

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF CITY OF) CASE NO.
EARLINGTON FOR A DECLARATORY ORDER) 2025-00299

O R D E R

On November 12, 2025, the city of Earlington (Earlington) filed a verified application for declaratory order and formal complaint pursuant to KRS Chapter 278 and 807 KAR 5:001, asserting that the wastewater treatment service provided by the city of Madisonville (Madisonville) is subject to the jurisdiction of the Public Service Commission (Commission) and challenging Madisonville's 2024 wholesale wastewater rate increase.¹

The Commission issued one round of requests for information, limited to the threshold jurisdictional question.² Earlington filed responses on December 8, 2025.³ Madisonville filed a Motion to Dismiss on December 2, 2025, asserting that the Commission lacks jurisdiction over municipal wastewater operations and municipal-to-municipal wholesale rates.⁴ Earlington filed a response opposing dismissal on December

¹ Earlington's Verified Application for Declaratory Order and Formal Complaint (Application and Complaint) (filed Nov. 12, 2025).

² Commission Staff's First Request for Information to City of Earlington (Staff's First Request) (issued Nov. 25, 2025).

³ Earlington's Response to Staff's First Request (filed Dec. 8, 2025).

⁴ Madisonville's Motion to Dismiss (Motion to Dismiss) (filed Dec. 2, 2025).

8, 2025.⁵ There are no intervenors in this case. The matter now stands submitted for decision based on the written record.

LEGAL STANDARD

The Public Service Commission is a statutory agency whose jurisdiction is limited to that expressly granted by the General Assembly. Under KRS 278.040(2), the Commission's authority extends only to the regulation of "utilities" as defined by KRS Chapter 278 and applicable administrative regulations.

Pursuant to 807 KAR 5:071(9), a "sewage utility" is defined as any person owning or operating sewage treatment or disposal facilities *except a city*, and cities are therefore categorically excluded from Commission regulation as sewage utilities.

KRS 278.200, which governs contracts between utilities, does not apply to city-to-city wastewater agreements and does not provide an independent basis for Commission jurisdiction. Absent a specific statutory or regulatory grant expanding the Commission's authority, the Commission must resolve jurisdiction as a threshold matter and may not reach the merits of disputes involving municipal sewer services outside its jurisdiction.

DISCUSSION AND FINDINGS

The threshold issue before the Commission is whether it has jurisdiction under KRS Chapter 278 and applicable administrative regulations to review wholesale wastewater treatment rates charged by one city to another city. Earlington asserts that jurisdiction exists because Madisonville provides wastewater treatment service outside its territorial boundaries and because the wholesale rate arose in connection with a

⁵ Earlington's Response to Motion to Dismiss (Response to Motion to Dismiss) (filed Dec. 8, 2025).

federally funded EPA “201” grant program requiring proportional user-charge systems.⁶ Earlington further argues that prior Commission acceptance of inter-municipal sewer contracts and the absence of political recourse for Earlington’s residents support Commission oversight.⁷

Madisonville contends that the Commission lacks jurisdiction because all parties are cities operating municipal sewer systems, and cities are expressly excluded from the definition of a “sewage utility” under 807 KAR 5:071.⁸ Madisonville maintains that any dispute regarding wholesale sewer rates is contractual in nature and must be resolved in circuit court rather than through Commission ratemaking.⁹

The Commission has authority granted to it by statute.¹⁰ Under 807 KAR 5:071(9), a “sewage utility” is defined as any person owning or operating sewage treatment facilities except a city.¹¹ The record confirms that Earlington and Madisonville are both cities operating municipal sewer systems.¹² No Commission-regulated utility is involved in the wastewater treatment service at issue. Although Earlington responded “[y]es” to Staff’s Request for Information regarding service to a regulated utility, the entirety of its response

⁶ Application and Complaint at 4-5.

⁷ Application and Complaint at 17-18.

⁸ Motion to Dismiss at 2.

⁹ Motion to Dismiss at 3-4.

¹⁰ KRS 278.040.

¹¹ 807 KAR 5:071(9): “Sewage utility” means any person except a city, who owns, controls or operates or manages any facility used or to be used for or in connection with the treatment of sewage for the public, for compensation, if the facility is a subdivision treatment facility plant, located in a county containing a city of the first class or a sewage treatment facility located in any other county and is not subject to regulation by a metropolitan sewer district.

¹² Application and Complaint 2.

confirms that it provides wastewater service only within its municipal boundaries and does not provide service to any Commission-regulated utility.¹³

Because cities are expressly excluded from the definition of a sewage utility, Madisonville's wastewater treatment operations are not subject to Commission regulation under KRS Chapter 278.¹⁴ The Commission's jurisdiction under KRS 278.200 to regulate rates fixed by agreement between a city and a Commission-regulated utility is not implicated here because neither Madisonville nor Earlington is a Commission-regulated utility.¹⁵ The Commission therefore lacks jurisdiction over wholesale wastewater rates charged by one city to another city.

The Commission further finds that the federal EPA "201" grant provisions cited by Earlington do not independently confer jurisdiction upon the Commission.¹⁶ While federal law may require proportional user-charge systems and may contemplate enforcement through state-law mechanisms, it does not expand the Commission's statutory authority beyond that granted by the Kentucky General Assembly. Absent a specific statutory provision conferring jurisdiction over municipal-to-municipal wastewater rate disputes, the Commission cannot assume authority based on federal grant conditions.

¹³ Earlington's Response to Staff's First Request, Item 1.

¹⁴ 807 KAR 5:071(9).

¹⁵ KRS 278.200 grants the Commission authority to regulate rates and service standards fixed by agreement between a utility and a city.

¹⁶ Application and Complaint at Exhibit A.

The federal district court opinions cited by Earlington likewise do not expand the Commission's jurisdiction.¹⁷ Those decisions addressed the scope of federal court jurisdiction under the Clean Water Act and concluded that the federal courts lacked subject matter jurisdiction over the dispute. They do not confer independent regulatory authority upon the Commission beyond that granted by statute. To the extent the federal court referenced enforcement through state-law mechanisms, it did not identify the Commission as the proper forum but rather recognized that any remaining remedies would arise under applicable state law.¹⁸

With respect to prior Commission Staff correspondence acknowledging receipt of intermunicipal contract filings,¹⁹ the Commission finds that such communications were administrative in nature and did not constitute formal Commission Orders establishing jurisdiction. In its September 4, 2025 correspondence, the Commission expressly clarified that it lacks jurisdiction over wholesale wastewater rates between municipal utilities and that prior staff letters acknowledging receipt of filings were issued in error and did not constitute approval of any rate.²⁰ The Commission only speaks through its Orders, and no Orders approving rates were issued.

¹⁷ Application and Complaint at Exhibit C, *City of Earlington, Ky. v. City of Madisonville*, No. 86-0203-O(CS), (W.D. Ky. Apr. 5, 1993) and Exhibit D, *City of Earlington, Ky. v. City of Madisonville*, Nos. 88-0069-O & 86-0203-O, (W.D. Ky. Dec. 29, 1994).

¹⁸ Application and Complaint at Exhibit D, *City of Earlington, Ky. v. City of Madisonville*, Nos. 88-0069-O & 86-0203-O, page 5.

¹⁹ Application and Complaint at Exhibit F.

²⁰ Application and Complaint at Exhibit H.

Finally, although the Commission recognizes the policy concerns raised by Earlington regarding monopoly service and rate impacts on its residents,²¹ such considerations cannot create jurisdiction where the governing statutes and regulations expressly exclude cities from Commission regulation.

Accordingly, the Commission concludes that it lacks jurisdiction over the wholesale municipal wastewater treatment rates at issue in this proceeding. Because jurisdiction is absent as a matter of law, the motion to dismiss must be granted.

IT IS THEREFORE ORDERED that:

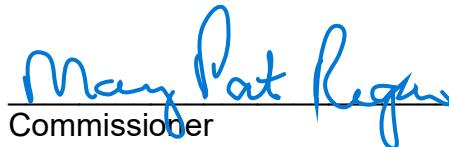
1. The motion to dismiss for lack of jurisdiction filed by the city of Madisonville on December 2, 2025, is granted.
2. The verified application for declaratory order and formal complaint filed by the city of Earlington on November 12, 2025, is dismissed for lack of jurisdiction.
3. This case is closed and removed from the Commission's docket.

²¹ Application and Complaint at 17-18.

PUBLIC SERVICE COMMISSION


Chairman


Commissioner


Commissioner

ATTEST:


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