

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

*[Electronically Filed]*

In the matter of:

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

**CITY OF EARLINGTON’S RESPONSES TO THE COMMISSION STAFF’S FIRST  
REQUEST FOR INFORMATION**

The City of Earlington (“*Earlington*”), by counsel, and pursuant to 807 KAR 5:001, for its responses to the Commission Staff’s November 25, 2025, First Request for Information:

**1) REQUEST: State whether Earlington provides wastewater service to any entity or customer that is subject to the jurisdiction of the Commission.**

**RESPONSE:** Yes. At this time, Earlington provides retail wastewater services only to entities and customers within its territorial boundaries, where it provides local collection services to its own residents and transports that wastewater to the “Point of Origin,” where Madisonville assumes responsibility for treatment under the 1984 Sewer Contract, as amended in 1995. Earlington does not provide retail or wholesale wastewater treatment services to any other entity or customer subject to the jurisdiction of the Commission, at this time.

However, Earlington believes that because the 1984 Contract, as amended in 1995, is a federally mandated rate and was a necessary precondition to receiving the EPA 201 grant, this makes the wholesale wastewater rate between Madisonville and Earlington subject to the Commission’s jurisdiction. This wholesale rate arises entirely from the EPA-mandated user-charge system required by 33 U.S.C. §1284(b)(1) and 40 C.F.R. §§ 35.912, 35.925-11, 35.935-13 as a condition of the 201 Grant. Under this structure, all participating municipalities—including Madisonville and Earlington—are required to adopt user-charge systems, industrial cost recovery

mechanisms, and inter-municipal user agreements, all subject to State oversight. See 40 CFR §§ 30.900, 35.912, 35.915, 35.927-4, 35.935-13, published in Federal Register, Vol, 39, No, 29, February 11, 1974. A copy of which is attached as **Exhibit 1** and bookmarked accordingly. States are responsible for certifying that user-charge systems are technically adequate and economically sufficient.

Kentucky implemented this federal delegation by assigning:

1. *Technical oversight* to the **Kentucky Division of Water**, and
2. *Economic oversight*—including wholesale rate enforcement—to the **Public Service Commission**, which is the only state body empowered to determine whether wholesale rates between municipal entities are fair, just, and reasonable.

This split mirrors the federal regulatory categories: technical adequacy vs. economic sufficiency.

Moreover, Earlington believes two federal opinions from the Western District of Kentucky, Consolidated Action Nos. 86-0203-O and 88-0068-O, *City of Earlington v. City of Madisonville*, support this position. This matter involves the very same grant terms, and the previous service agreement was at issue. The federal court expressly held that:

- The user-charge system requirements are federally mandated. See April 5, 1993, Memorandum and Opinion of Judge Simpson, pp. 2–5. A copy of which is attached as **Exhibit 2** and bookmarked accordingly.
- EPA’s enforcement of those requirements is discretionary, not mandatory. See Exhibit 2, p. 6.
- Federal courts lack jurisdiction to enforce these obligations, and that enforcement is left to state law and state regulatory mechanisms. See December 29, 1994 Order by Judge Russell, pp. 1–5. A copy of which is attached as **Exhibit 3** and bookmarked accordingly.

Because federal law places the obligation on the “State” to ensure economic compliance with the federally required user-charge system—and because Kentucky has assigned economic enforcement (including wholesale rates between municipal systems) to the Public Service

Commission—the PSC is the State entity responsible for ensuring economic compliance with the user-charge terms required by the EPA grant.

Thus, while Earlington does not provide wastewater service to any other Commission-regulated customer, the economic obligations arising from the federally mandated user-charge system fall within the Commission’s jurisdiction.

**2) REQUEST: State whether the outcome of this proceeding, or the rate change described in the application, has any direct or indirect effect on the rates of any utility or wastewater customer under the Commission’s jurisdiction. If yes, identify the affected entity and explain how its rates or services would be affected.**

**RESPONSE:** Yes, because the wholesale wastewater rates are a federal requirement by which federal law imposes enforcement and regulation on the states, and Kentucky has designated the Public Services Commission as the economic regulatory agency over wholesale rates. Earlington’s retail customers will be directly affected by the rate change.

**3) REQUEST: Provide copies of any contracts between the City of Madisonville and Earlington that have been filed and approved by the Commission and affixed with the Commission’s effective stamp.**

**RESPONSE:** The only document available to Earlington demonstrating that a contract was filed with and approved by the Commission is attached as **Exhibit 4**. On July 31, 2001, in response to Madisonville’s filing, acknowledging and accepting the contract as Case No. C62-0009 between the two cities.

“The above referenced Contract filing has been received and reviewed. An accepted copy is enclosed for your files.”

This demonstrates that Madisonville filed a wholesale sewer rate contract with the Commission in 2001 and that the Commission accepted jurisdiction, as the cities accepted and implemented

the Commission's approved rate through 2019. Moreover, the rate determination that Madisonville provided to the Commission highlights the historical compliance with the 1995 Amended Contract and Settlement Agreement that resulted from nearly 9 years of previous litigation.

**4) REQUEST: Identify any past cases before the Commission that involved wastewater treatment services between Madisonville and Earlington or the City of Hanson and provide case numbers.**

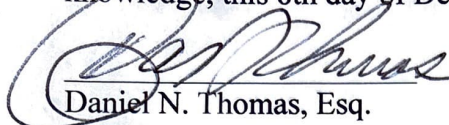
**RESPONSE:** The only available information that Earlington has at this time is Case No. C62-0009, where the Commission reviewed and accepted the contract for wastewater services on July 31, 2001. See Exhibit 4. Also, C62-0011, where the Commission accepted the Hanson-Madisonville Contract on July 31, 2001. A copy of that letter is also attached as **Exhibit 5**.

RESPECTFULLY SUBMITTED this 8th day of December, 2025.

/s/ Daniel N. Thomas  
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**VERIFICATION**

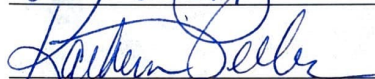
I, Daniel N. Thomas, on behalf of the City of Earlington as the legal representative in the above-style case, and the person supervising the response on behalf of the City of Earlington, state and verify that all statements contained herein are true and correct to the best of my knowledge, this 8th day of December, 2025.

  
Daniel N. Thomas, Esq.

STATE OF KENTUCKY                    )  
  )     SCT.  
COUNTY OF Christian            )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED to before me by Daniel N. Thomas, on behalf of the City of Hanson, this 8th day of December, 2025.

My Commission Expires:

2-21-2029  
  
NOTARY PUBLIC

