

**Goss
Samford**

ATTORNEYS AT LAW | PLLC

L. Allyson Honaker
allyson@gosssamfordlaw.com
(859) 368-7740

June 4, 2018

RECEIVED

JUN 04 2018

**PUBLIC SERVICE
COMMISSION**

VIA HAND-DELIVERY

Gwen R. Pinson, Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602

Re: *In the Matter of: Application of CMTA, Inc., for Declaratory Order - PSC Case
No. 2018-00180*

Executive Director Pinson:

Please find enclosed and accept for filing in the above-styled matter on behalf of CMTA, Inc., an original and ten (10) copies of its Verified Application for Declaratory Order. Please return a file-stamped copy of this submission to me.

I appreciate your assistance with this matter, and please do not hesitate to contact me with any questions or concerns.

Respectfully submitted,



L. Allyson Honaker

Enclosures

3. Pursuant to 807 KAR 5:001, Section 14(1), CMTA's local business address is 10411 Meeting Street, Prospect, Kentucky 40059. CMTA's electronic mail address is rmaybrier@cmtaegrs.com. CMTA is not currently under the jurisdiction of the Commission.

4. CMTA is a corporation organized and existing under the laws of the state of Kentucky. Its principal office is located at the above address.

5. Finance is an agency of Kentucky state government and a political subdivision of the Commonwealth of Kentucky. Its principal office is located at 403 Wapping Street, Frankfort, KY 40601. Finance is not currently under the jurisdiction of the Commission.

II. SUMMARY OF THE PROJECT

6. On or about September 14, 2017, CMTA and Finance entered into an agreement setting forth the terms of the Project.¹ The Project may be fairly summarized as follows:

- a. Finance currently has a system in place where it has chillers and boilers located in a Central Utility Plant (CUP) that serves 3 adjacent buildings located in downtown Frankfort. High Temperature Hot Water and Chilled Water are distributed through underground pipes to the different buildings located on this campus;
- b. Finance's campus currently has one 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;
- c. The Project would replace the water piping system with a natural gas piping system that will pipe natural gas from the same meter connection point through the new natural

¹ As Project manager, CMTA is responsible for assuring that the Project complies with all regulatory obligations, including seeking a determination as to whether Finance (as Project owner) could be a "utility" or "master meter system" operator. A letter from Finance to CMTA is attached as Exhibit 1 authorizing CMTA as Project manager to file this declaratory action.

gas pipes to new high efficiency boilers that will be installed at the other buildings on Finance's campus, as part of this boiler plant decentralization project;

- d. The existing water piping system will be abandoned in place with the proper steps taken to safely abandon in place;
- e. The current system heats water to 300 degrees and has a pressure of 125 psi;
- f. The new natural gas piping system will be 4" polyethylene pipe and will operate at a pressure of 10 psig on the pipe going to each building on this campus;
- g. There will be meters installed at each of the buildings. The purpose of these 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 ("CEMCS") <http://kyenergydashboard.ky.gov/>. The natural gas meters will replace the Hot Water BTU meters that currently meter the hot water energy consumed by each building. These meters are also required to be installed to comply with requirements of the department of air quality ("DAQ") and associated boiler plant air permits;
- h. There is an existing, separately metered, gas meter located at the Transportation Cabinet's building that serves the kitchen equipment. As part of this project the meter will remain in service only providing natural gas to the kitchen cooking appliances. Finance pays the bill for this meter as well as the kitchen is a state-operated kitchen. The rent for the kitchen is based upon the square footage only;
- i. Each of the buildings on Finance's campus are owned by Finance and each of the offices are occupied by an agency of Kentucky State Government;

- j. Leases of each building space is based on the square footage of the building and does not depend on any utility usage factors; and
- k. Finance will not be collecting any different amount of rents from the occupants than it currently does with the boiler/water piping system, this project will only change the heating delivery method to each building for the propose of saving energy.

7. The Project will be an energy improvement project. Upon completion of the Project, Finance will be the owner and will maintain the natural gas piping system that is installed by CMTA. Only the buildings owned by Finance and indicated on the map of the campus attached as Exhibit A will be receiving natural gas from the main gas meter located at the CUP.

8. Finance will not be making the natural gas available to the public. It will be confined to the area within the Finance campus.

9. CMTA will be installing the new natural gas piping system and will be taking the necessary steps to safely abandon in place the current water piping system. CMTA will not be the owner of the natural gas piping system.

10. The entire Project will be constructed on property owned by Finance. Finance will own and maintain the natural gas piping system once the Project is complete.

11. Finance will not be rendering a bill for natural gas usage to any of the tenants of the buildings being served by the main gas meter located at the Central Utility Plant, nor will Finance be issuing a bill for the natural gas usage for the kitchen located in the Transportation Cabinet building.

III. DISCUSSION

A. The Project Cannot be Considered a “Utility” Under Kentucky Law

12. The Commission’s regulates the rates and services of all public utilities in the state pursuant to the authority granted to it by KRS 278.040(2). A “utility” is defined as follows:

Any person except... a city, who owns, controls, operates or manages any facility used or to be used for or in connection with... the production, manufacture, storage, distribution, sale, or furnishing of natural or manufactured gas, or a mixture of same, to or for the public, for compensation, for light, heat, power or other uses.²

13. Pursuant to the definition of a utility above, natural gas would have to be available to or for the public for compensation as a prerequisite to being deemed a utility and subject to Commission jurisdiction. Finance, as the Project owner will not meet the definition of a utility since it will not be making sales of natural gas to or for the public. Utility service provided by landlords to their tenants is considered as being service to a specific class and not open to the public. In *Drexelbrook Associates v. Pennsylvania Public Service Commission*, 212 A.2d 237 (Pa. 1965), the Pennsylvania Supreme Court rejected arguments that a landlord reselling utility service to its tenants was providing service to the public. The Court held that only people who entered into a landlord/tenant relationship would be entitled to and receive service. Therefore, it was not open to the indefinite public but only to those who are selected to become tenants.

14. Other courts and regulatory commissions, including the Commission have followed this same rule.³

² KRS 278.010(3)(b).

³ See, *Envirotech Utility Management Services*, Case No. 96-448 (Ky. P.S.C. April 29, 1997); *Fairhaven Mobile Home Village Sewage Treatment Plant*, Case No. 90-169 (Ky. P.S.C. June 22, 1990); *Petition of Mountain Water District for Disclaimer of Jurisdiction or Approval of Tariff*, Case No. 2009-00405 (Ky. P.S.C. April 10, 2010); *Electronic Application of Kentucky Manufactured Housing Institute for a Declaratory Order*, Case No. 2016-00305 (Ky. P.S.C. March 10, 2017); *City of Sun Prairie v. Wisconsin Pub. Serv. Comm’n*, 154 N.W.2d 360 (Wis. 1967).

B. The Project Cannot be Considered a Master Meter System Under Kentucky Law

15. KRS 278.495 and 49 CFR 191.3 define a master meter system as follows:

Master meter system means a pipeline system for distributing gas within, but not limited to, a definable area, such as a mobile home park, housing project, or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. The gas distribution pipeline system supplies the ultimate consumer, who either purchases the gas directly through a meter or by other means, such as through rents.

16. The Project will not meet the definition of a master meter system since the gas will not be resold by Finance to any consumer. No bills are sent to the tenants of the buildings and rent is based solely on the square footage of the office and not tied to any amount of natural gas, electric or water service.

17. Resale of a utility service is generally considered to involve the assessment of a charge designed to recover the revenues in excess of the cost of the supplied service or commodity.⁴ Therefore, the Project will not constitute “resale of a utility service”.

18. The fact that CMTA will be installing meters at each building will not constitute the resale of the natural gas. The meters will not be used for the purpose of measuring natural gas usage in order to bill the tenants for that usage, but instead to monitor each building’s energy consumption as required by the CEMCS. The rent currently paid by tenants – who are also agencies of state government and political subdivisions of the Commonwealth of Kentucky – will not change with the addition of the natural gas system. The rent will still be based solely on the square footage of the space being leased. It should be noted that as current, the buildings associated with this project are heated with hot water made from burning natural gas in boilers located in one location, the CUP. This project is not changing the heating method or system types of these

⁴ See, *Procedures Governing Sales of Electricity for Resale*, 85 PUR 3d 107 (Fla. P.S.C. 1970).

buildings, but only the location at which the gas is burned. New high efficiency boilers will be installed at each building to create hot water for the heating systems for the sole goal of saving energy. Furthermore, the rent charged to each tenant of the building will not change as a result of this Project.

III. REQUEST FOR RELIEF ON AN EXPEDITED BASIS

19. CMTA requests that the Commission enter a final order in this matter within sixty days, *to wit*, on or before August 4, 2018. Obtaining a decision from the Commission within this timeframe will allow the Project to proceed without unreasonable delay and afford CMTA sufficient time to take whatever other actions may be deemed appropriate to ensure timely completion of the Project.

IV. CONCLUSION

20. CMTA does not believe that the Project would create a “utility” under KRS 278.010 or a “master meter system” under KRS 278.495, and requests the Commission to so declare.

WHEREFORE, on the basis of the foregoing, CMTA respectfully requests that the Commission enter an Order:

1. Declaring that neither KRS 278.010 nor KRS 278.485 is applicable to the Project, thereby determining that Finance would not be subject to the jurisdiction of the Commission as a utility or as a master meter system operator;
2. Granting the relief requested herein within sixty days, *to wit*, on or before August 4, 2018; and
3. Granting CMTA all other additional relief to which it may appear entitled.

This 4th day of June, 2018.

VERIFICATION

State of Kentucky)
)
County of Jefferson) SS:

The undersigned, Roger Maybrier, being duly sworn, deposes and says that he is the Project Manager for CMTA and that the matters set forth in the foregoing Application are true and correct to the best of his information, knowledge and belief.



ROGER MAYBRIER

Subscribed and sworn to me on this 1st day of June, 2018.

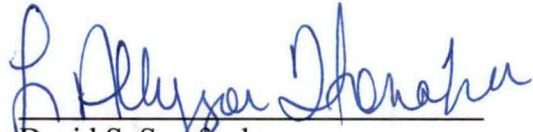




NOTARY PUBLIC

My Commission expires: 6/10/2020

Respectfully submitted,



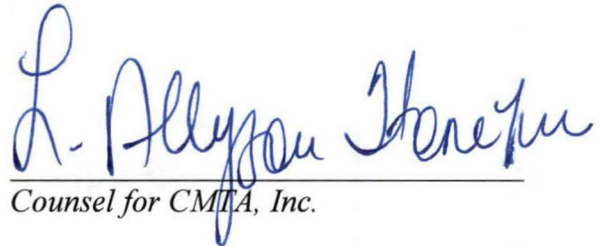
David S. Samford
L. Allyson Honaker
Goss Samford, PLLC
2365 Harrodsburg Road
Suite B-325
Lexington, Kentucky 40504
(859) 368-7740
david@gosssamfordlaw.com
allyson@gosssamfordlaw.com

Counsel for CMTA, Inc.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing has been served, by delivering same to the custody and care of the U.S. Postal Service, postage pre-paid, this 4th day of June, 2018, addressed to the following:

Andy Beshear, Attorney General
Rebecca Goodman, Deputy Attorney General
1024 Capital Center Dr., Suite 200
Frankfort, KY 40601-8204



Counsel for CMTA, Inc.



MATTHEW G. BEVIN
GOVERNOR

COMMONWEALTH OF KENTUCKY
FINANCE AND ADMINISTRATION CABINET
DEPARTMENT FOR FACILITIES AND SUPPORT SERVICES
DIVISION OF ENGINEERING AND CONTRACT ADMINISTRATION
403 WAPPING STREET, 1ST FLOOR
FRANKFORT, KY 40601-2638
(502) 564-3050
FAX NO. (502) 564-6822

WILLIAM M LANDRUM III
SECRETARY

ROBERT M. BURNSIDE
COMMISSIONER

JENNIFER LINTON
EXECUTIVE DIRECTOR

June 1, 2018

Kentucky Public Service Commission
P.O. Box 615, 211 Sower Boulevard,
Frankfort, Kentucky 40602-0615

Re: ESPC Owner Representative

Dear PSC,

The Kentucky Finance and Administration Cabinet selected CMTA Energy Solutions as the qualified provider to perform an Energy Savings Performance Contract ("ESPC") (RFP-14-18), on September 14th 2017. By this letter the Kentucky Finance and Administration Cabinet hereby authorizes CMTA to act on the behalf of the Kentucky Finance and Administration Cabinet in all matters relating to the development of this ESPC (RFP-14-18), including the determination of any regulatory issues that may arise as a result of the ESPC (RFP-14-18).

I thank you in advance for your assistance.

Sincerely,

A handwritten signature in blue ink that reads "Jennifer Linton".

Jennifer Linton

Executive Director of Office of Facility Development & Efficiency

CC:

Roger Maybrier, CMTA Energy Solutions
Allyson Honaker, Goss Samford PLLC

