

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DAVID PATRICK POWERS

COMPLAINANT

v.

JESSAMINE COUNTY WATER
DISTRICT NO. 1

DEFENDANT

CASE NO. 2023-00260

MOTION TO DISMISS COMPLAINT
AND SUPPORTING MEMORANDUM

Pursuant to 807 KAR 5:001, Section 5, Jessamine County Water District No. 1 (“JCWD1” or “Defendant”) moves for dismissal of the Complaint on the following grounds: (1) lack of jurisdiction; (2) failure to state a prima facie case, and (3) the issue is moot.

1. The Public Service Commission Lacks Jurisdiction Over the Requested Relief

In his Complaint, David Patrick Powers (“Powers”) alleges that JCWD1, while having work performed sometime in 2023 to its water infrastructure across the street from Complainant’s property, clogged the storm water drainage system serving Powers’ property and others, thereby causing water to overflow and damage his property. Powers only requests the Public Service Commission (the

“Commission”) to grant injunctive relief by ordering the repair of the “Water Runoff Area”. The rates and service of JCWD1 are not mentioned in the Complaint, nor are rates and service implicated by the injunctive relief requested.

The Commission has limited authority over public utilities. *See, e.g., Boone County Water District v. Public Service Commission*, 949 S.W.2d 588, 591 (Ky. 1997) (“The PSC is a creature of statute and has only such powers as have been granted to it by the General Assembly.”) The Commission has the statutory duty to regulate utilities and enforce the provisions of KRS Chapter 278.¹ It has “exclusive jurisdiction over the regulation of rates and services of utilities”² and “original jurisdiction over complaints as to rates or service of any utility.”³ The Commission does not have the statutory authority to grant injunctive relief.⁴

The Complaint does not challenge Defendant’s rates, nor does it seek changes in the quality of Defendant’s service or how such service is rendered. It seeks only an injunction to repair storm water utility infrastructure, not under the control or authority of JCWD1, located near his property. It is respectfully submitted that the relief requested is beyond the Commission’s power.⁵ That question is a matter within the jurisdiction of the Kentucky courts, not the Commission. As the Commission lacks jurisdiction to hear and resolve the Complaint, it should be

¹ KRS 278.040(1).

² KRS 278.040(2).

³ KRS 278.260(1).

⁴ KRS 278.390 and KRS 278.410.

⁵ *Vowels v. Louisville Gas and Electric*, Case No. 2023-00288. (Ky. PSC Dec. 21, 2023) (denying a motion for stay from discontinuing of service).

dismissed.

2. The Complaint Fails to State a Prima Facie Case

807 KAR 5:001, Section 20(4)(a) requires that a formal complaint must establish a *prima facie* case. A complaint establishes a prima facie case when, on its face, it sets forth sufficient allegations, uncontradicted by other evidence, that would entitle the Complainant to the requested relief. If a complaint fails to state a *prima facie* case and cannot be amended to state such a case, the complaint must be dismissed.

The Commission has held it lacks authority to address a complaint that seeks only injunctive relief and does not implicate rates or service.⁶ The Complaint does not allege facts that would allow the Commission to award the requested relief and, because the relief requested is beyond the Commission's power, there can be no amendment which would be sufficient. The Complaint should be dismissed for this additional reason.

3. Powers' claim is moot.

The work which Powers alleges caused damages to his property was performed under contract with United Pipeline, Inc. The insurance company for this contractor investigated the claim and later paid Powers the sum of \$26,500.00 as compensation for his damages. Powers signed a General Release on September 19, 2023, which is attached hereto. One of the entities expressly released by Powers was JCWD1.

⁶ *Vowels, supra.*

Arguably, Powers further agreed in the General Release to hold JCWD1 harmless from any expenses incurred by having to defend any action arising out of the claim, including attorney's fees,

Powers was contacted by the undersigned counsel after the Release was executed to solicit his cooperation in jointly dismissing the Complaint. Counsel understood Powers to have agreed to consider such action and he prepared a Joint Motion to Dismiss, also attached hereto. Counsel emailed the Joint Motion to Powers on September 1, 2024. No response was received from Powers. Counsel emailed Powers twice more on September 5 and September 16, 2024. Again, no response from Powers was forthcoming. Counsel also left several telephone messages for Powers, again with no response. Finally, counsel concluded that this Motion was the only option left in order to clear the Complaint. Attorney's fees have been incurred to generate this Motion and JCWD1 should be awarded such fees.

Conclusion

WHEREFORE, JCWD1 requests for the reasons set forth herein that the Commission enter an Order dismissing the Complaint with prejudice and awarding JCWD1 its legal fees expended.

Dated: December 4, 2024.

Respectfully submitted,

/s/ Bruce E. Smith

BRUCE E. SMITH

HENRY E. SMITH

BRUCE E. SMITH LAW OFFICES, PLLC

201 SOUTH MAIN STREET

NICHOLASVILLE, KY 40356

Phone: 859.885.3393

Fax: 859.885.1152

bruce@smithlawoffice.net

henry@smithlawoffice.net

Counsel for JCWD1

CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, I certify that Jessamine County Water District No. 1's electronic filing of this 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 December 4, 2024; that there are currently no parties that the Public Service Commission has excused from participation by electronic means in this proceeding; this Application in paper medium was be mailed to the Public Service Commission, 211 Sower Blvd., P.O. Box 615, Frankfort, KY 40602, and to David Patrick Powers by US Mail, First Class, postage prepaid at 124 Carolyn Lane, Nicholasville, KY 40356 on December 4, 2024.

/s/ Bruce E. Smith

Bruce E. Smith

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION
CASE NO. 2023-00260

In the matter of:

David Patrick Powers

COMPLAINANT

vs.

Jessamine County Water District No. 1

DEFENDANT

JOINT MOTION TO DISMISS

Come David Patrick Powers and Jessamine County Water District No. 1, by counsel, and move the Kentucky Public Service Commission to dismiss the Complaint filed herein. The parties hereto state and affirm that the issues raised by the Complaint have been fully and completely resolved to the satisfaction of the Complainant and the Defendant¹ and there exists no reasonable cause why the Complaint should not be dismissed.

David Patrick Power
124 Carolyn Lane
Nicholasville, KY 40356
859.608.1565
Powers.david3@gmail.com
COMPLAINANT

Bruce E. Smith, Esq.
Bruce E. Smith Law Offices, PLLC
201 South Main Street
Nicholasville, Kentucky 40356
859.885.3393
Bruce@smithlawoffice.net
ATTORNEY FOR DEFENDANT

¹ The insurance company for the contractor, engaged by the Defendant to perform the work that caused the damage to Complainant's property, paid the Complainant for the harm done. See attached.

ENTIRE AGREEMENT

The undersigned further declares and represents that no promise, inducement, or agreement not herein expressed has been made to the undersigned, and that this Release contains the entire agreement between the parties hereto and supersedes any prior oral or written agreements between the parties, and that the terms of the Release are contractual and not a mere recital.

The undersigned has read the foregoing Release and fully understands it.

Executed in Nicholasville, Jessamine County, Kentucky this 19th
day of September, 2023.

Releasor

David Powers

PRINT OR TYPE NAME

Releasor

PRINT OR TYPE NAME

County of

State of

Jessamine
Kentucky

BEFORE ME, the undersigned authority, personally appeared,

David P. Powers

who, after being duly cautioned and sworn, depose(s) and

say(s) he/she/they has/have read the above Release and that he/she/they has/have set his/her/their hand(s) and seal(s) thereto for the purposes therein expressed.

The foregoing instrument was acknowledged before me this

19th

day of

September

, 2023

by Jennifer Sparr

- ☒ Who is/are personally known to me or
☐ Who produced the following identification _____ and
☐ Who did take an oath or
☐ Who did not take an oath.

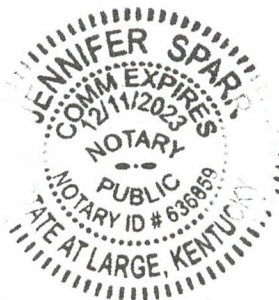
SIGNATURE OF NOTARY

Jennifer Sparr

PRINT OR TYPE NAME OF NOTARY
(NOTARY SEAL)

My Commission Expires:

12/11/23



GENERAL RELEASE

The undersigned parties to this Release, to wit: David Powers, (hereinafter collectively referred to as the "Releasor"), United Pipeline Inc. and Jessamine County Water District Number 1 and National Trust Insurance Company (hereafter collectively referred to as the "Releasee") hereby agree as follows:

WHEREAS, Releasor has filed a claim against Releasee due to an accident, incident or loss occurring on 06/30/2023 at 124 Carolyn Lane, Nicholasville, 40356, in Jessamine County, KY (hereafter "the Occurrence");

WHEREAS, the parties wish to compromise and settle all claims each may have against the other as a result of the Occurrence;

NOW, THEREFORE, the parties agree as follows:

SCOPE OF RELEASE

Releasor, for and on behalf of each and all of his/her/their respective present, former, and future successors, heirs, executors, administrators, guarantors, attorneys, representatives, insurers and assigns (all of whom are also hereinafter collectively referred to as the "Releasor"), for and in consideration of the sum of \$ \$26,500.00 and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby release, acquit, and forever discharge Releasee, and if Releasee is/are a corporation, all of its respective present, former and affiliated and subsidiary corporations, divisions and associations, and each and all of its present, former and future officers, directors, trustees, agents, employees, insurers, executors, personal representatives, managers, predecessors, successors, representatives and assigns (all of whom are also hereinafter collectively referred to as the "Releasee") of and from any and all claims, demands, contracts, leases, guaranties, covenants, suits, causes of action, obligations, controversies, debts, costs, accounts, damages, judgments, losses and liabilities of whatever kind or nature, in law, equity, statutory or otherwise, whether known or unknown, which against them, or any of them, Releasor now has, had, may have had, or can, shall or may have which were or might or could have been asserted in connection with, arising out of or in any way relating to the Occurrence.

It is the intent of the undersigned Releasor that this is a general, complete, full, comprehensive and final release of any and all liability of the parties released herein arising from or out of any act performed or omitted by, or on behalf of the parties released herein prior to the date hereof, in any way relating to the Occurrence.

OWNERSHIP OF CAUSES OF ACTION

The undersigned Releasor hereby expressly warrants, represents and covenants to the parties released herein that Releasor is presently the legal owner and holder of the claims or causes of action released hereby, and that it has not heretofore expressly or impliedly assigned, transferred, pledged or otherwise disposed of any such rights, claims, demands, or causes of action being described herein and released hereby.

SATISFACTION OF LIENS

The undersigned Releasor further declares and represents that any and all hospital liens, worker's compensation liens, repairmen liens, attorney's liens, governmental liens and/or subrogation rights possessed by any third party have been or will be settled or released and that the undersigned hereby expressly agrees to hold harmless and indemnify the Releasee from any such liens or any action brought on account of such liens or subrogation rights, whether or not said actions allege or show negligence on the part of Releasee in determining the existence or validity of any such liens, said indemnification to include without limitation the amount of the lien(s) and Releasee attorney's fees expended in defending any such actions. Releasor hereby agrees that the proceeds of this settlement will be used to satisfy any such liens.


RELEASEE'S INITIALS