

BEFORE THE PUBLIC SERVICE COMMISSION

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

Electronically Filed

CITY OF EARLINGTON, KENTUCKY

APPLICANT/COMPLAINANT

v.

**RESPONDENT’S MOTION TO DISMISS COMPLAINANT’S
APPLICATION AND FORMAL COMPLAINT**

CITY OF MADISONVILLE, KENTUCKY

RESPONDENT/DEFENDANT

Comes now Respondent, City of Madisonville, by counsel, and for its Motion to Dismiss Complainant, City of Earlington’s, Verified Application for Declaratory Order and Formal Complaint, states as follows:

INTRODUCTION

By filing its Formal Complaint to the Kentucky Public Service Commission (the “PSC”), the City of Earlington (“Earlington”) has made a futile attempt to force the PSC to reverse the answers it has already given to questions that have already been asked. Both Kentucky law and this Commission’s own correspondences confirm that the PSC lacks jurisdiction over this matter. Despite Complainant’s errant characterization of its claims, this dispute is simply about a breach of contract; a matter which must be resolved by the appropriate Circuit Court – not the PSC. The City of Madisonville (“Madisonville”) entered into a contract with Earlington, where Earlington agreed to pay Madisonville to transport and treat its wastewater.¹ Although this contract has been amended, one provision has remained unchanged—Madisonville sets the rate, not Earlington.

¹ Madisonville also entered into a similar contract with the City of Hanson (“Hanson”), which is also at issue before this Commission. In an effort to simplify matters for the Commission, Madisonville has divided its dispute with each city into two separate Motions to Dismiss.

Madisonville has increased the rate, and Earlington refuses to pay. As it has already recognized, it is not within the scope of this Commission's authority to become involved in such a situation.

LAW AND ARGUMENT

Earlington has overly complicated this dispute and, in so doing, it has merely prolonged the inevitable. Particularly, Earlington has filed a repetitive and perhaps intentionally confusing 21-page Application and Formal Complaint ("Complaint") to the PSC, asking it to affirm its jurisdiction over the wholesale wastewater rate between Madisonville and Earlington and to make certain declarations as a result thereof. Earlington asserts these allegations despite having already received notice **from the PSC** that it cannot adjudicate these claims. As set forth below, the PSC may not hear this dispute as it recognizes that it does not have jurisdiction over this matter.

According to KRS Chapter 278, the PSC's jurisdiction extends only to utilities.² KRS 278.010(3) exempts a city from the definition of a utility, stating specifically that a utility is "any person *except ..., a city, who owns, controls, operates, or manages any facility used ...*" for the provision of utility service.³ A city⁴ waives this exemption *only* if it contracts with a *utility* regulated by the PSC.⁵

In *City of Greenup*, the court held that a municipal utility, even one maintained by a "fifth class" city, is not subject to PSC regulation unless it contracts to provide services to a PSC regulated utility.⁶ The court also held that the PSC, as a quasi-judicial agency, has the authority to determine its own jurisdiction.⁷ The PSC has done just that. In *City of Mount Sterling, Kentucky*,

² KRS 278.040(2).

³ KRS 278.010(3) (emphasis added).

⁴ The Supreme Court of Kentucky has held that "reference to a 'city' under the statutory scheme includes city-owned utilities." *Simpson County Water Dist. v. City of Franklin*, 872 S.W.2d 460, 462 (Ky. 1994).

⁵ KRS 278.200.

⁶ *City of Greenup v. PSC*, 182 S.W.3d 535, 536 (Ky. App. 2005).

⁷ *Id.* at 538.

Case No. 95-193, the PSC held that its jurisdiction does not extend to “the rates which a municipality owned utility may assess to another municipality owned utility.”⁸

Further, and most importantly, **the PSC has specifically declined to exercise jurisdiction over this dispute.** On May 7, 2025, Earlington sent a letter to the PSC requesting that it investigate this matter. However, on September 4, 2025, the PSC sent notice to Earlington that it was declining the request.⁹ Specifically, the PSC stated that it “does not believe it has jurisdiction to investigate,” nor does it believe that “Madisonville must comply with KRS Chapter 278 or 807 KAR Chapter 5” regarding its contract with Earlington.

In its Complaint, Earlington refers to the letter only for the purpose of asserting that the letter is an “informal staff analysis” that “cannot preclude this Petition.” (Compl., at n. 4). Thus, Earlington apparently believes that the PSC will be more inclined to reverse its well-documented position if Earlington initiates the formal complaint process, thereby prolonging the dispute and exhausting more of the PSC’s time and resources on a question that it has already answered.

It is beyond dispute that the PSC has no jurisdiction here. This is supported by KRS Chapter 278, the Kentucky Court of Appeals, and the PSC itself. Not only is any sewer rate increase not subject to PSC approval—*the PSC refused to review it*. This matter remains a simple breach of contract action, for the Hopkins Circuit Court to resolve. Thus, Complainant’s claims to this Commission must be dismissed.

CONCLUSION

Despite the City of Earlington’s repetitive and inaccurate contentions, the Kentucky Public Service Commission lacks jurisdiction to hear the matters asserted in Earlington’s Complaint. This

⁸ *City of Mount Sterling, Kentucky*, Case No. 95-193 (Ky. PSC May 31, 1995) (https://psc.ky.gov/order_vault/Orders_1995/199500193_05311995.pdf).

⁹ The referenced letter is attached to Earlington’s Complaint as **Exhibit H**.

Commission being unable to afford any relief on the claims asserted, Earlington's Verified Application and Formal Complaint must be dismissed in its entirety.

WHEREFORE, for the foregoing reasons, the Respondent, City of Madisonville, Kentucky respectfully requests that this Commission dismiss the Verified Application and Formal Complaint of Complainant, City of Earlington, Kentucky, with prejudice.

/s/ Harold Mac Johns

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