

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF CMTA, INC. FOR AN ORDER)	
DECLARING THE PROVISIONS OF KRS 278.010(3))	
AND KRS 278.495 INAPPLICABLE TO PROJECT)	CASE NO.
PERFORMED BY CTMA, INC. FOR THE)	2018-00180
KENTUCKY FINANCE & ADMINISTRATION CABINET)	

ORDER

On June 4, 2018, CMTA, Inc. (CMTA), filed a verified Application pursuant to 807 KAR 5:001, Section 19, for an expedited Order declaring that the provisions of KRS 278.010(3) and KRS 278.495 are inapplicable to the project (Project) being performed by CMTA for the Kentucky Finance and Administration Cabinet (Finance Cabinet).¹ On July 13, 2018, CMTA supplemented the record by filing a map designated as Exhibit A to the Application, which was inadvertently omitted from the initial filing. Specifically, CMTA seeks a declaration that the proposed Project will not create a utility as defined under KRS 278.010(3), nor will it create a master meter system as defined in KRS 278.495 and 49 CFR 191.3; thereby Finance would not be subject to the Commission's jurisdiction.²

BACKGROUND

CMTA is a Kentucky corporation engaged in the business of providing engineering services, and the Finance Cabinet is an administrative agency of the Executive Branch

¹ CMTA Application, at 1.

² *Id.*

of the Kentucky state government and a political subdivision of the Commonwealth of Kentucky.³ CMTA and the Finance Cabinet entered into an agreement on or about September 14, 2017, setting forth the terms of the proposed Project.⁴ As the Project manager, CMTA filed the pending declaratory action because it is responsible for assuring that the Project complies with all regulatory obligations.⁵

Currently, the Finance Cabinet has a system in place where it has chillers and boilers located in a Central Utility Plant (CUP), which distributes high-temperature hot water and chilled water through underground pipes to serve three different buildings (which CMTA refers to as Finance's campus) located in downtown Frankfort.⁶ The Finance Cabinet owns the buildings, and leases the offices to administrative agencies of the Kentucky State Government.⁷ CMTA asserts that the Finance Cabinet is not presently under the jurisdiction of the Commission.⁸

At this time, the Finance Cabinet's campus currently has a natural gas meter where natural gas is used to heat the water, and then the water is pumped through a water piping system to the other buildings to provide heating for the HVAC systems.⁹ CMTA contends that as part of a boiler plant decentralization Project, the water piping system

³ *Id.* at 1 - 2.

⁴ *Id.* at 2.

⁵ *Id.* A letter from the Finance Cabinet authorizing CMTA as Project manager to file the pending declaratory action is attached as Exhibit 1 to the Application.

⁶ *Id.*

⁷ *Id.* at 3.

⁸ *Id.* at 2.

⁹ *Id.*

will be replaced with a natural gas piping system that will pipe natural gas from the same meter connection point through the new natural gas pipes to new high-efficiency boilers that will be installed at the other buildings on the Finance Cabinet's campus.¹⁰ The Finance Cabinet plans to abandon the existing water piping system in place.¹¹ CMTA states that the current system heats water to 300 degrees and has a pressure of 125 psi; whereas, the new natural gas piping system will consist of 4" polyethylene pipe and will operate at a pressure of 10 psig on the pipes going to each building on the Finance Cabinet's campus.¹²

CMTA argues that even though natural gas meters will be installed to replace the hot water meters that currently meter the hot water energy consumed by each of the Finance Cabinet's campus buildings, the purpose of the meters will not be to measure the natural gas used at each building for revenue purposes, but rather used to monitor each building's energy consumption as required by the Commonwealth Energy Management and Control System.¹³ CMTA further states that the natural gas meters are required to be installed to comply with requirements of the Division for Air Quality, as well as associated boiler plant air permits.¹⁴ Moreover, CMTA asserts that there is also an existing, separately metered, natural gas meter located at the Transportation Cabinet's building that serves the kitchen equipment in the cafeteria.¹⁵ As part of the proposed

¹⁰ *Id.* at 2 - 3.

¹¹ *Id.* at 3.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

Project, that meter will remain in service and continue providing natural gas to the kitchen cooking appliances.¹⁶

CMTA asserts that the lease amount for each building space is based exclusively upon the square footage of the building, and does not factor in the usage of utilities. CMTA further states that because the Project will only change the heating delivery method to each building with the purpose of saving energy, the Finance Cabinet will not collect rental amounts from the lessees that differ from those collected for the current boiler water piping system.¹⁷ Finally, CMTA confirms that only buildings owned by the Finance Cabinet, as indicated on the map and designated as Exhibit A, will be receiving natural gas from the main gas meter located at the CUP.¹⁸ At the completion of the Project, the Finance Cabinet will own and maintain the natural gas piping system that CMTA installs, and CMTA will take the necessary steps to safely abandon the current water piping system in place.¹⁹

DISCUSSION AND FINDINGS

Pursuant to KRS 278.040(2), the Commission has exclusive jurisdiction over the regulation of rates and services of all utilities in the state. KRS 278.010(3) defines a utility as “any person except . . . a city, who owns, controls, operates, or manages any facility used or to be used for or in connection with . . . (b) [t]he production, manufacture, storage, distribution, sale, or furnishing of natural or manufactured gas, or a mixture of same, to

¹⁶ *Id.*

¹⁷ *Id.* at 4.

¹⁸ *Id.*

¹⁹ *Id.*

or for the public, for compensation, for light, heat, power, or other uses.”²⁰ CMTA argues that the Finance Cabinet should not be considered a utility after completion of the proposed Project because it will not be making sales of natural gas for compensation and will not be providing natural gas to or for the public.²¹ The Commission has long held that where the provision of utility service is limited to a specific class of persons, such as a utility service provided by landlords to their tenants, such provision of service is not considered service to the public, and therefore, not subject to the Commission’s jurisdiction under KRS 278.040(2).²² Consequently, because the Finance Cabinet will be acting as a landlord providing natural gas only to its tenant occupied buildings, it will not be providing natural gas to or for the public, and should not be considered a utility pursuant to KRS 278.010(3).

However, the Commission is unable to render a decision on an expedited basis as to whether the proposed Project would create a master meter system pursuant to KRS 278.495 and 49 CFR 191.3. Therefore, additional proceedings will be necessary in order to develop the evidentiary record further. Specifically, the Commission intends to gather additional evidence concerning the Finance Cabinet’s provision of natural gas to the Transportation Cabinet’s kitchen/cafeteria, determine the ultimate consumer in each

²⁰ KRS 278.010(3)(b).

²¹ CMTA Application, at 5.

²² Case No. 2016-00305, *In the Matter of: Elec. Application of Kentucky Manufactured Hous. Inst. for A Declaratory Order* (filed Mar. 10, 2017) at 3; Case No. 1996-00448, *An Investigation of the Rates, Charges, Billing Practices and Provision of Utility Service by Envirotech Utility Management Services* (filed Apr. 29, 1997) at 5-7.

subject building, and obtain further clarification of whether the tenants reimburse the Finance Cabinet for any utility usage included in or separate from the assessed rents.

Having reviewed the evidentiary record and being otherwise sufficiently advised, the Commission finds that based upon the information that CMTA provided concerning the proposed Project, the Finance Cabinet should not be designated as a utility pursuant to KRS 278.010(3). Conversely, further proceedings will be conducted in order to determine whether the proposed Project would cause the Finance Cabinet to be considered a master meter system pursuant to KRS 278.495 and 49 CFR 191.3.

IT IS THEREFORE ORDERED that:

1. CMTA's request for an Order declaring that the provisions of KRS 278.010(3) are inapplicable to the Project being performed by CMTA for the Finance Cabinet is granted.
2. Based upon the information provided, the proposed Project shall not cause the Finance Cabinet to be deemed a utility as defined in KRS 278.010(3)(b).
3. Further proceedings are required to address CMTA's request for an Order declaring that the provisions of KRS 278.495 and 49 CFR 191.3 are inapplicable to the Project being performed by CMTA for the Finance Cabinet.

By the Commission



ATTEST:



Executive Director

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