new wholesale water rate to BCWD in the amount of \$2.967, with the KY PSC Tariff filings, TFS 2024-00469, on or about September 26, 2024. *See. Tariff Filing; 20240926_Augusta Tariff Filing.pdf.*

3. BCWD filed a notice of objections to City of Augusta on or about October 9, 2024, which was sent to them by mail along with an objecting to the tariff filing, pursuant to statutory and regulatory law, as well as language in the water purchase contract between the parties herein (paragraph 14), in TFS 2024-00469 (*See. BCWD response and attachments to KY PSC Staff questions, post hearing, filed 8-8-25*) and requested to intervene; City of Augusta did not file a direct response to this objection, except for its filings herein.
4. KY PSC previously approved the 2016 contract in Case No. 2015-00039.
5. KY PSC denied a joint request between the parties to increase the wholesale water rate to \$2.50 in Case No. 2020-0277 (a \$0.15 increase), and opened an investigation into the agreed rate increase to determine reasonableness (*see. Case No 2020-0277, 202000825_PSC_ORDER.pdf*); wherein, after months of legal proceedings and negotiations, a joint agreement to raise the wholesale water rate by \$0.01, from \$2.35 per 1000 gallons to \$2.36 per \$1000 gallons, was finally agreed to and approved by KY PSC, and an amendment was made to the 2016 water purchase contract, but the rate methodology stayed the same. *See. 20210527_PSC_ORDER.pdf*.
6. By Supplemental Order of The Commission on April 18, 2025, the City of Augusta was given until May 7, 2025, to submit all direct testimony. *See. 20250418_PSC_ORDER.pdf*;
7. City of Augusta filed a twenty-one (21) page wholesale water rate study (“Rate Study”) prepared by Kentucky Rural Water, by Mr. Scott Lawless, which calculated the wholesale water rate based upon pro-forma adjustments to expenses and requested

adjustments to gallons sold for the test period chosen; test period chosen was June 1, 2022 to July 31, 2023. The tariff filing of City of Augusta, included the audits for the fiscal years ending June 30, 2022 and June 30, 2023. *See. City of Augusta Tariff filing, which includes rate study; 20240926_Augusta Tariff Filing.pdf.*

8. The rate study calculations, on page 21, establish rates on pro-forma expenses and requested changes to water sold by both parties, based upon the 2016 water rate methodology, i.e. \$2.87 for BCWD and \$3.22 for City of Augusta (Augusta Water Treatment Plant sells water to itself, i.e. Augusta Water Works, for resale to customers). The rate study also calculated, what it calls a unified rate implementing the same pro-forma adjustments and requested changes to water purchased, and imposed a change to the 2016 water rate methodology. *See. Water Rate Study, Page 21, City of Augusta Tariff filing, which includes rate study.*
9. All rate revenue requirements used in the rate study are for \$584,539.00. *See, Page 21 of Rate Study; City of Augusta Tariff filing, which includes rate study.*
10. The amount budgeted for revenue by the City of Augusta, Water Treatment Plant, in 2025-2026 fiscal year was \$519,000.00. *See. Intervenor's submission of City of Augusta Budget, fiscal year 7/1/25 to 6/30/26, published in Bracken County News, 6-26-25.*
11. The Amount stated by City of Augusta on its excel sheet attached to questions to the City of Augusta, show minimum revenue required by lenders to be \$518,947.00. *See. Augusta_Request_for_Information_from_Bracken.pdf.*
12. The City of Augusta passed an ordinance for imposition of a \$2.967 per 1000 gallons wholesale rate increase request on April 16, 2025, which was published on or about

May 1, 2025, in the Bracken County News. *See. See. Intervenor’s submission of City of Augusta Budget, fiscal year 7/1/25 to 6/30/26, published in Bracken County News, 5-1-25.*

13. KY PSC authorized a requested application amendment for rate increase to \$3.181 per 1000 gallons, which was deemed filed, on March 19, 2025. *See.*

20250418_PSC_ORDER.pdf.

14. A hearing on this matter occurred on July 31, 2025.

A. REQUISITES FOR A MUNICIPALITY TO RAISE WHOLESALE WATER RATES WITH KY PSC

“To secure approval of proposed rate adjustments to public utilities, city-owned utilities must file a “tariff” (i.e. proposed tariff) with the Commission. And, because the requirements and procedures set forth in KRS Chapter 278 and the Commission’s regulations apply equally to filings by a city-owned utility....”. *See. City of Pikeville v. KY PSC (2023-CA-0338) NOT TO BE PUBLISHED OPINION, pursuant to KY R. Civ. Proc. Rule 41, is not binding.*). KY PSC has ruled that when a municipality applies for a rate adjustment, it is bound by KRS 278.190 and 807 KAR 5:001. *See. Bowling Green Municipal Utilities, Case NO. 95-044, (Ky. PSC. April 7, 1995).* Further, KY PSC has ruled that an ordinance is a necessary document for a municipality to proceed with a rate increase request. *See. City of Pikeville, 2000-540, KY PSC 12-19-00.*

The City of Augusta is formed under Kentucky Revised Statute (“KRS”) 83A., as a mayor-council plan city, as established by the cross-examination testimony of mayor, John Laycock, at the July 31, 2025 hearing. KRS 83A.130(2) states, “Each city under this section shall be governed by an elected executive who shall be called mayor and

by an elected legislative body which shall be called the city council...(3) The executive authority of the city shall be vested in and exercised by the mayor....(11) The legislative authority of the city shall be vested in the and exercised by the elected city council of the city..." *Id.* KRS 83A.060, Enactment of ordinances, states, unless an emergency declaration under (7), under subsection 9, all cities, except 1st class cities and charter county governments, "no ordinance shall be enforceable until published pursuant to KRS 424."

KRS 96.160 provides: "The legislative body of any city may, **by ordinance**, provide the city with water..." *Id.*

KY PSC Commission in 1997, found that "Any application for the adjustment of existing rates or the establishment of new rates which lacks the requisite authorization from its governing body is premature and must be dismissed....Only when a utility's governing body has expressly authorized the rates for which the Commission approval is sought will this Commission review the merits of the proposed rates." *See. Winchester Municipal Utilities, Case No. 96-616 (Ky. PSC Oct. 3, 1997) at 6.*

City of Augusta during cross-examination testimony of Mayor John Laycock, admitted the City Council of Augusta never authorized a wholesale water rate increase of \$3.181 per 1000 gallons. In addition, City of Augusta during cross-examination testimony of Mayor Doug Padgett, admitted the Augusta Water Treatment Advisory Board never authorized nor recommended a wholesale water rate increase of \$3.181 per 1000 gallons. The only wholesale water rate approved

by the City council and/or approved and/or recommended by the Augusta Water Treatment Advisory Board, was the ordinance approving a wholesale water rate increase of \$2.967 which had a second reading on April 16, 2025 and publication on or about May 1, 2025. *See. Intervenors Cross Examination Introduced Evidence, Brooksville Newspaper, classified of Ordinance publication dated May 1, 2025.*

Therefore, by City of Augusta's own admission, the City of Augusta is without authorization for a wholesale water rate increase of \$3.181 per 1000 gallons; as no ordinance has been addressed, or any formal action by the City Council to approve said requested wholesale water rate; nor any approval and/or recommendation from the Augusta Water Treatment Plant Advisory Board for a wholesale water rate increase of \$3.181 per 1000 gallons. BCWD also asserts that the application should be dismissed for lack of authority by City of Augusta, City Council to proceed with the rate request of \$3.181 per 1000 gallons. *See. Winchester Municipal Utilities, Case No. 96-616 (Ky. PSC Oct. 3, 1997) at 6.*

B. AMENDMENT OF MUNICIPAL WHOLESAL WATER RATES BY CONTRACT WITH UTILTIY

KRS 278.200, authorizes KY PSC to "...originate, establish, change, promulgate and enforce any rate....". *Id.* Any rate enforced and/or authorized by KY PSC must be "...fair, just and reasonable...". KRS 278.030. KRS 278.190(3), establishes the utility requesting the rate has the burden of proof to demonstrate its proposed rate is fair, just and reasonable. *Id.*

Insufficiency of Application:

BCWD fully incorporates all arguments regarding insufficiency of the wholesale water rate increase of \$3.181 as amended and approved by KY PSC herein on March 19, 2025. *See. 20250418_PSC_ORDER.pdf*. BCWD further asserts that the amended wholesale water rate increase is insufficient, due to failure to file an amended tariff sheet for said amount, KRS 278.160(1), and for failure to supplement its water rate study to include amounts and/or rate calculations for the increased wholesale rate amount, nor obtain the Augusta Water Treatment Plant's approval or consent, nor obtain the City of Augusta's City Council for passage of an ordinance and/or approval, for a wholesale water rate increase of \$3.181 per 1000 gallons.

KRS 278.200 language:

BCWD acknowledges that KRS 278.200, authorizes KY PSC to "...originate, establish, change, promulgate and enforce any rate....", but points to the enabling verb of said statute, which utilizes "may" as opposed to "shall". BCWD asserts this language along with the burden of the applicant under KRS 278.190 to prove the reasonableness of their rate increase, requires some proof of necessity to deviate, change and/or amend the water purchase contract as opposed to enforce the water purchase contract.

Revenue Requirement:

City of Augusta by rate study requests rate revenue of \$584,539.00, *see. rate study, page 21*; and by budget for fiscal year July 1, 2025 to June 30, 2026 for revenues from BCWD in the amount of \$374,000.00 and revenues from City of

Augusta in the amount of \$145,000.00, and miscellaneous grant revenue of \$83,000.00 (*See. Cross-Examination Testimony of Doug Padgett; Copy of Budget for City of August, fiscal year 7-1-25 to 6-30-26, published in Bracken County News, June 26, 2025*).

By filing in questions to BCWD from City of Augusta, City of Augusta attached an excel sheet that showed on it multiple times that \$518,9470.00 was the **minimum revenue requirement for lenders**. *See. Augusta_Request-for_Information_from_Bracken.pdf, Page 10, Exhibit "A"*. City of Augusta puts their calculations in an Excel sheet, identified as Exhibit "A", shows \$416,123, as cash related pro forma expenses, \$86,861.00 as average annual debt, and reduction of received interest income of \$1,409.00 for a total of \$501,575.00 cash related revenue expenses and then adds \$17,372.00 as the extra debt service (debt service at 120%, i.e. \$104,233.00 , for a total of \$518,947.00 or \$519,000.00 (rounded); This number does not included depreciation expenses. *Id.*

There was much discussion and statements at the July 31, 2025, hearing in the matter herein, about insufficient bond/loan reserves required by lender, despite the evidentiary record being void of any such documentation from any lender and/or auditor of City of Augusta as to needing additional monies to be added to its bond/debt reserve; except the statement in the fiscal year audit ending June 30, 2022, page 46, "Condition: The Depreciation Reserve balance was short by \$2,430.00. *See. 2022 Year Audit, ending fiscal year 6-30-22; part of tariff filing; 20240926_Augusta Tariff Filing.pdf.*

Interestingly, the budgeted amounts for City of Augusta (\$145,000.00) and the amount for BCWD (\$374,000.00), collectively equates to the minimum revenue requirement referenced by City of Augusta in its filing of \$519,000.00

REFERENCES TO FUTURE LOANS AND DEFERRED MAINTENANCE COSTS

BCWD objects to any inclusion or consideration of future loans and/or possible expenses toward the rate calculation, as those are not determined, fixed costs due to the loans not being approved nor the project funded, and no debt or expenses incurred to City of Augusta to date, and therefore are not known and measurable costs. *Also. See. 807 KAR 5:001.*

BCWD objects to any inclusion or consideration of any deferred maintenance costs towards the rate calculation, as the City of Augusta has not met its burden of proof that it has an adopted infrastructure investment plan or similar such plan, nor has it met its burden of proof of showing any authority from the necessary legislative body of the City of Augusta and/or the Augusta Water Treatment Advisory Board, to proceed towards implementing any such infrastructure investment plan or similar such plan or part thereof. BCWD objects to the inclusion of any expenses toward the rate calculation for deferred maintenance, as those costs are not determined, fixed costs, due to the deferred maintenance not being approved by the City Council, as it was not in their current budget, *(see. Intervenors Cross Examination filing of City of Augusta budget for fiscal year 7-1-25 to 6-30-26, Bracken County News, filed 6-26-25);* and

therefore are not known and measurable costs. *Also. See. 807 KAR 5:001.* In addition, Plant Manager, Doug Padgett admitted all desired deferred maintenance was in the referenced loan request for plant upgrades, which has not been approved.

C. WHOLESALE WATER RATE INCREASE BY 2016 CONTRACT

The parties by 2016 water purchase contract have a rate methodology for wholesale water rate increases. The rate methodology is established on page four (4) of the water purchase contract. *See. Water Purchase Contract, Pages 4-5, Paragraph 16 (a-i).*

City of Augusta admits by answer and cross-examination testimony of Scott Lawless, rate study author, that using the 2016 contractual wholesale water rate increase calculation methodology, and using the test year chosen by City of Augusta, computes to a water rate increase of \$2.56 per 1000 gallons, not including any imposed rate costs. *See. Answer to BCWD request for information, filed, 1-16-25; DR_1_BCWD_Augusta_Response.pdf, Page 58.*

i) **“known and measurable changes to expenses”**

BCWD admits that known and measurable changes can be made to the wholesale water rate methodology, as provided in the 2016 contract. *See. 2016 water purchase contract, page 5, Number 16(f).* BCWD would also assert that the changes made as pro forma adjustments to expenses and revenues equate to

a cumulative rate revenue generation of \$584,539.00. *See Rate Study, Page 21, Schedule D, (all three calculations).*

During cross examination, KY PSC Staff questioned the applicability to 2014 and 2015 water purchases provided in KY PSC Case No. 2015-00039, wherein, the same document shows the total expenses to the Augusta Water Treatment Plant in 2014, in the amount of \$417,778.00 (not including debt or depreciation). *See. KY PSC Staff referenced document during July 31, 2025 hearing.* Looking at the submitted audited financials for City of Augusta for fiscal years ending June 2022 and June 2023, the expenses for the water treatment plant, respectively: 2022, were \$394,756 (not including depreciation or debt expenses; $\$502,865.00 - \$108,109, \text{dep. Expenses} = \$394,756.00$; 2023, $\$533,372 - 104,882 (\text{dep. Expenses} = \$428,490.00$; however, as admitted in the water rate study (*See. Water Rate Study, page 13, paragraph J*), those expenses included a one-time \$25,000.00 cost for engineering fees from 2021; therefore, $\$428,490.00 - \$25,000.00 = \$403,490.00$. Therefore, BCWD asserts that no significant change of circumstances in expenses has occurred, to justify a deviation, modification and/or change, to the wholesale rate increase methodology agreed to by the parties, in the 2016 contract from its inception date to present.

ii) **Changes to gallons sold for rate methodology**

City of Augusta in the rate study makes changes to the 2016 wholesale water rate increase methodology, by reducing the amount of actual gallons sold

for the test year to each party. City of Augusta admits the 2016 contract does not state that changes can be made to those water purchase numbers for the chosen test year, but asserts the contract does not preclude such request. BCWD objects to the reduction, on the grounds the contract rate precludes such reduction, as the plain meaning of the contract states changes to expenses may be made which are known and measurable. *See. 2016 water purchase contract, page 5, 16(f).* This requirement coincides with administrative regulatory language regarding rate increases, as stated in 807 KAR 5:001.

Therefore, BCWD asserts pursuant to the 2016 wholesale water rate calculation increase methodology; wherein, said calculation having been admitted by the City of Augusta, as the accurate wholesale water rate calculation increase for BCWD, using the chosen test year, without any changes to expenses or water sold, would be \$2.56 per 1000 gallons. *See. Answer to BCWD request for information, filed, 1-16-25; DR_1_BCWD_Augusta_Response.pdf, Page 58.*

D. VARIOUS AMENDMENTS IF KY PSC CHOOSES TO AMEND THE WHOLESALE WATER RATE CONTRACT

Pursuant to KRS 278.200, the Commission has jurisdiction to approve changes to contracts between utilities subject to its jurisdiction and municipal utilities, including deviations or amendments. KRS 278.030 requires that rates for utility service be fair, just, and reasonable.

City of Augusta has raised the issue that the current contract should be deviated and/or amended to allow a higher wholesale water rate than as authorized under

the current contract between the parties and even used the word discriminatory and/or unfair; but no complaint by City of Augusta, nor by Commission's own motion has been brought herein, pursuant to KRS 278.260. Therefore, the issue arises as to whether the contract should be amended and/or deviated from as it relates to increased wholesale water rates, to ensure a fair, just, and reasonable rate.

The City of Augusta first attempts to argue the necessity for a contract wholesale water rate increase deviation and/or amendment by asserting that KRS 278.170 controls in the matter, wherein, KRS 278.170, imposes same or similar rates for same and/or similar services for regulated utilities. *Id.* City of Augusta which is a municipality is not a regulated utility for water it produces to itself (Augusta Water Treatment Plant sells to City of Augusta water works), nor is it a regulated utility for water it sells to residents of the city (Water Works). City of Augusta is only regulated by KY PSC for the water rates it sells water to BCWD. *See. Mount Sterling Water And Sewer Com'n, Case No. 95-193 (Ky. PSC May 31, 1995).* Rate Study author Scott Lawless, at cross examination on July 31, 2025, agreed with said conclusions, despite the previous assertions by City of Augusta as a position of necessity to enforce KRS 278.170 as to rates charged to the City of Augusta. *See. Augusta Request for Information from (really to, sic) Bracken (002, filed February 27, 2025).*

BCWD asserts that KRS 278.200 enabling verb "may", requires a change of circumstances, at minimum, before a wholesale water rate increase methodology agreement is changed, modified and/or deviated. The same amount of requested revenue by City of Augusta of \$584,539, can be generated by implementation of the

2016 water rate methodology agreement; if City of Augusta is willing to charge themselves the agreed contractual rate. *See. Page 21, Schedule D, Augusta Costs and rate pursuant to 2016 contract and BCWD Costs and Rates, which combine for \$584,539.00.* BCWD disagrees with the numbers used to generate the rate calculations based upon the reduction of gallons sold; but would agree that the rate calculations without changes to the gallons sold to each party for the chosen test year would be as follows:

- A) BCWD, \$376,667.00 (Exp allocation) + \$66,709.00 (debt allocation) =
 $\$443,376 / 173,162,180 = \2.56 per 1000 gallons
- B) City of August, \$103,459.00 (Exp allocation) + \$37,524.00 (debt allocation) =
 $\$140,983 / 52,539,444 = \2.68 per 1000 gallons
- C) Total generated revenue, $\$443,376 + \$140,983 = 584,359.00$

City of Augusta using the same or similar services and similar rates argument of KRS 278.170, attempts to establish this argument as the criteria for not establishing separate rates for both City of Augusta, i.e., a rate of \$3.32 (with changes to test year expenses and gallons sold; *see page 21, Schedule D, of rate study*) or a rate of \$2.68 (above, B), generates \$140,983.00 of projected income; and for BCWD a rate of \$2.87 (with changes to test year expenses and gallons sold; *see page 21 of rate study*) or \$2.56 (above, A) for projected income of \$443,376.00, for a total of \$584,359 required revenue). The calculations utilized by the rate study, calculated all rates (i.e. \$2.967, \$2.87 and \$3.32), by using a vastly decreased changes to purchased water gallons for the chosen test year, (City of Augusta test year

purchased water 52,539,444, requested to reduce to 42,433,508; BCWD test year purchased water 173,162,980, requested to reduce to 154,489,118). The wholesale water rate study utilized by City of Augusta, requests revenue generation of \$584,359 for the unified rate. *See. Page 21 of the Wholesale Water Rate Study for the referenced wholesale water rate study calculations.*

Interestingly, using the requested revenue requirement number of \$584,359.00, as used by the City of Augusta's water rate study, divided by the gallons sold during the test year to both parties, i.e., $(173,162,980 + 52,539,444 = 225,702,424)$, would be $\$584,359 / 225,702,424 = \2.5898658 ; However, for transparency using the same revenue requirement number of \$584,359.00 divided by the requested reduced sold gallons $(225,702,424 \text{ to } 196,923)$, drastically raises the rate $\$584,359 / 196,923 = \2.968363 ; proving that the gallons sold is the driving factor of how much the wholesale water rate increases, implementing such rate methodology.

Augusta Water Treatment Plant operator, Doug Padgett stated during cross-examination at hearing on July 31, 2025, that at least for the last three months (assumingly May, June, July 2025), Augusta Water Treatment has been producing and selling 200,000 gallons a day, or 6 million gallons a month, to the City of Augusta. When asked if 72,000,000 gallons a year would be consistent, with the amount sold in a year to City of Augusta from the Augusta Water Treatment Plant; the response given by Mr. Padgett (paraphrasing), was that if that is what 200,000 gallons a day equates to, then that is correct. City of Augusta has the burden of proof in this matter, to prove the necessity of the rate increase, and its increase being fair, just

and reasonable; wherein, any reduction in the gallons sold for the wholesale water rate calculation herein, from the chosen test year ending June 30, 2023, as opposed to increasing the gallons sold based upon City of Augustas' own testimony at hearing, would not be fair, just or reasonable, based upon the evidentiary record.

BCWD would request use of the actual test year gallons sold to be the utilized number for any rate calculation methodology utilized and/or implemented by KY PSC, that number being (BCWD 173,162,980, City of Augusta 52,539,444) = 225,702,444, total gallons. In the event that KY PSC believes an adjustment to said gallons sold during the chosen test year by City of Augusta, would be fair, just and reasonable to utilize in the rate calculation methodology; then BCWD requests that the KY PSC implement the evidentiary record as to the testified number of gallons used by City of Augusta, as recently as of July 2025, of 200,000 gallons a day and/or 72,000,000.00 gallons a year. BCWD would acknowledge that it is purchasing less water than the test year chosen, and the amount being purchased from City of Augusta is @ 150,000,000 a year (*see. Bracken County Water District filing for a pass through rate increase, case ultimately dismissed due to KY PSC Order denying implementation of the requested rate effective date, by City of Augusta, Case No. 2025-00119*); wherein, an accurate current purchase from Augusta Water Treatment to BCWD (@150,000,000) and City of Augusta (@72,000,000.00) would be @222,000,000 gallons. BCWD believes this amount would be an alternate, fair just and reasonable number, for use of total gallons sold to each entity and collectively.

Therefore, depending on rate calculation methodology, a unified rate for the highest requested revenue \$584,539, as opposed to the stated minimum revenue requirement of \$519,000.00, would be as follows:

\$584,539.00 revenue requirement

A) $\$584,539 / 225,702,444 = \2.58 per 1000 gallons

B) $\$584,539 / 222,000,000 = \2.63 per 1000 gallons

\$519,000.00 minimum revenue requirement for lenders

C) $\$519,000 / 225,702,444 = \2.30 (rounded up)

D) $\$519,000 / 222,000,000 = \2.34 (rounded up)

RATE CASE EXPENSES

BCWD does not object to the reasonableness of the rate study fees or the city attorney, Mrs. Cynthia Thompson's, fees being reasonable rate case fees and/or expenses. However, BCWD encourages KY PSC to evaluate the reasonableness of the hourly rate being charged for the submitted invoiced services through July 31, 2025 by the Dinsmore legal team. The two day late (KY PSC gave until 8-9-25 to file; City of Augusta filed 8-11-25 at 6:00 p.m.) invoices did not show any hourly fees for the Dinsmore legal team. BCWD does not contest the reasonableness of the services performed, simply the reasonableness of the hourly fee charged (even including the discounts), for the nature of the rate case and the skill level required for a municipal wholesale water rate increase. Simply stated, BCWD understands the reasonableness of high hourly attorney fees for complicated matters, but questions the hourly fee amount considering the nature of the proceedings herein, and the lack of stating the charged

hourly fee in the untimely filed invoices. *See.* BCWD would assert that a Mercedes Benz expense is not necessary or reasonable if a Toyota or Chevrolet expense, can do the same or similar service.

BCWD would also be interested if City of Augusta, City Council approved the hiring of the Dinsmore legal team, and the hourly fees charged for the services rendered; as this also would be a legislative function, requiring city council approval, due to the requirement of fiscal dollars to be spent on a third party contractor. *See. Brief herein, Section on requisites for municipal authority to proceed with rate case, beginning at page 4.*

Amortization of Rate Case Expenses

BCWD would request that the approved amount of rate case expenses be amortized as expenses in the wholesale rate increase methodology, over a period of no more than four years no less than three years, and included in the wholesale rate increase to BCWD. BCWD would also request that KY PSC determine the amount each party can expense yearly of the approved rate case expenses, for the purposes of their financial accounting, and/or incorporation into any pro-rata rate calculation. (I.E., If a yearly amortized rate case expense of \$10,000,00 is approved, then how much of the \$10,000.00 can each party report as a yearly amortized expense; percentage and/or amount of said yearly approved amortized amount).

Denial and/or reduction of rate case expenses

KY PSC has denied and/or reduced rate case expenses when there has been inadequate documentation of the expense (*See. Frankfort Plant Board, 2008-00250 (Ky.*

PSC April 6, 2009); the expenses are related to an improperly prepared rate application (See. *Case No. 8783, Third Street Sanitation, Inc. at 7 (Ky. PSC Nov. 14, 1983)*; or when the utility failed to justify the high level of expenses for a relatively simple alternate rate filing (See. *Case No. 9127, Sergeant & Sturgeon Builders, Inc. Gardenside Subdivision Sewer Div. at 14 (KY PSC Mar 25, 1985)*). Citing *KY PSC Case NO. 2009-00373, Proposed Adjustment of the Wholesale Service Rates of Hopkinsville Water Environmental Authority*. The Commission in Case No. 2009-00373, established that legal fees should not on average exceed forty-five 45 percent of the total rate case expenses. *Id. At 12*; citing *Kentucky-American Water Co, Case No's 2007-00143; 2008-00427; 2007-00143*. Based upon this analysis, and examining the required services and hourly fees billed, but not stated, i.e. Rate Study, \$15,732.45, legal fees of \$67,984.50; BCWD believes that total legal fees should not exceed \$14,000.00, for a combined for total rate case expenses of \$29,000.00 ($15,732.45/29,000 = 0.5424982759$).

CONCLUSION

BCWD asserts that the burden of proof is on the City of Augusta, to prove the reasonableness, fairness, and justness, of their rate increase request. BCWD does not believe City of Augusta has met this burden as to its requested rate increase of \$3.181 per 1000 gallons. First, City of Augusta lacked the authority to request a rate increase of \$3.181 per 1000 gallons, as they have never authorized such an increase, nor filed the appropriate regulatory and statutory requirements for a rate increase. See. *Cross Examination Testimony of City of Augusta Mayor, John Laycock*. Further, the new rate increase request amount of \$3.181 per 1000 gallons, has never had a tariff filing for said

amount filed of record. City of Augusta did not validly (by published ordinance) authorize a rate increase of \$2.967, prior to the November 26, 2024, Tariff filing, (ordinance published May 1, 2025); therefore, the rate increase request and amendment are deficient and should be dismissed, as the application lacked authority for its increase by the legislative body prior the application filing. *See. See. Winchester Municipal Utilities, Case No. 96-616 (Ky. PSC Oct. 3, 1997) at 6; cited authority KRS 83A, KRS 96.*

BCWD does agree City of Augusta would be entitled to a rate increase under the 2016 contract, implementing the test year chosen of \$2.56 per 1000 gallons (not including approved rate case expenses).

BCWD believes the 2016 wholesale water rate calculation methodology using the chosen test year without any adjustments to expenses and/or gallons sold, is fair just and reasonable; which is the rate of \$2.56 per 1000 gallons, a \$0.20 per 1000 gallon increase (increase without KY PSC approved rate expenses). This would generate based upon the current usage by BCWD of @150,000,000, $(150,000,000 \times 2.56 =)$ \$354,000.00, and City of Augusta @70,000,000, $(70,000,00 \times \$2.56, \text{ assuming they are not going to charge the contract rate for themselves,}=)$ \$179,000,000; for a total of \$533,000.00, or \$21,000,00 over the amount required for minimum revenue by lenders of \$519,000.00.

In the event that KY PSC desires (KRS 278.200 “may”) to make changes, modifications and/or deviations from the rate methodology, City of Augusta is bound by the evidentiary record, and their rate study, which on page 21 requests revenue generation of \$584,539.00, and BCWD requests that said revenue generation number be highest rate revenue generation number utilized for any “modification, change and/or

deviation” from the current rate increase methodology between the parties, by KY PSC (not including approved rate case expenses), if the minimum revenue requirement for lenders of \$519,000.00 is not implemented. BCWD would also request that any modification, change and/or deviation utilize the actual gallons sold during the chosen test year or utilize the most accurate current representation of gallons being purchased currently by each party; wherein, said calculation based upon the highest requested revenue generation number of \$584,539, would be \$2.58 or \$2.63 per 1000 gallons respectively (not including approved rate case expenses by KY PSC). *See rate calculations on page 17, herein.*

Respectfully submitted,

/s/ JESSE P. MELCHER, ESQ.
BRACKEN COUNTY WATER DISTRICT,
ATTORNEY
JESSE MELCHER LAW OFFICE, PLLC
MR. JESSE P. MELCHER, ESQ.
P.O. BOX 345
MOUNT OLIVET, KY 41064
606-724-5322 (phone)
jpmelcher@yahoo.com

CERTIFICATE OF SERVICE

I, Jesse P. Melcher, Esq. as counsel and representative of BCWD herein, do hereby certify that I have mailed out by electronic filing through the KY PSC web portal, pursuant to 807 KAR 5:001(8), this the 19th day of August, 2025; and that no party herein, has opted out of the electronic notice and/or filing herein, and proof of electronic filing and courtesy copy are as follows, of BCWD'S post-hearing brief:

KY PSC, filed by web portal in this case number

Ms. Cynthia Thompson, Esq.
Counsel for City of Augusta
ccthompsonatty@yahoo.com

Mr. Evan Buckley, Esq.
Counsel for City of Augusta
Evan.Buckley@dinsmore.com

Mr. Edward T. Depp, Esq.
Counsel for City of Augusta
Tipp.depp@dinsmore.com

Mr. R. Brooks Herrick, Esq.
Counsel for City of Augusta
Brooks.herrick@dinsmore@com

/s/ MR. JESSE P. MELCHER, ESQ.