

COMMONWEALTH OF KENTUCKY  
PENDLETON CIRCUIT COURT  
CASE NO. 24-CI-\_\_\_\_\_

CITY OF FALMOUTH, KENTUCKY

PLAINTIFF

v.

PENDLETON COUNTY WATER DISTRICT

DEFENDANTS

Serve: David Boden/Chair  
P.O. Box 232  
Falmouth, Kentucky 41040  
*Via Certified Mail*

and

EAST PENDLETON WATER DISTRICT

Serve: Lisa Cobb/Chair  
P.O. Box 29  
601 Woodson Road  
Falmouth, Kentucky 41040  
*Via Certified Mail*

and

THE KENTUCKY PUBLIC SERVICE COMMISSION

Serve: Linda Bridewell/Executive Director  
P.O. Box 615,  
211 Sower Boulevard,  
Frankfort, Kentucky 40602  
*Via Certified Mail*

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COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE AND/OR  
OTHER APPLICABLE RELIEF

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Plaintiff, the City of Falmouth, Kentucky (the “City” or “Falmouth”), by and through counsel, hereby files its Complaint for Declaratory Judgment, and in support thereof alleges as follows:

1. This is an action for declaratory judgment and other relief brought pursuant to Kentucky Revised Statute § 418.040, wherein Falmouth seeks a declaration of its rights,

Filed

24-CI-00222 12/27/2024

Michael D. Redden, Pendleton Circuit Clerk

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obligations and legal relations arising from two asserted contracts for wholesale water and the actions of the Kentucky Public Service Commission related thereto.

### **PARTIES**

2. Falmouth is a municipal corporation of the Home-Rule class located within the Commonwealth of Kentucky.

3. Pendleton County Water District and East Pendleton Water Districts (the “District or Districts”) are duly organized water districts under the laws of the Commonwealth of Kentucky, with a principal place of business in Pendleton County, Kentucky.

4. Defendant, the Kentucky Public Service Commission (“PSC”), is an administrative body with jurisdiction over utilities in the Commonwealth of Kentucky. The PSC is a party to this action based on its unlawful actions regarding the City of Falmouth. The PSC has taken action contrary to both the opinions of the Kentucky Attorney General and Kentucky Supreme Court.

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over this matter pursuant to KRS § 23A.

6. Venue is proper in that the Districts are both a special purpose governmental entity with a principal place of business in the County of Pendleton, furthermore, the actions giving rise to this action took place in the County of Pendleton.

7. The actions and/or inactions which gave rise to this Complaint all occurred in the Commonwealth of Kentucky.

### **FACTS UNDERLYING THE CONTROVERSY**

8. Falmouth incorporates by reference all previous allegations contained herein.

9. Falmouth entered into wholesale water sale agreements with the Districts, which have been subsequently modified, but each for a term in excess of 20 years.

10. Falmouth did not publicly bid for said contracts.

11. Section 162 of the Kentucky Constitution states in part, “No county, city, town or other municipality shall ever be authorized or permitted to pay any claim created against it, under any agreement or contract made without express authority of law, and all such unauthorized agreements or contracts shall be null and void.” Exhibit A herein is expressly prohibited by express authority of law.

12. Section 164 of the Kentucky Constitution states in part, “No county, city, town, taxing district or other municipality shall be authorized or permitted to grant ..., or make any contract in reference thereto, for a term exceeding twenty years.” It further provides that prior to even granting a twenty-year contract, proper advertisement and bids must be obtained. Exhibit A herein is for a term in excess of twenty years and was not advertised and bid.

13. Kentucky Attorney General Opinion 81-365, attached as Exhibit B, opined that KRS 96.120 allows for the sale of water in a manner in which one acquires a franchise pursuant to Section 164 of the Constitution. Exhibit A did not comply with the opinion of the Attorney General.

14. The Kentucky Supreme Court, in an unpublished case, *Ledbetter Water Dist. V Crittenden-Livingston Water Dist.* 2018-SC-000494 (Ky. 2000), copy attached as Exhibit C, addressing the identical issue presented herein regarding a wholesale water contract for a proposed term to exceed twenty years, held, “Since the contract entered into by Ledbetter and Crittenden-Livingston was both for a term of greater than twenty years and was not advertised for public bidding, it violates the Kentucky Constitution and applicable statutes and, thus is void.”

15. Exhibit A herein is void pursuant to said holdings and unenforceable. Furthermore, the Kentucky Attorney General in regards to its opinions states that, “public officials are

expected to follow them.”

[https://www.ag.ky.gov/Resources/Opinions/Pages/default.aspx#:~:text=Opinions%20of%20the%20Attorney%20General%20\(OAGs\)%20do%20not%20have%20the,cited%20in%20all%20Kentucky%20courts.](https://www.ag.ky.gov/Resources/Opinions/Pages/default.aspx#:~:text=Opinions%20of%20the%20Attorney%20General%20(OAGs)%20do%20not%20have%20the,cited%20in%20all%20Kentucky%20courts.)

16. The City of Falmouth brings this action as required by the directive of the Kentucky Attorney General.

17. While the directly applicable law establishes Exhibit A is void, the Districts and the PSC have sought to undermine applicable law.

18. Contrary to its own regulations, the PSC initiated a PSC Case, 2024-403, without a required Motion, hearing and/or other, and issued an Order to the City of Falmouth to continue to sell water to the Districts, in violation of the aforementioned holdings. Order attached hereto as Exhibit D.

19. The PSC failed to comply with its own laws/regulations, for which the City filed the attached Notice of Lack of Jurisdiction/Enforcement, with attachments and the applicable law. Attached as Exhibit E.

20. The City of Falmouth has no redress under the PSC since the PSC refuses to acknowledge applicable law/regulation.

21. This Declaratory Judgement is filed and sought, consistent with the actions in *Ledbetter*.

22. The PSC asserts that *Simpson County Water District v. City of Franklin*, 875 S.W.2d 460 (Ky. 1994), provides the authority for their actions, but the case involved legal contract, not one void as a matter of law.

23. If the PSC asserts it has the authority to determine legal questions such as presented herein, it must as a preliminary matter make such determination, prior to issuing the Order attached as Exhibit D.

24. The City of Falmouth did advise the PSC of the applicable law, which was not considered by the PSC. See attached Exhibit E.

**DECLARATION ONE**  
**THE WATER SALE CONTRACTS ARE VOID AS A MATTER OF LAW**

25. The City incorporates by reference all previous allegations contained herein.

26. As set forth above, the two water contracts, Exhibit A, are void as a matter of law, pursuant to Sections 162 and 164 of the Kentucky Constitution.

27. That the opinions of the Kentucky Attorney General and Kentucky Supreme Court also opine that said contracts are void.

28. That this Court should issue a Declaration of Law consistent herewith and hold that the contracts are void.

**DECLARATION TWO**  
**THE PSC LACKS JURISDICTION OVER THE CITY OF FALMOUTH**

29. The City incorporates by reference all previous allegations contained herein.

30. Falmouth does not dispute that should a valid contract exist water rate increases are subject to review and determination by the PSC.

31. The PSC only has jurisdiction if a valid contract exists, herein one does not.

32. Absent a valid contract the PSC lacks jurisdiction over the City of Falmouth.

33. Absent jurisdiction, PSC Case No. 2024-403, is not applicable and Falmouth is not subject to its Orders.

34. That this Court should make a Declaration of Law, that the PSC lacks jurisdiction over the City of Falmouth.

**DECLARATION THREE**  
**IN THE ALTERNATIVE THE PSC MUST MAKE AN INITIAL DETERMINATION**  
**REGARDING THE LAWFULNESS OF THE WATER CONTRACTS**

35. The City incorporates by reference all previous allegations contained herein.

36. As set forth above, and by the City of Falmouth in Exhibit E, the PSC issued the Order, Exhibit D, without making a required finding of jurisdiction through determining whether a lawful contract exists.

37. That should this Court determine that the PSC has the legal authority to determine the dispute between Falmouth and the Districts, the Court must direct that the PSC follow applicable law/regulations, including but not limited to, making a preliminary finding of jurisdiction pursuant to law.

38. Furthermore, that the PSC be directed to comply with its own laws/regulations regarding due process, notice and applicable hearings, prior to issuing Orders.

**EXISTENCE OF AN ACTUAL CONTROVERSY**

39. The City submits that an actual controversy exists for reasons set forth herein and requests that this Court issue Declaratory Orders consistent with applicable law.

**WHEREFORE**, the City of Falmouth, Kentucky respectfully seeks a declaration of its rights as follows:

- A. As to declaration one, Falmouth respectfully requests a declaration concerning the validity of the two water contracts applying the Kentucky Constitution, Attorney General Opinions and Kentucky Supreme Court guidance.

- B. As to declaration two, Falmouth respectfully requests a declaration that the PSC lacks jurisdiction over the City of Falmouth.
- C. As to declaration three, Falmouth respectfully requests a declaration setting forth that the PSC shall comply with applicable law/regulations regarding applications concerning the City of Falmouth.
- D. An award of attorney fees, costs, and expenses incurred by the City in this action; and
- E. Any other relief to which the City may be entitled.

Respectfully submitted,

/s/ Brandon N. Voelker

Brandon N. Voelker (KBA 88076)

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Kentucky*

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