

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF KENTUCKY)	CASE NO.
MANUFACTURED HOUSING INSTITUTE FOR)	2016-00305
A DECLARATORY ORDER)	

ORDER

On September 23, 2016, the Kentucky Manufactured Housing Institute (“KMHI”) filed an application for a declaratory order regarding the Commission’s jurisdiction over mobile home communities that utilize sub-metering for water service provided to tenants within those communities. In particular, KMHI requests an order declaring that mobile home communities that utilize sub-metering of watering service do not provide utility service to the public; that mobile home communities utilizing sub-metering should not be deemed a “utility” as that term is defined in KRS 278.010(3)(d); and that therefore mobile home communities utilizing sub-metering do not fall within the Commission’s jurisdiction under KRS 278.040.

In support of its request, KMHI states that it is a trade association for the manufactured and modular housing industries. KMHI notes that a manufactured home is a single-family residential dwelling constructed after June 16, 1976, in accordance with the Federal Manufactured Home Construction and Safety Standards Act of 1976, as amended. KMHI further notes that a modular home is a single-family residential dwelling constructed in accordance with the Kentucky Residential Building Code or the

Industrialized Systems Code. KMHI states that all references to a mobile home community would include both manufactured and modular homes.

According to KMHI, the owner of a mobile home community owns the mobile home park and rents each lot to individuals. A manufactured or modular home is then placed on the lot by the renter. The renter typically owns the home that is placed on the lot and pays a monthly rent to the mobile home community owner for use of the lot.

KMHI describes sub-metering as the “practice of [the owner of a mobile home community] placing meters on each of the independent lots housing a mobile home, and charging each of the tenants of the [mobile home community] for the amount of water individually used during the month.” KMHI states that water is received through a master meter and distributed to the individual lots through service pipes located within the mobile home community. A sub-meter records the usage of each mobile or modular home within the mobile home community. The mobile home community owner then allocates the water costs based on each home’s usage during the month. KMHI indicates that this transaction does not generate a profit for the owner of the mobile home community.

KMHI asserts that the use of sub-metering provides benefits, including accurate pricing signals to the renters which encourage conservation of water. KMHI notes that many mobile home community owners have seen reductions in usage of 50 percent upon instituting sub-metering. KMHI states that line breaks are quickly identified and resolved due to individual renters notifying the park owner of increased water bills. KMHI maintains that sub-metering also allows a mobile home community owner to disconnect water service as a means of ensuring payment of rent rather than relying on

eviction, which is a more time consuming and expensive process for both the owner and the renter.

KMHI notes that there have been seven Staff advisory opinions issued since 1992 addressing the issue of sub-metering, two of which specifically addressing sub-metering by mobile home communities. KMHI points out that each of the Staff opinions concluded that sub-metering in a landlord-tenant instance did not constitute the provision of utility service to the public and that the subject mobile home community was a not a utility subject to the Commission's jurisdiction. KMHI further points out that the rationale supporting Staff's conclusions was that the arrangement was limited to those who were tenants of the mobile home communities and not offered to those outside of the mobile home park. Because the Staff opinions are not binding on the Commission, KMHI now seeks a declaration from the Commission on this issue.

807 KAR 5:001, Section 19(3) provides that the Commission may direct that a copy of the application be served on a person who may be affected by an application for a declaratory order. In an Order issued on October 6, 2016, the Commission found that the jurisdictional issued raised by KMHI may affect water utilities regulated by the Commission, and thus served a copy of KMHI's application on all water utilities regulated by the Commission and on the Attorney General's Office of Rate Intervention.¹ Pursuant to 807 KAR 5:001, Section 19(4), the Commission provided that responses to KMHI's application be filed within 21 days from the date of the October 6, 2016 Order. The Commission received no responses.

¹ The Commission served the October 6, 2016 Order and KMHI application on the Kentucky Rural Water Association ("KRWA"), whose members include all water utilities regulated by the Commission except for two investor-owned water utilities, and to Kentucky American Water Company and Water Service Corporation of Kentucky, the two investor-owned water utilities not members of KRWA.

On November 7, 2016, KMHI filed a motion noting that no comments have been filed in response to its application and requesting approval of its application. Pursuant to 807 KAR 5:001, Section 19(7), the matter stands submitted to the Commission for a decision based upon the evidentiary record.

Having reviewed the application and being otherwise sufficiently advised, the Commission finds that a mobile home community owner or operator utilizing sub-meters as described in the application would not be considered a utility. KRS 278.010(3)(d) defines a utility, in relevant part, as follows:

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 in connection with...[t]he diverting, developing, pumping, impounding, distributing, or furnishing of water to or for the public, for compensation....

Where the provision of utility service is limited to a specific class of persons, the Commission has found that 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).² Here, KMHI states that the sub-meters would be placed on each lot within a mobile home community; the sub-meters would track the usage in each individual mobile home; the owner or operator of the mobile home community allocates the water costs based on each home's usage during the month; and the transaction does not generate a profit for the owner or operator of the mobile home community. Based on the facts presented in the application, the Commission finds that the mobile home

² See *The Application of Metropolitan Sewer District for Approval to Acquire and Operate the Fairhaven Mobile Home Village Sewage Treatment Plant* (Ky. PSC June 22, 1990) (determining that an owner and operator of a mobile home park who provided sewer service only to the park's tenants could not be considered within the statutory definition of a utility).

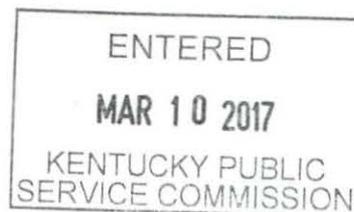
community owner or operator would not be a utility as that term is defined under KRS 278.010(3) and would not be subject to the Commission's jurisdiction pursuant to KRS 278.040. The Commission notes, however, that sub-metering alone or in combination with any fees such as an administrative fee, a disconnect fee, or a reconnect fee, could result in the owner or operator of the mobile home community being in violation of the supplying water utility's filed tariff.³

IT IS THEREFORE ORDERED that:

1. KMHI's motion for a decision is granted.
2. KMHI's application for a declaratory order is granted as discussed in the findings set forth in this Order.
3. This case is closed and removed from the Commission's docket.

By the Commission

Vice Chairman Cicero did not participate in the deliberations or decision concerning this case.



ATTEST:



Executive Director

³ See, for example, Henderson County Water District Tariff PSC KY. No. 4, Original Sheet No. 12 and Ohio County Water District Tariff PSC KY. No. 1, Original Sheet No. 26.

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