

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) SUR-REPLY 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) sur-reply brief, as follows:

PROCEEDINGS HEREIN:

1. Both parties were granted by KY PSC Order, until August 19, 2025, to file their post hearing briefs. *See. 20250805_PSC_ORDER.pdf.*
2. Both parties were granted by KY PSC Order, until August 26, 2025 to file sur-reply briefs, and to limit the sur-reply brief, to issues raised by the other’s post hearing brief. *See. 20250805_PSC_ORDER.pdf.*

City of Augusta raised the following issues in its brief: a) KY PSC to review application under KRS 278.260, (*See. City of Augusta Brief, Page 20, Reference 108*); b) Why the 64% of the debt service was established and should be disregarded, (*See. City of Augusta*

Brief, Page 20); c) Why the reduction in depreciation was established and should be disregarded, (*See. City of Augusta Brief, Page 23*); d) Burden Shifting as to Rate Study Numbers, (*See. City of Augusta Brief, Page 17*); e) Rate Revenue Requirement by Rate Study, (*See. City of Augusta Brief, Pages 13, 17 and page 23*); f) Necessity of KY PSC to consider and incorporate the City of Augusta's unapproved loan request, for loan project of Augusta's modernization plan, (*See. City of Augusta Brief, Pages 9 and 22*; g) That known and measurable changes to expenses, necessitates changes to gallons sold in the rate calculation methodology, (*See. City of Augusta Brief, Pages 13-14*); h) KRS 278.170(1) and City of Pikeville holding (*See. City of Pikeville, v. Publ Serv. Comm, of Kentucky, 2024 Unpub, not controlling, Ky. Civ. Rule 41*), *Lexis 246 at 21 (Ky App. April 19, 2024)*)), mandates that KY PSC must evaluate and determine the wholesale rates to its own municipal utilities, and not allow or determine a rate higher than the rate charged to BCWD, as a same or similar service. (*See. City of Augusta Brief, Pages 13-14*);

A) KY PSC to review application under KRS 278.260.

City of Augusta asserts that KY PSC must review its application under KRS 278.260. (*See. City of Augusta Brief, Page 20, First Paragraph, reference 108*). BCWD would agree with the asserted legal principal that KRS 278.260, states that KY PSC may review a rate as to whether it is unreasonable or unjustly discriminatory (*See. Id.*), if a party to the case files a complaint with KY PSC and/or raises the issue by motion or direct assertion in its application, or raised by KY PSC motion. *See. KRS 278.260; KY PSC Case No. 2024-00114, Electronic Alleged Failure of Duke Energy to Comply with KRS 278.160(2)*.

BCWD states that the record is void of any motion by City of Augusta in its tariff filing, or pleadings of a formal complaint, made pursuant to KRS 278.260 and/or direct assertions of request to review under KRS 278.260; nor has KY PSC to date made a request to review the application pursuant to KRS 278.260. The requested revenues of \$519,000 (minimum revenue for debt) and/or \$584,539.00 (revenue generated by rate 2016 methodology), can be generated by following the 2016 contract methodology, and Augusta charging the appropriate rate to cover their agreed shared costs, pursuant to the 2016, wholesale water increase rate methodology.

Further, BCWD would establish that by City of Augusta's recent filings, their recent admissions of immediate possibility of the water treatment plant being unsafe, inadequate and/or providing unreliable service (*See. City of Augusta's Post-Hearing Brief, Page 23, First Paragraph, reference 123*); either necessitate an investigation and/or monitoring compliance, pursuant to KRS 278.260, or are issues to be addressed by future rate increases tied to the loans for improvement to address Augusta's asserted immediate possible unsafe, inadequate, and/or or unreliable service.

B) why the 64% of the debt service was established and should not be honored.

City of Augusta by hearsay statements and assertions, allege the rationale behind the 2016 contract agreed to by City of Augusta, for establishing the 64% debt limit, was due to a possible typographical error or as a floor and not a ceiling of debt service. (*See. City of Augusta Brief, Pages 6-7*). BCWD objects to the hearsay statements, and would direct attention to the public record in the Case that established the 2015 Contract, i.e. KY PSC Case No. 2015-00039; wherein, by revised answers to KY PSC Staff questions (3-16-16),

BCWD asserted on 4-1-16, answers which established the parties intent regarding the 64% debt service threshold. *See. Q.3 & A.3, contained in Exhibit "A", which is fully incorporated herein.*

BCWD asserts that the four corners of the contract control regarding interpretation of a contract (*See. Smith v. Crimson Ridge Development, LLC, 410 S.W. 3d 619, 621 (Ky. App. 2013)*), and interpretations of contracts are an issue of law for the Court to decide (*See. Equitrans Ins. Co. v. Slone & Garrett, PSC, 191 S.W. 3D 552, 556 (Ky. 2006) (citing Morganfield Nat. Bank v. Damien Elder Sons, 836 S.W. 2d 893 (Ky. 1992))*); and if an ambiguity exists, then a Court can look to extrinsic evidence. (*See. Smith v. Crimson Ridge Development, LLC, 410 S.W. 3d 619, 621 (Ky. App. 2013, citing Frear v. PTA Indus., Inc. 103 S.W. ed 99, 106 (Ky. 2003))*). The parties involved in the contract should be the ones to look to for extrinsic evidence, not third parties who did not participate in the contract formation, nor had the courtesy to read or correctly identify the filings in the case, that formed the intent of the parties regarding the 64% debt threshold. Also, as pointed in cross-examination testimony, when determining the 64% of the 120% debt amount (adding 20% to the actual debt payment) for rate methodology, equates to (debt payment for 6-30-25 was \$85,399, with a \$104,233, as the 120% average debt payment; $\$104,233 \times .64 = 66,709.12$, therefore, $66,709.12 / 85,399 = 78.11\%$; meaning BCWD pays 78% of the actual debt payment.

C) why the reduction in depreciation was established, and should not be honored.

City of Augusta by hearsay statements and assertions, allege the rationale behind the depreciation limitation, in the 2016 contract agreed to by City of Augusta, was without

justification. (*See. City of Augusta Brief, Page 23*). BCWD objects to the hearsay statements offered by City of Augusta as evidence of the how the provision of depreciation limitation was established for the wholesale rate to BCWD, and would direct attention to the public record in the Case that established the 2016 Contract, i.e. KY PSC Case No. 2015-00039; wherein, by revised answers to KY PSC Staff questions (3-16-16), BCWD asserted on 4-1-16, answers which established the parties intent regarding the deprecation limitation. *See. Q.4 & A.4, contained in Exhibit "A", which is fully incorporated herein, which identify the history of the contracts between the parties and prior agreements as to depreciation, and equity.*

BCWD asserts that the four corners of the contract control regarding interpretation of a contract (*See. Smith v. Crimson Ridge Development, LLC, 410 S.W. 3d 619, 621 (Ky. App. 2013)*), and interpretations of contracts are an issue of law for the Court to decide (*See. Equitrans Ins. Co. v. Slone & Garrett, PSC, 191 S.W. 3D 552, 556 (Ky. 2006) (citing Morganfield Nat. Bank v. Damien Elder Sons, 836 S.W. 2d 893 (Ky. 1992))*); and if an ambiguity exists, then a Court can look to extrinsic evidence. (*See. Smith v. Crimson Ridge Development, LLC, 410 S.W. 3d 619, 621 (Ky. App. 2013, citing Frear v. PTA Indus., Inc. 103 S.W. ed 99, 106 (Ky. 2003))*). The parties involved in the contract should be the ones to look to for extrinsic evidence, if necessary, not third parties who did not participate in the contract formation, nor had the courtesy to read or correctly identify the filings in the case; which formed the intent of the parties, regarding the limitation of depreciation, as consistent with prior agreements, between the parties. *See. Q.4 & A.4,*

contained in Exhibit “A”, which is fully incorporated herein, which identify the history of the contracts between the parties and prior agreements as to depreciation, and equity

D) Burden Shifting.

City of Augusta contends that due to BCWD not utilizing an expert or challenging the pro-forma numbers, requires the Commission to accept the pro-forma numbers as uncontroverted. (*See. City of Augusta Brief, Page17*). BCWD states this is improper burden shifting under KRS 278.190, and even if BCWD had not intervened, the burden remains upon City of Augusta, to prove their rate is fair, just and reasonable to the Commission, and subject to Commission approval or rejection. Specifically, the Commission has held that KRS 278.190(3) “explicitly places the burden of proof to show that the increased rate or charge is just, fair and reasonable [on] the utility.” *See. KY PSC Case No. 2023-00159, Electronic Application of KY Power for General Rate Adjustment as to Rates....*

E) Rate Revenue Requirement by Rate Study.

City of Augusta stated in its post hearing brief that it was attempting to generate rate revenue of: a) \$414,186; b) \$418,160 and c) \$626,464. (*See. City of Augusta Brief, Pages 13, 17 and 18, respectively*). BCWD objects to the use of \$626,464 as the revenue requirement, as said revenue requirement was never incorporated into an amended rate study or a direct testimony submission, and was filed as an exhibit to questions to BCWD herein. *See. Augusta_Request_for_Information_from_Bracken.pdf*. Augusta in its first responses to BCWD agreed to supplement any answers, and stated it only relied on its August 2024 rate study and tariff filing, and exhibits filed as of 1-16-25, to met its burden

of proof. *See. DR_1_BCWD_Augusta_Response.pdf*, Q.49, Q.52, Q. 53. Augusta, also admitted that it had no further direct evidence filings on or before May 7, 2025 (*See. City of Augusta-Responses to County's Third RFI 2024-00349.pdf, filed 5-30-25*), pursuant to KY PSC scheduling Order (*See. 20250418_PSC_ORDER.pdf, filed 4-18-25*), and never filed a supplementation of answers and/or rate study, on or before the hearing date of July 31, 2025. *See. Evidentiary record in this matter.*

City of Augusta by budget for fiscal year July 1, 2025 to June 30, 2026, budgeted revenues from BCWD in the amount of \$374,000.00, and revenues from City of Augusta in the amount of \$145,000.00, for collective projected revenue of \$519,000.00. *See. Copy of Budget for City of August, fiscal year 7-1-25 to 6-30-26, published in Bracken County News, June 26, 2025, presented at cross-examination 7-31-25).*

As noted in the post-hearing brief, the budgeted amounts for City of Augusta (\$145,000.00) and the amount for BCWD (\$374,000.00) (*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, presented at cross-examination 7-31-25*), collectively equates to the minimum revenue requirement referenced by City of Augusta in attachment to questions to BCWD. *See. Augusta_Request_for_Information_from_Bracken.pdf*

Further, BCWD objects to the revenue requirement of \$626,464.00, as not consistent with the 2016 contractual rate methodology, which limits depreciation and debt expenses to the parties agreed rate methodology provisions. BCWD has no objection to the use of \$414,186 and/or \$418,160 as expenses before contractual inclusion of pro-

rata debt and pro-rata depreciation, to be used in accordance with the 2016 rate increase methodology; if the actual chosen test year of gallons sold is used, or an estimate of the current usage by both parties, based upon the evidentiary record. BCWD provided several rate methodologies for use if the 2016 contractual rate methodology is abandoned and/or or modified, in its post hearing brief.

F) Necessity of KY PSC to consider and incorporate the City of Augusta's unapproved loan request for loan project, and/or "modernization plan").

City of Augusta requests KY PSC to take into consideration a possible future loan for City of Augusta for Water Treatment upgrades, specifically, loan, KIA, WRIS, Project # WX21023047. (*See. City of Augusta Brief, Pages 9-10*); kia.ky.gov/WRIS/Pages/WRIS-Portal.aspx.)

BCWD first objects to the incorporation and/or consideration of the loan application (not approved) for KIA, WRIS, project # WX21023047, as not fixed nor known costs. BCWD secondly objects to the incorporation and/or consideration of the loan application (not approved) for KIA, WRIS, loan project WX21023047, as not having been approved and/or adopted by City of Augusta, City Council. BCWD, also objects due to the capital improvements not being included in the rate study; as incorporation and/or consideration of the loan application (not approved) for KIA, WRIS, loan project WX21023047; wherein, pursuant to 807 KAR 5:001 Section 16(5), mandates that for inclusion of the future plant upgrades to be part of the pro-forma numbers, that necessary corresponding documentation must be submitted.

Water Treatment Plant operator, Doug Padgett, during cross-examination stated that all desired deferred maintenance (i.e. “modernization plan”), were all included in the project profile and/or loan for WX21023047, which said project profile was started on or about November 23, 2015, almost ten (10) years ago. *See. kia.ky.gov/WRIS/Pages/WRIS-Portal.aspx, project WX21023047.* Further, the project is for \$3,250,000.00 with \$2,500,000 for construction, \$350,000.00 for engineering, \$45,000.00 for administration, \$5,000.00 for legal, \$100,000.00 for miscellaneous, and \$250,000.00 for contingencies. It is assumed that annual payments for such a loan, would be near \$150,000.00, which would not be offset by the requested increase herein of \$3.181 per 1000 gallons, and will be the subject of a future rate case if approved, to ensure adequate rates for the loan payments, which are a not known or fixed.

It should be noted that the \$3.181 per 1000 gallons is justified by City of Augusta to allow “Augusta Treatment an opportunity to maximize access to the internal working capital that will be essential to funding the \$3,250,000, plant improvement projects identified in the Cann-Tech Study.” (*See. Page 10 of Rebuttal Testimony of Mayor John Laycock, lines 16-18*). Review of the loan project referenced, shows no need for extra money to obtain the loan. *See. kia.ky.gov/WRIS/Pages/WRIS-Portal.aspx, project WX21023047.* However, BCWD would acknowledge that the annual principal payment on \$3,250,000.00 and for possible \$3,500,000.00 to address PFA’s and PFO’s would require more revenue than any revenue number presented to date, but said expense is not fixed and determinable, until the loan has been approved, and repayment terms are

completed; and therefore, not ripe for inclusion or consideration for the current rate case, nor in compliance with 807 KAR 5:001 Section 16(5).

BCWD would establish that 807 KAR 5:001 Section 16(5), requires that upon good cause shown for pro forma adjustments to a historical test year period, shall incorporate any possible capital construction budget with proposals as to the plant additions. *See. 807 KAR 5:001 Section 16(5)(a-b)(c)(1-8) and (d).*

G) That known and measurable changes to expenses necessitates changes to gallons sold in the rate calculation methodology.

City of Augusta contends that adjustments for “known and measurable changes” (*See. 2016 Contract Page 5, numerical paragraph 16(f)*), includes adjustments to gallons sold, (*See. City of Augusta Brief, Page 2 & 19-20*); although the contractual language states, **“Test period operating costs** may be adjusted to reflect known and measurable changes.” *See. 2016 Contract Page 5, numerical paragraph 16(f).*

BCWD objects to changes to gallons sold for the test year, unless they include information that reflects current gallons purchased. City of Augusta attempts to persuade the Commission, that it is only using @ 42,000,000 gallons per year, although through cross-examination testimony, Water Treatment Plant Operator, acknowledged that City of Augusta has been selling and/or producing @ 72,000,000 gallons a year or 6,000,000 gallons a month, or 200,000 gallons a day, for the City of Augusta. The number of gallons being purchased during the 2020-00277 rate case, that generated a \$0.01 cent increase, City of Augusta purchased \$59,992,000 and BCWD purchased 147,836,000, for a total of 207,828,000 (*See. KY PSC Case No. 2020-00277*;

Augusta_Responses_to_BCWD.pdf, filed 2-24-21); and was based upon same or similar expenses. *See. KY PSC Case No. 2020-00277*;

Augusta_Responses_to_2nd_Request_for_Information.pdf, filed 10-14-20. Therefore, BCWD believes the gallons purchased should not be reduced from the chosen test year rate methodology, or a current determination of gallons being sold, should be implemented to give an accurate representation of anticipated revenue for any increase, and to accurately reflect the current percentage of costs to each entity, if the chosen actual test year purchased gallons is not used.

(H) Application of KRS 278.170(1), as to a municipality's rates to itself and/or its own proprietary interests for the rates as to "regulated activities" (KRS 278.010(23).

City of Augusta argues that the recent holding of City of Pikeville, (*See. City of Pikeville, v. Publ Serv. Comm, of Kentucky, 2024 Unpub, not controlling, Ky. Civ. Rule 41, Lexis 246 at 21 (Ky App. April 19, 2024)*), and the statutory requirement of KRS 278.170(1), mandate KY PSC to evaluate, consider and by implication establish and set, the wholesale water rates for water that City of Augusta sells from its distribution plant, to its own water works (its own distribution to its citizens). (*See. City of Augusta Brief, Page 2 & 19-20*). BCWD would acknowledge the holding in Pikeville, *See. City of Pikeville, v. Publ Serv. Comm, of Kentucky, 2024 Unpub, not controlling, Ky. Civ. Rule 41, Lexis 246 at 21 (Ky App. April 19, 2024)*), that established KY PSC must evaluate and can adjust other regulated utilities for regulated activities, regarding wholesale water increases, if the application only requests to include increases to one regulated utility. However, BCWD states that in said case there was never any establishment of the rates

that City of Pikeville sells to itself for water distribution, only water that it sells to two (2) regulated utilities (KRS 278.010), i.e. Mountain and Southern Water (both Water Districts, established under KRS 74), for regulated activities (KRS 278.010).

KY PSC Commission by Order dated September 1, 1994, in *Proposed Adjustment to Wholesale Water Service Rates of the Mount Sterling Water and Sewer Commission*, Case No. 95-193, citing *Simpson County Water District v. City of Franklin*, 872 S.W. 2d 460, 465 (Ky. 1995), stated, “The purpose of the Commission’s jurisdiction over a municipal utility is to ensure that any public utility consumer/customer that has contracted and become dependent for its supply of water from a city or utility is not subject to either excessive rates or inadequate service.” *Id.*; cited in Case No. 95-193, 199500193_09011995.pdf. KY PSC in said case of 95-193, by Order dated May 31, 1995, stated, “The Commission’s jurisdiction over municipally owned utilities extends only to rates charged and services provided to public utilities. *Simpson County Water District v. City of Franklin*, 872 S.W. 2d 460 (Ky. 1994). It does not extend to the retail rates of such utilities or to the rates which a municipality owned utility may assess to another municipally owned utility.” Case No. 95-193, 199500193_05311995.pdf.

Further, BCWD would establish that by Frequently Asked General Questions dated June 19, 2018, Page 1 of 4, for Commission Staff’s interpretation of law, advisory in nature, and not binding on the commission, stated, “Does the PSC regulate a municipal utility’s rates and services to another municipal utility? No. If a municipal utility provides service to another municipal utility, that service is not subject to KY PSC regulation.” See. *Exhibit “B”, Page 1 of 4.*

Any ruling by PSC herein to overturn the above precedents and advisory opinions, to establish that KY PSC should determine municipal rates to other municipal utilities; would subject KY PSC to complaints and possible intervenors in municipal utility rate cases or rate complaint cases, by municipal customers as to rates and services from municipalities by such precedent.

(I) Incorrect assertion by City of Augusta in its brief:

- 1) “Once again, BCWD intervened and objected to the increase.” *See. City of Augusta post hearing brief, Page 8, reference 40*). This is in reference to the 2020 rate case. Actually, BCWD filed on July 30, 2020, a letter of receipt of notice from City of Augusta as to the \$2.50 rate increase, and waived any objection to the rate increase. *See. TFS 2020-00381-Bracken County Water District Response and Waiver; 20200819_Bracken County July 30 letter.pdf*; subsequently by KY PSC Order, 20200825_PSC_ORDER.pdf., KY PSC on its own, opened an investigation, and then BCWD pursuant to said order, made a motion to intervene. Ultimately, City of Augusta, City Council, agreed to a \$0.01 cent increase by mutual agreement with BCWD. *See. 2020-00277.*

CONCLUSION

BCWD refutes that implication it has caused herein, unnecessary review of the wholesale water rate request, by attempting to implore on the Commission, that the Commission has a duty to change a contract rate methodology, because its proposed rate increase is presumptively fair, just and reasonable. BCWD asserts that water district commissioners are under a fiduciary duty, to ensure that the water district commissioner

is enhancing the interests of the district, by enhancing revenue or reducing costs. *See. KY PSC Case No. 2019-00026, approving Kentucky Rural Water CLE training, document 20190401_Kentucky Rural Water Association Response to Commission Order.* Further, even if BCWD had not intervened, the rate increase is still subject to KY PSC review, as to whether City of Augusta has met its burden of proof, to establish the requested rate increase rate is fair, just, and reasonable.

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 the \$3.181 per 1000 gallons for the all of the prior reasons stated in the post-hearing brief, i.e., a) lack of City official City Council approval pursuant to KRS 83A., to proceed with a \$3.181 per 1000 gallons; b) lack of the Water Treatment Advisory Board to approve the \$3.181 per 1000 gallons, which include changes to expenses from the test year, pursuant to 2016 contract and Ordinance of City of Augusta; c) Failure to file an amended tariff sheet for \$3.181 per 1000 gallons, pursuant to 807 KAR 5:001, Section 16, (1)(b)(3); d) failure to demonstrate by proof, a necessity to change the 2016 contractual rate increase methodology; and e) failure to provide proof that a \$3.181 per 1000 gallons increase to wholesale water rate is fair, just and reasonable.

The revenue that would be generated on a \$3.181 per 1000 gallons on estimated current usage, based upon the evidentiary record, would be as follows: BCWD @150,000,000 x 3.181 per 1000 gallons = \$477,150.00; City of Augusta 72,000,000 x

3.181 per 1000 gallons = \$229,032.00; collectively, \$706,182; which is well above any rate revenue requested.

BCWD requests that the contractual rate methodology of \$2.56 per 1000 gallons be used, implementing the chosen test year, without changes to expenses or gallons purchased; or alternatively if modifications to the rate methodology are made, that the gallons sold reflect the test year chosen, or represent a current accurate representation of the gallons purchase based upon the evidentiary record, i.e. BCWD @ 150,000,000 gallons and City of Augusta @72,000,000 gallons, for a total of 222,000,000 gallons; this would generate \$384,000.00 from Bracken County and \$184,320.00 from City of Augusta, for a total of \$568,320.00; assuming, City of Augusta will only charge the same rate it sells water to BCWD, for the water it sells to its own waterworks.

Lastly, BCWD would state that any claim that non-deviation from the contract is confiscatory, is waived by the City of Augusta's contractual agreement and approval of the contract rate methodology. The rate methodology was not imposed upon the City of Augusta; City of Augusta chose to agree with the 2016 contractual rate methodology and rate, two (2) times.

Respectfully submitted,

/s/ JESSE P. MELCHER, ESQ.
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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 26th 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 sur-reply brief:

KY PSC, filed by web portal in this case number

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