

BEFORE THE PUBLIC SERVICE COMMISSION

COMMONWEALTH OF KENTUCKY
FRANKFORT, KENTUCKY
CASE NO. 2025-00299

[*Electronically Filed*]

CITY OF EARLINGTON, KENTUCKY

APPLICANT/COMPLAINANT,

vs.

CITY OF MADISONVILLE, KENTUCKY

RESPONDENT/DEFENDANT.

**VERIFIED APPLICATION FOR DECLARATORY ORDER
AND FORMAL COMPLAINT**

COMES NOW, the City of Earlington (“*Earlington*”), by counsel, and pursuant to KRS Chapter 278, 807 KAR 5:001, Section 19 and other applicable law, seeks an order declaring the effect of Kentucky Law and the Kentucky Public Service Commission (“*KYPSC*”) precedent on the contracted “wholesale” wastewater treatment rates imposed upon it by the City of Madisonville (“*Madisonville*”); and an order declaring any attempted reclassification of the City of Earlington from a wholesale customer to a “resale customer” by the wholesale wastewater treatment rate change by the City of Madisonville to be void *ab initio* until an appropriate hearing is held by the KYPSC to determine the fair and just rate. In support of this action, Earlington states as follows:

This petition seeks a declaratory order confirming that the KYPSC retains plenary jurisdiction under KRS Chapter 278 and 807 KAR Chapter 5 over the wholesale wastewater treatment rate charged by Madisonville to Earlington. Earlington requests a declaration that Madisonville’s unilateral 2024 rate reclassification and increase—from \$0.81 to \$3.75 per 1,000 gallons—was void *ab initio* in part for failure to obtain Commission approval. Earlington also seeks a formal hearing to establish a fair and just wholesale rate consistent with the long-standing intermunicipal sewer contract and the Commission’s 2001 precedent recognizing jurisdiction over the same relationship.

I. INTRODUCTION

1) This matter arises from a unilateral contracted wholesale wastewater treatment rate change and customer reclassification imposed by the City of Madisonville on Earlington, by adopting a Madisonville City Ordinance that attempted to increase from \$0.81/1000 gallons to \$3.75/1000 gallons, a 463% rate increase for Earlington.

2) Refusing to acknowledge and accept this Commission's authority and jurisdiction over the matter, Madisonville filed suit in Hopkins Circuit Court, Case No. 24-CI-00849¹, where it sought to enforce what it believes is its "unilateral authority" to (a) reclassifying Earlington (and Hanson) as a "retail customer" and (b) impose any wholesale wastewater treatment rate on Earlington (and Hanson). This action follows, despite Earlington's best efforts to resolve the matter extrajudicially and without this Commission.²

II. PARTIES

3) The Applicant/Complainant is an independent home rule city within Hopkins County, Kentucky, which operates its own separate sewage system under its Department of Public Works.

4) Earlington's address is 103 West Main Street, Earlington, KY 42410. It can be reached through the undersigned attorneys at THOMAS, ARVIN & ADAMS, PLLC, PO BOX 675, Hopkinsville, Kentucky 42241-0675.

5) Respondent/Defendant, Madisonville, is an independent home rule city within Hopkins County, Kentucky, which operates its own separate utility, being Madisonville Municipal

¹ Of note, the City of Hanson has also filed a Formal Complaint and Application for Declaratory Order with the PSC: Action No. 2025-300.

Utilities. It can be reached through its city attorney, Hon. Hillary Lantrip Croft, at Riddle Legal Group, 220 N. Main Street, Madisonville, Kentucky 42431.

III. JURISDICTION

6) Pursuant to KRS Chapter 278 and 807 KAR 5.001, this Commission has jurisdiction over the regulation of rates and services of wholesale wastewater utility rates and services between utilities.

7) Pursuant to KRS Chapter 278 and 807 KAR 5:001, this Commission has jurisdiction over allegations to declare and resolve whether a utility rate or service of a utility is unreasonable, unlawful, or otherwise in violation of Kentucky law or administrative regulation.

8) Pursuant to KRS 278.200, the Commission has authority over ‘contracts and agreements affecting rates and services of utilities,’ including inter-utility wholesale wastewater treatment agreements. See *City of Franklin v. Simpson County Water District*, 872 S.W.2d 460 (Ky. 1994). Madisonville also provides sewage treatment to Hanson, a separate municipal utility, which constitutes service for compensation to another utility outside its territorial limits and thus falls squarely within the Commission’s jurisdiction under KRS 278.010(3)(f) and KRS 278.200.

IV. BACKGROUND

9) After the adoption of the Federal Water Pollution Control Act (33 U.S.C. § 1251) and the corresponding regulations, the EPA established the 201 Grant Agreement Program to ensure small city compliance with the new laws and regulations without imposing significant financial constraints.

10) Earlington, along with the independent City of Hanson, worked with Madisonville to receive the first-ever EPA 201 Grant Agreement to fund the three cities’ EPA-compliant

wastewater treatment operation. A copy of the Grant terms, pursuant to 40 CFR 35.925-11, is attached as **Exhibit A**, the terms of which are incorporated herein by reference.

11) According to the terms of the grant program, a single “regional” wastewater treatment plant was established to service a collection for all three (3) cities’ sewage.

12) Each participating city was then required by the terms of the EPA 201 Grant to enter into a separate “User Agreement,” – or Sewer Contract – for the use of the wastewater treatment plant. Earlington’s separate “User Agreement” – or Sewer Contract with Madisonville – is attached as **Exhibit B**, the terms of which are incorporated herein by reference.

13) Since the three cities were awarded the grant in 1978, Earlington has been a contracted “wholesale” wastewater treatment utility customer of the Madisonville Municipal Utilities.

14) Pursuant to the terms of the Earlington-Hanson-Madisonville EPA 201 Grant Agreement, Earlington’s Public Works would continue to own and operate its own respective “retail” wastewater collection and transmission system within its territorial city footprint for its own respective retail customers and residents. The wastewater collected in Earlington would then be transferred from its territorial footprints to a specific central collection point, where Earlington’s wastewater was metered by both cities, and then co-mingled with Madisonville’s own wastewater flow to the Madisonville Wastewater Treatment Plant (“**MWWTP**”).

15) Pursuant to the terms of the Earlington-Hanson-Madisonville EPA 201 Grant Agreement, Earlington, like Hanson, would pay its proportional share of the costs of operation and maintenance (including replacement) as defined in § 35.905-17 of all wastewater treatment services at the MWWTP. This objective metered percentage of all of the gallons of wastewater treated, established Earlington’s wholesale sewage treatment cost.

16) The EPA 201 Grant Program, codified at 40 C.F.R. Part 35, required the grantee (Madisonville) to enact and maintain a user charge and cost-recovery ordinance subject to state-level regulation. The KYPSC has been the recognized body to implement those cost-recovery standards under state law. Because the grant terms require state review of cost recovery, KYPSC's oversight is necessary to ensure compliance with those conditions. Thus, the Madisonville–Earlington agreement was and is not purely local; it was federally and state-conditioned, falling within the KYPSC's oversight authority.

17) Pursuant to 40 C.F.R. § 35.925-11 and § 35.935-16, every grantee of an EPA “201 Construction Grant” must develop a user charge system that ensures proportional cost recovery for all recipients of wastewater treatment services, and that the system must be approved by the state's regulatory agency – the Kentucky Public Service Commission.

18) In Kentucky, the designated “state regulatory agency” for purposes of user charge and rate approval is the Kentucky Public Service Commission, which exercises economic oversight under KRS Chapter 278. The Division of Water enforces environmental compliance under KRS Chapter 224A, but the PSC's economic review satisfies the federal condition of state-level approval of the user charge system. Therefore, PSC jurisdiction over the Madisonville–Earlington wholesale wastewater rates arises not merely from state statute, but as a required element of the federal grant obligations originally authorizing the regional treatment facility.

PRIOR LITIGATION³

THE 1995 AMENDED SEWER AGREEMENT WAS THE SETTLEMENT AGREEMENT CONFIRMING A RESOLUTION AFTER NINE (9) YEARS OF LITIGATION

19) Following completion of the MWWTP in 1980, Madisonville began billing Earlington for wastewater treatment at a rate higher than the metered cost per 1,000 gallons contemplated in the 1978 EPA-approved User Agreement. The additional surcharges—purporting to recover infiltration and inflow (I&I) expenses—were not authorized by the Agreement and effectively duplicated costs already reflected in the metered flows. In September 1986, Earlington formally resolved to pay only the metered

20) On December 3, 1986, Madisonville initiated litigation in Hopkins Circuit Court (Civil Action No. 86-CI-00670) seeking collection of the disputed surcharges. Earlington counter-claimed for declaratory relief to confirm that its payment obligation was limited to the metered, proportionate share of treatment costs and to compel Madisonville's compliance with the 1978 EPA-approved Sewer Contract and with the federal grant covenants under the Clean Water Act and 33 U.S.C. § 1284. Because several of Earlington's claims involved the enforcement of federal grant conditions, the federal issues were not cognizable in state court.

21) Accordingly, Earlington filed two related federal actions in the U.S. District Court for the Western District of Kentucky (Civil Actions Nos. 86-0203-O(CS) and 88-0069-O(CS)) naming both Madisonville and the U.S. Environmental Protection Agency. The Hopkins Circuit Court case was stayed while the federal cases proceeded for nearly eight years. Four different federal judges oversaw the consolidated matters, and two (2) specific memorandum opinions—

³ Prior to this action and the commencement of Hopkins Circuit Court Case No. 24-CI-00849, Earlington and Hanson demanded an accounting from Madisonville so as to achieve the transparency necessary to protect its residents/customers from excessive, unfair, and unjust rate calculations. Prior to this dispute, the transparent accounting enabled the cities to establish a mutually agreed, fair and just rate, for submission to the KYPSC.

entered April 5, 1993, and December 29, 1994—addressed the scope of the EPA’s enforcement authority and the proportional-share methodology under the 1978 Agreement. Copies of these orders are attached hereto as **Exhibits C & D**.

22) The federal court ultimately held that the EPA’s duty to ensure Madisonville’s compliance with 40 C.F.R. §§ 35.927-4, 35.929, and 35.935-16 was a “hybrid” of discretionary and mandatory elements, precluding federal injunctive relief. Still, it retained jurisdiction over the state-law contractual disputes. These opinions established the continuing validity of the 1978 proportional-share user-charge system as the lawful basis for calculating wholesale wastewater rates between the cities.

23) On December 29, 1994, the federal judge dismissed the remaining claims of Earlington and Madisonville as it was his belief that was no federal jurisdiction and concluded in 1994 “Congress intended only to require the service agencies to institute a user charge and leave to state law, presumed, the law of contracts, the method of enforcement...” Therefore in 1995, the parties negotiated a post judgment final settlement to the nine (9) year dispute.

24) All remaining issues were resolved through a comprehensive settlement of all claims in both the federal and state actions, memorialized as the Amendment to Sewer Contract and Settlement Agreement, dated June 1, 1995. A copy of this Amendment and Settlement Agreement is attached hereto as **Exhibit E**. That Settlement incorporated the judicially required proportional-share methodology and expressly provided that Earlington’s wholesale rate would equal the actual audited cost of treatment as determined annually from Madisonville’s financial statements. The Settlement Agreement thus functions as both a litigation release and a continuing rate-setting instrument, establishing the framework for all subsequent adjustments.

25) The 1995 Settlement required Madisonville to furnish Earlington its annual audited financial statements within 30 days of completion and to recalculate the wholesale rate each

January 1 based on the prior fiscal year's audited costs. This mechanism effectively substituted a regulatory process within the contract—mirroring the cost-of-service principles later administered by the Kentucky Public Service Commission under 807 KAR Chapter 5. For the next several years, both cities adhered to this structure, and Madisonville consistently treated its rate updates as subject to PSC filing and review.

26) In late 2000, Madisonville's auditor, Berry & Kington PSC, issued its letter and supporting computation determining the recalculated 2001 wholesale rate under the 1995 Settlement at \$1.60 per 1,000 gallons. Madisonville submitted this filing to the PSC on December 27–28, 2000, and the Commission formally acknowledged and accepted the filing by letter dated July 31, 2001, Contract Filing No. C62-0009. A copy of this correspondence is attached hereto as **Exhibit F**. This correspondence confirms that Madisonville itself recognized PSC jurisdiction over the Earlington wholesale rate and voluntarily subjected its rate computation to Commission review. The Kington Letter and PSC acceptance together demonstrate that both cities and the Commission historically treated the Madisonville-Earlington wastewater rate as a filed wholesale utility rate under KRS 278.200—an essential precedent reaffirming the Commission's present jurisdiction.

PRIOR RATE ADJUSTMENTS

27) On or about January 20, 1998, Earlington and Madisonville then agreed to an amended the contracted wholesale wastewater treatment rate to an agreed annual rate of \$0.81/1,000 gallons. While mutually agreed, the changed wholesale rates were not approved by the KYPSC.

28) While the litigation settlement agreement of 1995 and the amendment of 1998, those rate changes have been made without the KYPSC approval, the KYPSC did accept

Madisonville's wholesale wastewater treatment rate change in 2001 in Application C62-0011 for Earlington (and Hanson).

29) On or around July 31, 2001, Madisonville, following the prescribed procedures of 807 KAR Chapter 5, and the Settlement Agreement, applied for a wholesale wastewater rate change with the KYPSC for the Earlington rate.

30) By its prior application of wholesale wastewater treatment rate changes in 2001 for Earlington, Madisonville knew any and all future changes to the wholesale rate were subject to the exclusive jurisdiction of the KYPSC in the same manner as Earlington's purchase of water supplied by Madisonville.

31) To the extent that KYPSC staff later characterized the 2001 acceptance as an administrative error, such a view does not erase the record of Madisonville's own voluntary submission and the Commission's acceptance, which collectively confirm that both parties treated the Commission as the proper regulatory forum for wholesale wastewater rate changes.⁴

MADISONVILLE'S UNAPPROVED UNILATERAL WHOLESALE RATE CHANGES

32) In 2019, Madisonville commissioned its CPA, Charles Kington, to perform a rate analysis for the Earlington wholesale rate to be implemented in 2020. His purported wholesale rate analysis resulted in identifying a wholesale rate of \$0.81/1000 gallons for Earlington. While not approved by the KYPSC, this rate change was never implemented. A copy of the 2019 Kington Rate analysis is attached hereto as **Exhibit G**.

⁴ Earlington has reviewed the informal staff letter sent on September 4, 2025, in response to Earlington's Mayor's informal complaint. A copy of this letter is attached as **Exhibit H**. It is Earlington's position and understanding that this informal staff analysis is not an agency formal action and cannot preclude this Petition. Only the Commission itself can issue binding orders or final determinations on jurisdiction.

33) On or around January 1, 2024, Madisonville adopted Ordinance 0-2022-10 in its attempt to change the classification of Earlington from a “wholesale customer” to a “retail” customer and impose the unilateral wholesale rate change to \$3.95/1000 gallons for Earlington.

34) This 2024 reclassification and change of the wholesale rate change was not consented to by Earlington.

35) The 2024 “retail” wastewater treatment rate change is not based on any acceptable industry standard practice for computing utilities or following the standards outlined in 807 KAR 5:071 or 807 KAR 5:076. Madisonville has described the basis for the 2024 wholesale rate increase upon its “2022 Technical Memorandum.”

36) The 2024 rate change adopted by Madisonville no longer reflects a wholesale customer classification, but a retail customer classification. Instead, it aligns with the rate Madisonville charges its retail customers, characterized in judicial filings by Madisonville as a “2022 Technical Memorandum” wholesale rate calculation, to also include all costs incurred for the operation and transmission of Madisonville’s separate, independent wastewater collection system.

37) In response to Madisonville’s drastic increase, Earlington has demanded accounting from Madisonville, engaged a utility rate expert, to attempt to perform an analysis based upon accepted industry standards to identify the correct wholesale rate and enforce a fair and just contractual rate for its residents and customers. Earlington has escrowed the difference between the unapproved Madisonville unilateral rate increase and the prior wholesale rate.

38) In response to Earlington’s demands for transparency and accounting, Madisonville, believing it is wholly exempt from the Commission’s jurisdiction, KRS Chapter 278 and 807 KAR Chapter 5, filed litigation in Hopkins Circuit Court against Earlington, by which

Hanson joined as the intervening party.⁵ In short, Madisonville's suit attempts to (i) collect the wholesale rate enacted by the Madisonville City Council effective December 31, 2024; (ii) unilaterally modify the Earlington Sewer Contract, as amended by the terms of the settlement of the 1988-1995 litigation; and (iii) enforce unjust and unfair rates. In response to Madisonville's attempt to judicially enforce the wholesale rate increase, Earlington has affirmatively asserted that only the KYPSC has exclusive jurisdiction over the classification of Earlington and the wholesale wastewater treatment rate to be imposed, not the Madisonville City Council by Ordinance. Nor does the Hopkins Circuit Court have such jurisdiction. Madisonville disagrees.

39) Earlington's expert's preliminary analysis demonstrates that Madisonville has not complied with the regulations - e.g., failure to file required schedules, failure to give proper notice, improper rate-setting, or other violations. A copy of the expert's – Mr. Steven Brock - March 18, 2025, Preliminary Analysis is attached as **Exhibit I**, and Mr. Brock's July 9, 2025, Updated Analysis is attached as **Exhibit J**, the terms of which are incorporated herein by reference.

40) Despite bringing the issues identified by Mr. Brock to Madisonville's attention and also the objections from Earlington, Madisonville continues to assert that it is exempt from any and all regulations, including 807 KAR Chapter 5 or KRS 278, and that it has unilateral authority to make any wholesale rate changes without KYPSC involvement.

41) The Earlington City Council has invoked its contractual right to compel Madisonville to initiate the annual rate adjustment, as allowed by the application of the Earlington Sewer Contract (page 3), as amended. A copy of the Earlington invocation of the annual audit on the basis of the actual costs incurred is attached hereto as **Exhibit K**. In August 2025, Madisonville judicially confirmed that it has initiated the annual rate adjustment. It is unknown whether the

⁵ Hopkins Circuit Court Civil Action No. 24-CI-00849, *City of Madisonville, KY vs. City of Earlington, KY, and City of Earlington, KY*

ongoing Madisonville rate adjustment for Earlington will comply with the KYPSC requirements and/or be submitted to the KYPSC.

V. **REQUEST FOR DECLARATORY ORDER AFFIRMING JURISDICTION**

42) Earlington incorporates by reference all prior paragraphs asserted in this application.

43) Wastewater - or sewage treatment - is a public utility within the context of KRS Chapter 278 and 807 KAR Chapter 5.

44) The KYPSC's supervision ensures that all rates for public utility service are fair, just, and reasonable and not arbitrary.

45) Pursuant to the provisions of KRS Chapter 278, the KYPSC has plenary jurisdiction over the classification of retail and wholesale customer and utility rates and services, including the wholesale sewage treatment rate between Madisonville, by and through its utility division – Madisonville Municipal Utilities, and Earlington by and through its separate utility department (and Hanson), by and through its separate utility, and any adjustment or modifications thereof.

46) KYPSC's jurisdiction includes cities that provide an extra-territorial utility service, as this ensures the residents have "some means of protection against excessive rates or inadequate services." *Louisville Water Co. vs. PSC*, 318 S.W.2d 537 (Ky. 1958); *Simpson Cty. Water Dist. v. City of Franklin*, 872 S.W.2d 460, 463 (Ky. 1994). Ergo, the necessity of the KYPSC's jurisdiction.

47) As defined within KRS 278.010, in its relevant part, "Utility" is:

any person ***except a regional wastewater commission*** established pursuant to KRS 65.8905 and, for purposes of paragraphs (a), (b), (c), (d), ***and (f) of this subsection, a city***, who owns, controls, operates, or manages any facility used or to be used for or in connection with...

48) KRS 278.010 creates two exceptions to the KYPSC's jurisdiction – (a) a regional commission or (b) the operation is solely within a city. Neither exception applies to a matter involving cities' extraterritorial rates, by and through their separate utilities.

49) This same conclusion has been affirmed by Kentucky Appellate Courts, which continue to reinforce that a city's exemption from KYPSC's jurisdiction is not absolute and the KYPSC has the exclusive jurisdiction over classification of customer rates and services charged to wholesale customers. *Simpson County Water District*, 872 S.W.2d at 463.

50) Where a contract exists as implemented between two (2) separate cities' utilities the KYPSC's jurisdiction applies. *Simpson County Water District*, 972 S.W.2d at 462 (stating the legislative intent is clear that when a city is involved, the sentence reflects unequivocally that the PSC exercises exclusive jurisdiction over utility rates and service).

51) Where a contract exists, as implemented, between two (2) separate cities' utilities, the KYPSC's jurisdiction applies. *Simpson County Water District*, 972 S.W.2d at 462.

52) While KYPSC's staff has previously expressed the view that jurisdiction does not extend to purely municipal operations under KRS 278.010(3), that position overlooks the express language of KRS 278.010 and KRS 278.200, a consistent line of Kentucky appellate cases recognizing jurisdiction when one utility—municipal or otherwise—renders service to another for compensation and contravenes the Constitution. The City of Madisonville's provision of wastewater treatment to Hanson is precisely such a relationship that demands KYPSC oversight.

A.

The Regional Commission Exception To "Utility" Does Not Exempt Madisonville from the KYPCS' Jurisdiction

53) There is *no* regional wastewater commission, as provided by KRS 65.8905, to serve as the oversight and governing body for the MWWTP rates.

54) To do so, each of the municipalities must individually establish a resolution or ordinance to establish a regional commission, and they all must collectively work together to establish said Commission to govern the wastewater system. KRS 65.8905.

55) Neither Madisonville nor Earlington (or Hanson) has passed the required resolution or ordinance.

56) Furthermore, the statutory requirements imposed on a Regional Wastewater Commission fail, making this wholesale rate squarely within the KYPCS's plenary jurisdiction.

a) KRS 65.8907(1) requires that a Regional Wastewater Commission be comprised of at least one commissioner from each member entity – i.e., Earlington must have a representative on this governing/oversight commission. This has not occurred.

b) The Commission must manage its own funds, adopt its own bylaws and rules of procedure, establish regular meeting times, among other duties or responsibilities. KRS 65.8911. This has not occurred.

c) The Commission is a separate entity from any or all of its member cities. KRS 65.8917. Madisonville has attempted to bring this “commission” under the control of the Madison Municipal Government.

d) KRS 65.8921 outlines the steps required for the Board of Commissioners to make rate changes, which were not followed.

57) With the statutory requirements for a Regional Wastewater Commission exception failing, the KYPCS retains its plenary jurisdiction over the modification of the classification and amounts of wholesale wastewater rates and the Regional Wastewater Commission exception is not applicable.

58) As no Regional Wastewater Commission exists or functions as required by KRS 65.8905–8921, Madisonville cannot claim exemption; the Commission’s jurisdiction therefore remains intact.

B.
***The “a City” Exception to “Utility” Does Not Exempt Madisonville
from KYPCS’ Jurisdiction***

59) The second exception within KRS 278.010 does not apply because the implementation and continuance of the 201 Grants and rights and duties regarding the operation is not limited to a single “city” whereby Earlington’s separate utility would operate as a department of the Madisonville Municipal government, making it accountable to the voters and residents of Madisonville for any unfair, unjust, or excessive rates imposed to include the costs of Madisonville’s separate “retail” systems. The June 1, 1995, litigation Settlement Agreement was and is to the contrary.

60) Instead, an extraterritorial wholesale operation extends from Madisonville to Earlington (and Hanson).

61) The full intention and effect of the application of the legislative exception to KYPSC’s jurisdiction, as “a city” requires the operation to take place within the jurisdictional territory of a single city. This does not extend to several cities operating through their utilities collectively. *Louisville Water Co.*, 318 S.W.2d 337 (Ky. 1958); *Simpson Co. Water Distr.*, 872 S.W.2d 537 (Ky. 1994).

62) Moreover, Madisonville is not a city of the first class.

63) The Madisonville attempted wholesale wastewater treatment rate change is for the sole benefit of the retail customers within the territorial jurisdiction of Madisonville, not the residents of Earlington (and Hanson).

64) The treatment plant is not located within a different county.

65) Again, with the statutory requirements for “a city” exception failing, the KYPSC retains its plenary jurisdiction over the Earlington (and Hanson) wholesale wastewater treatment rate.

66) The statutory provisions and regulations have not changed since 2001 when Madisonville last received KYPSC authorization and they remain in full force and effect.

67) The statutory definition of utility does not serve as an impenetrable shield to afford a city immunity. *Simpson*, 872 S.W.2d at 463.

68) The ‘a city’ exemption applies only to a municipal utility serving exclusively within its own corporate boundaries. Madisonville’s treatment of Hanson’s wastewater for compensation is extraterritorial service. The exemption, therefore, does not apply.

C.
The “a City” Exception to Sewage Utility Does Not Apply to Madisonville

69) As defined within KAR 5.071(2)(9), in its relevant part, a “Sewage Utility” is:

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. KAR 5.071(2)(9).

70) The exceptions to the KYPSC’s jurisdiction outlined in 807 KAR 5:071 do not apply to allow any adjustment to the wholesale wastewater treatment rate to include the retail costs only be increased for the separate Madisonville collector system by the Madisonville City Council because:

a) Madisonville is not a city of the first class;

b) The sewage treatment plant is within the same county as that of which Madisonville sits; and,

c) No sewer district has been established to be responsible for overseeing the sewage operation.

71) The KYPSC has plenary jurisdiction over the matter. The KYPSC should enter an order affirming its plenary jurisdiction over this matter and also defining the statutory and regulatory requirements of Madisonville and Earlington (and Hanson), prohibiting Madisonville from implementing any wholesale wastewater rate modifications binding on both Earlington and Madisonville to pay any cost, and Madisonville's separate retail wastewater collector system operation.

D.
Implications of Denying Commission Jurisdiction

72) If the KYPSC were to disclaim jurisdiction over this matter, the resulting framework would permit one city—Madisonville—to exercise unilateral legislative rate-making power over another sovereign municipality and its residents without any form of state-level review, appeal, or procedural safeguard.

73) Compulsory utility rates would then be delegated to the Madisonville City Council—an entity that is neither authorized by the terms of the federal grant, the 1995 Settlement Agreement or by statute to legislate for the citizens of Earlington nor subject to statewide accountability. That outcome would violate Sections 2, 27, and 28 of the Kentucky Constitution and the Fourteenth Amendment by delegating rate-making power without statutory authorization and denying Hanson's citizens equal protection and due process.

74) Earlington's citizens would be bound by rates fixed without a quantitative basis solely by Madisonville's City Council—an external legislative body for which they have no electoral recourse.

75) Such an arrangement would raise substantial constitutional concerns under the Kentucky Constitution and the Fourteenth Amendment to the United States Constitution.

76) The absence of KYPSC oversight would also deprive Earlington and its citizens of a forum to contest rate increases or to compel disclosure of cost-of-service data.

77) Declining to exercise jurisdiction over these extraterritorial rates effectively permits Madisonville to become an unauthorized taxing or revenue-raising power over Earlington without statutory oversight, procedural safeguards, or legislative recourse.

78) Such a declaration would contravene the purpose of the Commission and the protections of the Commonwealth's and the U.S. Constitution, namely the non-delegation doctrine, equal protection clauses, and due process clauses.

79) For these reasons, any interpretation of KRS 278 that denies the Commission jurisdiction over this matter contravenes the Constitutional protections. Accordingly, the Commission should construe its jurisdiction broadly to preserve the uniform, accountable system of utility regulation.

**VI. REQUEST FOR DECLARATORY ORDER DECLARING THE 2024
ATTEMPTED RATE INCREASE AS VOID *AB INITIO***

80) Earlington incorporates by reference all prior paragraphs asserted in this application.

81) Pursuant to the KYPSC's plenary jurisdiction over wholesale wastewater utility treatment rates and services conferred by KRS Chapter 278, 807 KAR Chapter 5, specifically 807 KAR 5:071, and relevant case law, the 2024 rate adjustment imposed by the Madisonville City

Council on Earlington failed to conform to the procedural and substantive requirements of 807 KAR Chapter 5.

82) 807 KAR Chapter 5 requires utility providers to first obtain authority and approval from the KYPSC prior to making any adjustments to rates (wholesale, retail, or otherwise) or classification changes for customers. 807 KAR 5:001, §16(1), 807 KAR 5.071, §3(2).

83) Any proposed adjustment must conform to the standards outlined in 807 KAR 5:071, §3,(2) or 807 KAR 5:096.

84) Additionally, KRS Chapter 278 and 807 KAR Chapter 5 require notice to be given to all customers prior to any intended rate changes. 807 KAR 5:001, §17; 807 KAR 5.071, §4.

85) Considering that the Madisonville-Earlington Wastewater Treatment Wholesale rates (and also Hanson) fall within the KYPSC's jurisdiction, *any* adjustments to the rate or classifications that first required KYPSC approval.

86) Madisonville failed to comply the regulatory filing requirements of 807 KAR 5:001, §16 and received *no* KYPSC prior approval for the 2024 wholesale rate increase from \$0.81 to \$3.75/1000 gallons for Earlington.

87) The attempted wholesale rate reclassification and/or change was not mutually accepted by Earlington, thereby not waiving any right to the procedure outlined in 807 KAR 5.001, §17 and 807 KAR 5.071, §3,(2).

88) The wholesale rate change has had an adverse and unlawful impact on Earlington's separate retail customers, including but not limited to the unjustified increase and a lack of transparency regarding the rate-making process.

89) Because Madisonville failed to file its 2024 wholesale rate with the Commission, give notice, or obtain approval as required by 807 KAR 5:001 §§16–17 and 807 KAR 5:071 §3, the rate change is unlawful under KRS 278.160(1) and of no legal effect.

90) The KYPSC should enter an order declaring the Madisonville 2024 wholesale rate changes to be void *ab initio*.

91) Earlington requests that the Commission open a formal docketed investigation to determine the lawful wholesale rate based on Madisonville’s actual costs and compliance with Commission filing requirements.

92) Earlington requests the Commission enter any such necessary orders to ensure fair, just, and reasonable the wholesale wastewater treatment rate.⁶

VII. REQUEST FOR INVESTIGATION TO ESTABLISH AN APPROPRIATE WHOLESALE RATE

93) Earlington incorporates by reference all prior paragraphs asserted in this application.

94) Earlington requests the KYPSC to initiate a formal hearing to resolve this disputed reclassification and wholesale wastewater treatment rate for Earlington (and Hanson) to also include the separate pursuant to 807 KAR 5:001, to allow for presentation of the evidence on the matter.

VIII. CONCLUSION

WHEREFORE, the City of Earlington respectfully requests that the Kentucky Public Service Commission enter an order:

⁶ Earlington has reserved all rights in pending judicial proceedings filed in the Hopkins Circuit Court by Madisonville to contest any and all wholesale rate adjustments imposed since the KYPSC’s last approved rate in 2001, including its right to a credit for any historical overpayment.

- A) Affirming its plenary jurisdiction over the wholesale wastewater rate between Madisonville-Earlinton and Madisonville-Hanson;
- B) Directing Madisonville to file a complete rate application pursuant to 807 KAR 5:001 §16, including cost-of-service data, schedules, and supporting audits, prior to any future wholesale rate adjustments;
- C) Declaring the attempted 2024 rate changes as void *ab initio* as Madisonville has failed to first conform to the substantive and procedural requirements necessary for a wholesale rate adjustment since the year 2001;
- D) Scheduling and conducting a formal hearing on the matter to establish the fair and just wholesale wastewater rate between Madisonville and Earlinton;
- E) Any and all relief that the Commission deems just, reasonable, and in accordance with the law and regulations.

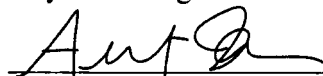
RESPECTFULLY SUBMITTED this 12th day of November, 2025.

/s/ Daniel N. Thomas
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City of Earlinton, Kentucky*

VERIFICATION

I, Albert Jackson, Mayor of the City of Earlington, the Complainant/Applicant in the above-style case, state that I have read the foregoing Verified Complaint and verify that all statements contained herein are true and correct to the best of my knowledge, this 11 day of November, 2025.

City of Earlington



By: Albert Jackson, Mayor

STATE OF KENTUCKY)

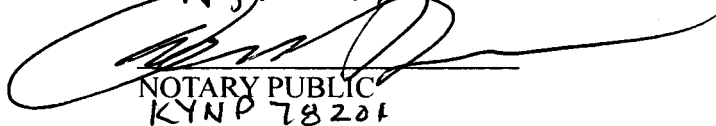
COUNTY OF Christian)

SCT.

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED to before me by Mayor Albert Jackson, City of Earlington, this 11 day of November, 2025.

My Commission Expires:

August 23, 2027



NOTARY PUBLIC
KYNP 78201