COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPLICATION OF PENNYRILE REGIONAL ENERGY AGENCY FOR A DECLARATORY ORDER REGARDING THE JURISDICTION OF THE PUBLIC SERVICE COMMISSION	)))))	CASE NO. 2023-00195

O R D E R

On June 19, 2023, the Pennyrile Regional Energy Agency (Pennyrile Agency) filed an application pursuant to 807 KAR 5:001, Section 19, for a Declaratory Order that it is not a utility that is subject to the Commission's rates and services jurisdiction. On July 5, 2023, Atmos Energy (Atmos) filed a motion for intervention, to which Pennyrile Agency filed a response on July 12, 2023.

By Order entered October 20, 2023, the Commission denied Atmos's motion to intervene and provided Atmos two weeks to file a response to Pennyrile Agency's petition for declaratory order. Atmos filed a response to the petition on November 10, 2023, and Pennyrile Agency filed a reply to the response on November 30, 2023.

Pennyrile Agency has not requested a hearing, and this matter stands ready for a decision based on the record.

LEGAL STANDARDS

Pursuant to 807 KAR 5:001, Section 19, the Commission may, upon application by a person substantially affected, issue a declaratory order with respect to the jurisdiction of the Commission or the meaning and scope of a provision of KRS Chapter 278. The

regulation provides that the Commission may dispose of an application for a declaratory order solely on the basis of the written submissions filed.

In this case, Pennyrile Agency applied for a declaratory order regarding the statutory definition of "utility" in KRS 278.010(3) and asked the Commission to find that it is a "city" exempt from being classified as a "utility" within the meaning of the statute or, therefore, subject to the Commission's plenary jurisdiction over the rates and services of utilities under KRS 278.040. KRS 278.010 defines, in relevant part,

> (3) "Utility" as 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 for or in connection with:
>
> * * *
>
> (b) 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

If Pennyrile Agency is not a "city" within the meaning of KRS 278.010, it would be required by KRS 278.020(1) to obtain a certificate of public convenience and necessity (CPCN) from the Commission before "commencing the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010(3)."

BACKGROUND

The city of Guthrie and the city of Trenton are both located in Todd County, Kentucky. Pennyrile Agency is an interlocal agency formed by the cities of Guthrie and Trenton, Kentucky, pursuant to the Interlocal Cooperation Act, KRS 62.210 to 65.300. According to Pennyrile Agency's application, it was formed "to foster development in the

region through the creation of a natural gas system."[1] Pennyrile Agency stated that it plans to construct a 53-mile, 16-inch intrastate natural gas pipeline to provide gas service to unserved and underserved areas of Todd, Christian, Trigg, Caldwell, and Lyon counties, Kentucky, and that it expects the pipeline to be in service by the end of 2025 or early 2026.[2] Pennyrile Agency attached the Interlocal Cooperation Agreement (Interlocal Agreement) entered into by the cities of Guthrie and Trenton as an exhibit to its application.[3]

The city of Guthrie has a municipal gas system that is inspected by the Commission's Division of Inspections (DOI). According to Commission Staff's Inspection Report from its most recent periodic inspection of the city's gas system, conducted March 1-4, 2022, the system serves 146 customers and is comprised of 15.7 miles of plastic main, 2.6 miles of coated steel main, and 214 plastic services. The city of Trenton does not have a gas system.

Pennyrile Agency requested in its application that the Commission enter an order declaring that Pennyrile Agency, as an interlocal agency formed by two cities, is not a "utility" as defined by KRS 278.010(3) and therefore is not subject to the Commission's general jurisdiction over its rates and services.[4] Pennyrile Agency acknowledged in its application that the Commission has authority to regulate the safety of the proposed pipeline.[5]

[1] Application at 1.

[2] Application at 2.

[3] Application, Exhibit 1.

[4] Application at 4.

[5] Application at 2.

POSITION OF PENNYRILE AGENCY AND ATMOS

In support of its application, Pennyrile Agency argued that under KRS 65.240, interlocal agencies like Pennyrile Agency may exercise and enjoy "any power or powers, privileges or authority" that that the member agencies exercise or are capable of exercising.[6] Pennyrile Agency argued that as its two public agency members are cities, it is entitled to the exemption for cities from rates and services regulation in KRS 278.010(3).[7] In support, Pennyrile Agency cited a federal court opinion holding that an interlocal agency "retains sovereign immunity from its county parents."[8]

In its response to Pennyrile Agency's application, Atmos argued that the exclusion from the definition of "utility" in KRS 278.010(3) for cities is limited to municipalities formed pursuant to state statute and traditionally understood as cities.[9] Atmos also argued that an "interlocal agency" as defined in KRS 65.230 cannot be considered a "city" within the meaning of KRS 278.010(3) because an interlocal agency can include public agencies that are not municipalities.[10]

Specifically, Atmos noted that membership in Pennyrile Agency is not limited to cities but is open to "public agencies" as defined in KRS 65.230.[11] The Interlocal Agreement provides:

> Section 7.08. New Members. Any Public Agency meeting the requirements of the Act may become an additional Member of

[6] Application at 3.

[7] Application at

[8] Application at 4.

[9] Atmos's Response to Order of October 20, 2023 (filed Nov. 2, 2023) (Atmos's Response) at 2.

[10] Atmos's Response at 1–3.

[11] Atmos's Response at 1, 3.

> the Agency by (i) taking any appropriate official action to adopt this Agreement, (ii) furnishing the Agency with satisfactory evidence that such official action has been taken, and (iii) if requested by the Agency, providing the Agency with an opinion of counsel to the effect that such party desiring to become a Member of the Agency is a Public Agency. A copy of this Agreement may be adopted by executing a written instrument of adoption in such form as may be prescribed by the Agency. Delivering an acknowledged copy of such instrument shall constitute satisfactory evidence of the adoption contemplated by this Section 7.08.[12]

Additionally, Atmos argued that Pennyrile Agency, not the cities, will own, operate, and control the proposed pipeline.[13] Atmos argued that Pennyrile Agency is a separate entity from its members and is governed by an independent board of directors.[14] The board can act independently of its municipal members and, under the terms of the Interlocal Agreement, could authorize Pennyrile Agency to undertake a project for the benefit only one member, which potentially could be a non-municipal public agency.[15] Atmos asserted that with addition of non-municipal public agencies, board members representing the cities could be in minority on the board.[16]

Atmos also argued that KRS 65.240 excludes natural gas facilities from the facilities that an internal local agency may acquire and operate. Atmos noted that the statute provides that public agencies may enter into agreements "to acquire by purchase or lease, any real or personal property, . . . outside of its municipal or jurisdictional boundaries, in connection with the acquisition, construction, operation, repair, or

[12] Application, Exhibit A, at 17.

[13] Atmos's Response at 6.

[14] Atmos's Response at 4–5

[15] Atmos's Response at 5.

[16] Atmos's Response at 4–6.

maintenance of any water, sewage, wastewater, or storm water facilities" but does not mention natural gas pipeline facilities. Atmos claimed that Pennyrile Agency's interlocal agreement, therefore, violates the statute because it purports to grant Pennyrile Agency powers in excess of those granted by the statue.[17]

Atmos argued that even if the Commission finds that Pennyrile Agency is not subject to its rates and services jurisdiction because it falls within the exemption of cities from the definition of utility in KRS 278.010(3), Pennyrile Agency is still required to obtain a Certificate of Convenience and Necessity (CPCN) pursuant to KRS 278.020 before it begins construction of the proposed pipeline and commences providing utility service. Atmos argued that the requirement under KRS 278.020(1) to obtain a CPCN expressly applies to any "person" and not just to jurisdictional utilities.[18] KRS 278.010(2) provides that "person" includes "natural persons, partnerships, corporations, and two (2) or more persons having a joint or common interest." KRS 278.010(1) provides that "corporations" include "public corporations." Atmos argued Pennyrile Agency is a "person" under these definitions.[19]

In support of its argument, Atmos cited the Commission's order in Case No. 2015-0090, *Application of Tower Access Group, LLC, For Declaratory Ruling as To Jurisdiction Over A 190-Foot Monopole Constructed on The Campus of Eastern Kentucky University* (Ky. PSC May 5, 2023). In this case, the Commission found:

> A high-quality telecommunications tower is a facility that, under KRS 278.010(3), is "used or to be used for or connection with" furnishing for the public the

[17] Atmos's Response at 6–7.

[18] Atmos's Response at 9–11.

[19] Atmos's Response at 11.

> telecommunications service enumerated in KRS 278.010(3)(e). Therefore, construction of a communications tower, if outside the jurisdiction of a local planning and zoning commission, should not begin without prior Commission approval, regardless of whether the entity constructing the communications tower is a utility as defined by KRS 278.010(3)(e). Although neither KRS 278.020(1) nor KRS 278.650 requires that a utility be the applicant for construction of a facility, they require that a CPCN be issued prior to the beginning of construction.[20]

Finally, Atmos argued that pursuant to KRS 65.300, the Commission must approve the Interlocal Agreement because the Commission has at least limited authority over Pennyrile Agency under KRS 278.020.[21]

In reply, Pennyrile Agency reiterated its argument that as an interlocal agency, the membership of which is comprised exclusively of two cities, Pennyrile Agency is exempt from the definition of "utility" under KRS 278.010(3).[22] Pennyrile Agency argued that the Commission does not have jurisdiction over utility services furnished by a city unless those services are furnished to a utility regulated by the Commission.[23]

Pennyrile Agency argued that its exemption from the Commission's jurisdiction flows from KRS 65.240, which provides that "[a]ny powers, privileges, or authorities exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state." Pennyrile Agency argued that because it is comprised exclusively of members which are cities, it has the "powers,

[20] Case No. 2015-0090, Application of Tower Access Group, LLC, For Declaratory Ruling as To Jurisdiction Over A 190-Foot Monopole Constructed on The Campus of Eastern Kentucky University (Ky. PSC May 5, 2023), Order at 13.

[21] Atmos's Response at 11–12.

[22] Pennyrile Agency's Reply to Atmos Energy Corporation's Response filed on November 2, 2023 (filed Nov. 30, 2023) (Pennyrile Agency's Reply) at 2–3.

[23] Pennyrile Agency's Reply at 3.

privileges, or authority" of those cities, including the statutory exemption to Commission regulation of cities.[24] Additionally, Pennyrile Agency argued that because, pursuant to KRS 65.243, it constitutes an agency of its two municipal members, it falls within the exemption in KRS 278.010(3) for cities.[25]

Pennyrile Agency argued that the Interlocal Agreement does not violate KRS 65.240, which expressly authorizes public agencies to enter into agreements in connection with the development of water, sewage, wastewater, and storm water facilities, but does not mention facilities for natural gas facilities. Pennyrile Agency stated that the Interlocal Cooperation Act authorizes an interlocal agency to exercise all of the privileges its member public agencies may exercise, and that a city is authorized by KRS 96.170 to 96.190 to provide its citizens with natural gas service.[26] Pennyrile Agency further argued that KRS 96.537 explicitly authorizes a city to provide natural gas service outside of its city limits.[27] Pennyrile Agency argued that by extension, the Interlocal Cooperation Act authorizes two cities are authorized to enter into an interlocal agreement to provide natural gas service outside of their boundaries.[28]

In support of this contention, Pennyrile Agency cited an interlocal agreement entered into on September 4, 2007, between the cities of Carrollton and Owenton, Kentucky, which agreement Pennyrile Agency attached as Exhibit 3 to its reply.[29] The

[24] Pennyrile Agency's Reply at 3.

[25] Pennyrile Agency's Reply at 4–5.

[26] Pennyrile Agency's Reply at 6.

[27] Pennyrile Agency's Reply at 6.

[28] Pennyrile Agency's Reply at 6.

[29] Pennyrile Agency's Reply, Exhibit 3.

agreement states that Owenton had constructed a pipeline from an existing Carrollton line to the Owenton industrial park phase one of a project to establish a gas distribution system to provide gas service in Owenton. The agreement provided that this pipeline would be transferred to Carrolton, that Owenton would endeavor to construct a gas distribution system to be connected to this pipeline to provide service to the entire city of Owenton, that the system would be transferred to Carrollton, and that Carrollton would operate and maintain this system in accordance with the terms of the agreement.[30]

Pennyrile Agency also asserted that contrary to Atmos's argument, KRS 278.020 does not require Pennyrile Agency to obtain the Commission's approval before commencing to provide natural gas service or constructing facilities to provide the service.[31] In support, Pennyrile Agency cited the decision in *City of Georgetown v. Public Service Commission*.[32] Pennyrile Agency argued that the court held that the City of Georgetown was not required to obtain a CPCN before commencing the provision of water services to areas outside its city limits because of the broad exemption of cities from the definition of utilities.[33]

Finally, Pennyrile Agency rejected Atmos's argument that KRS 65.300 requires it to obtain the Commission's approval of the Interlocal Agreement. This statute provides that if an agreement relates to facilities over which an agency of the state has statutory powers of control, that agreement must be submitted to and approved by the agency as

[30] Pennyrile Agency's Reply, Exhibit 3.

[31] Pennyrile Agency's Reply at 9.

[32] *City of Georgetown v. Pub. Serv. Comm'n*, 516 S.W.2d 842, 843 (Ky. 1974).

[33] Pennyrile Agency's Reply at 9.

a condition precedent to the agreement's operation. Pennyrile Agency argued that because it is exempt from Commission jurisdiction, for the reasons set forth in its reply, Commission approval of the Interlocal Agreement was not required.[34]

DISCUSSION

The threshold issue in this case is whether Pennyrile Agency should be considered a "city" for purposes of the definition of "utility" set forth in KRS 278.010(3) and the exclusion of cities therefrom. If the Commission finds that Pennyrile Agency should be deemed a city, the Commission must also consider whether Pennyrile Agency's proposed project would fall within the scope of the exemption of municipal facilities from the Commission's rates and service jurisdiction. If the Commission finds that Pennyrile Agency's proposed pipeline should not be treated as a city project within the meaning of the statutory exemption, Pennyrile Agency must seek a CPCN before commencing the provision of services or construction of facilities.[35]

In matters of statutory construction, the goal "is to give effect to the intent of the [legislature]."[36] To derive that intent, reference must first be made to the statute's language, "giving the words their plain and ordinary meaning."[37] Intent is derived "from the language the [legislature] chose, either as defined by the [legislature] or as generally understood in the context of the matter under consideration . . . ."[38] "All words and phrases shall be construed according to the common and approved usage of language,

[34] Pennyrile Agency's Reply at 12.

[35] KRS 278.020.

[36] *Shawnee Telecom Res., Inc. v. Brown*, 354 S.W.3d 542, 551 (Ky. 2011).

[37] *Pleasant Unions, LLC v. Ky. Tax Co.*, 615 S.W.3d 39, 45 (Ky. 2021).

[38] *Shawnee Telecom*, 354 S.W.3d at 551.

but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in the law, shall be construed according to such meaning."[39] If the statutory language is plain and unambiguous, the legislature's intent is deduced from the language used.[40] If the language is ambiguous, the legislature's intent may be derived from the application of rules of statutory interpretation.[41]

The regulatory status of cities providing utility services has been adjudicated in multiple court cases and has evolved over the years. The exemption of cities from Commission rates and services jurisdiction is not absolute.

Prior to the passage of the Public Service Commission Act of 1934 (1934 Ky. Acts 580-613), cities had the power to franchise and regulate the rates of utilities. The act of 1934, which created the Public Service Commission, "divested the city of the power to regulate rates and reposed that power in the commission."[42]

In 1936, the Act was amended to exclude cities from the definition of "utility" (1936 Revision to Public Service Commission Act, 1936 Ky. Acts 300-302). Although the amendment divested the Commission of jurisdiction over the rates and services of cities, the revision was held in *City of Vanceburg v. Plummer*, to have "left in effect the requirement that a municipality must obtain from the commission a certificate of convenience and necessity before it can begin the construction of a plant."[43] In

[39] KRS 446.080(4).

[40] *W. Ky. Coal Co. v. Nall & Bailey*, 14 S.W.2d 400, 401–02 (1929).

[41] *Pleasant Unions*, 615 S.W.3d at 45; *MPM Fin. Group, Inc. v. Morton*, 289 S.W.3d 193, 198 (Ky. 2009).

[42] *Southern Bell Telephone & Telegraph Co.*, 96 S.W.2d 695, 698 (1936).

[43] *City of Vanceburg v. Plummer*, 122 S.W.2d 772, 775 (1938).

Vanceburg, the Court of Appeals held that the 1936 amendment left in place "the provision in section 4(l) of the act [now codified at KRS 278.020(1)(a)] requiring [a] public corporation to obtain a certificate of convenience and necessity before beginning the construction of a plant."[44] The court reasoned that the purpose of requiring a CPCN before construction of utilities, to avoid unnecessary duplication of facilities for utility services, "applies alike to municipally and privately owned utilities."[45]

The Commission was also held to retain jurisdiction to regulate a city's provision of service to customers outside of city limits. In *Olive Hill v. Public Service Commission*,[46] the court considered the Commission's order finding that the city of Olive Hill lacked authority to purchase power at wholesale and resell it to customers outside the city and ordering Olive Hill to cease providing the service. The court ruled that the Commission lacked jurisdiction to determine whether the city had the statutory authority to furnish electricity outside of city limits, which the court treated as an issue distinct from whether the city could do so free of Commission regulation.[47]

Although the court ruled that the Commission lacked authority to determine the legality of the service, the court held that the Commission did have jurisdiction to regulate the rates and service to non-residents.[48] The court stated: "When the City supplied [electric service] outside its corporate limits, its exemption from regulation as to rates and

[44] *City of Vanceburg*, 122 S.W.2d 772, 775.

[45] *City of Vanceburg*, 122 S.W.2d 772, 775.

[46] *Olive Hill v. Public Service Comm'n*, 203 S.W.2d 68 (1947).

[47] *Olive Hill*, 203 S.W.2d 68, 70-71.

[48] *Olive Hill*, 203 S.W.2d 68, 71.

service by the Commission ceased, and the City came within the jurisdiction of the Commission and was subject to such regulation by it."[49]

In *Louisville Water Company v. Public Service Commission*, the court considered the Commission's jurisdiction to regulate certain charges assessed by the Louisville Water Company to customers outside the city limits of Louisville.[50] The court held that although the water company was exempt from the Commission's jurisdiction, the exemption did not extend to charges for the furnishing of service outside the city limits.[51] The court held that the legislature did not intend to exempt these activities because non-residents are without power to influence city policymakers. The court stated:

> Residents of a city have some means of protection against excessive rates or inadequate service of a utility owned by the city, through their voting power. However, customers outside the city have no such means of protection, and unless their interests are protected by the Public Service Commission they are at the mercy of the utility.[52]

In *McClellan v. Louisville Water Co.*, the court ruled that its prior interpretation of KRS 278.010(3) as not exempting extraterritorial utility service from Commission regulation was erroneous.[53] The court held that the exemption provided in KRS 278.010(3) "extends to all operations of a municipally owned utility whether within or without the territorial boundaries of the city."[54] The court stated that "w]hile we recognize

[49] *Olive Hill*, 203 S.W.2d 68 (1947).

[50] *Louisville Water Company v. Public Service Comm'n*, 318 S.W.2d 537 (1958)

[51] *Louisville Water Company*, 318 S.W.2d 537, 539.

[52] *Louisville Water Company*, 318 S.W.2d 537, __.

[53] *McClellan v. Louisville Water Co.*, 351 S.W.2d 197, 199 (Ky. 1961).

[54] *McClellan*, 351 S.W.2d 197, 199.

that this decision deprives nonresident utility customers of the protection afforded by the Public Service Commission against excessive rates or inadequate service, nevertheless matters of this character are of legislative rather than judicial concern."[55]

Subsequent to its decision in *McClellan*, the court in *City of Georgetown v. Pub. Serv. Commission* reconsidered whether a city must obtain a CPCN pursuant to KRS 278.020(1) to construct facilities to provide utility services.[56] The city sought to extend its water system outside its city boundaries. Kentucky-American Water Company (Kentucky American) filed a complaint with the Commission in which it alleged that the city's proposed facilities would enable it to serve within Kentucky American's service territory.

Kentucky American argued that the city was required to obtain a CPCN because KRS 278.020(1) refers to "person," not to "utility," and that "person" is defined in KRS 278.010(2) to include "corporations," which are defined in subsection one to include "public corporations."[57] Kentucky American argued that, therefore, the holding in McClellan holding was not controlling. The court rejected this argument and held that the city was not required to obtain a CPCN before extending its water system. The court found:

> It would be entirely inconsistent with the *McClellan* ruling to require a municipal water plant to obtain a certificate from the Commission . . . . It is our view that the plain intent of the General Assembly as expressed in KRS 278.010(1) should

[55] *McClellan*, 351 S.W.2d 197, 199.

[56] *City of Georgetown v. Pub. Serv. Comm'n*, 516 S.W.2d 842, 843 (Ky. 1974).

[57] *City of Georgetown*, 516 S.W.2d 842, 844-845.

> prevail and should not be circumscribed by a strained reasoning process bringing into play KRS 278.020(1).[58]

A city's exemption from the Commission's jurisdiction is not absolute. In *Simpson County Water Dist. v. City of Franklin*, the court recognized a "rates and service exception" to the statutory exemption of municipalities from Commission regulation.[59] The court ruled that the Commission retained jurisdiction to review the wholesale rates of municipal utilities that provide services to jurisdictional utilities. Specifically, the court found that KRS 278.200 applies when contracts are executed between a utility and a city. This statute requires that by entering such contracts, the city "relinquishes the exemption and is rendered subject to PSC rates and service regulation."[60] This decision clarified that while the Commission does not regulate municipally owned utilities directly, it can oversee the rates charged by these municipal utilities when they supply services to utilities under its jurisdiction. The court stated that the "statutory definition of utility is not to serve as an impenetrable shield to afford the City immunity."[61]

FINDINGS

The Commission finds that Pennyrile Agency manifestly is not a "city" within the plain, ordinary and commonly understood meaning of the term. It is by statute an "Interlocal Agency" as defined in KRS 65.230(3). Pennyrile Agency argued that it nonetheless should be treated like a city for the purpose of Commission jurisdiction because it has the power under KRS 65.240(1) to exercise and enjoy "any power or

[58] *City of Georgetown*, 516 S.W.2d 842, 845.

[59] *Simpson County Water Dist. v. City of Franklin*, 872 S.W.2d 460, 462 (1994).

[60] *Simpson County Water Dist.*, 872 S.W.2d 460, 463.

[61] *Simpson County Water Dist.*, 872 S.W.2d 460, 464.

powers, privileges or authority exercised or capable of exercise" by its two city members.[62]

The Commission first notes that it was unable to identify any precedent regarding whether the exemption of cities from the definition of utility is in the nature of a "power, privilege or authority" within the meaning of the Interlocal Cooperation Act, nor has Pennyrile Agency cited one. In support of its position that that it is exempt, Pennyrile Agency cited the federal district court's decision in *Bretagne, LLC v. Multi-County Recreational Board, Inc.*,[63] wherein the court held that an interlocal agency formed by four counties enjoyed the counties' privilege and immunity from suit. The court in *Bretagne* did not address the scope of a regulatory agency's statutory jurisdiction or the interpretation of a statutory definition, nor was there discussion in the opinion of the basis for the agency's enjoyment of its members' sovereign immunity. Pennyrile Agency has not cited, and the Commission has not found, support for the argument that an entity's exclusion from a statutory definition is tantamount to a legal "privilege."

Pennyrile Agency did not discuss how a city's exclusion from a statutory definition could be considered a power or authority. Much like the "privilege" argument, the Commission has not found any support for the proposition that the "power" or "authority" of an interlocal agency to engage in the provision of utility services requires that the agency be treated as a "city" for purposes of the Commission's jurisdiction.

KRS 65.240(3) expressly authorizes a public agency to enter into an interlocal agreement with another public agency to construct and operate water, sewage,

[62] Pennyrile Agency's Reply at 3.

[63] *Bretagne, LLC v. Multi-County Recreational Board, Inc.*, 467 F.Supp.3d 501 (E.D. Ky.2020).

wastewater, or storm water facilities "outside of its municipal or jurisdictional boundaries." When establishing this statutory authority, the Commission notes that this statute was further limited, as the statute provides that this authority may be exercised "notwithstanding any other provision of the Kentucky Revised Statutes restricting, qualifying, or limiting their authority to do so, ***except as set forth in KRS Chapter 278***."[64]

The Commission finds that Pennyrile Agency is not a "city" within the plain meaning of KRS 278.010(3). It is an interlocal public agency that proposes to construct a 53-mile natural gas transmission line to provide gas service to customers in five Kentucky counties. There is nothing in the Interlocal Cooperation Act to support divestment of the Commission's jurisdiction to regulate non-municipal public entities that provide gas service to or for the public for compensation.

Assuming *arguendo* that Pennyrile Agency was a "city," it is questionable that the proposed project would be exempt from the Commission's rates and services regulation. None of the court opinions holding that a municipal utility's provision of utility services outside of city limits is exempt from Commission authority have dealt with a city proposing to develop an entirely new utility system to service customers in such a large area. The cases have dealt with utility operations extended to areas immediately adjacent to the city. No case has considered operations of a city utility outside of city limits on the scale proposed in Pennyrile Agency's petition. It is unprecedented.

Pennyrile Agency has provided no support for the proposition that either of its city members has the statutory power to develop an entirely new, five-county natural gas transmission and distribution system. KRS 96.5375(1) provides that "any city that owns

[64] KRS 65.240(3) (emphasis added).

and operates a municipal system for the acquisition, distribution, or transmission of natural gas may extend the system into and furnish and sell natural gas to any person or entity within the boundaries of the city or within any territory outside of the city's boundaries." The proposed project would not be an extension of a municipal gas system. It would involve the construction and operation of a brand new, 53-mile transmission line to transport and distribute natural gas from a new tap on an interstate gas transmission pipeline to customers across five counties in Kentucky. While the Commission lacks authority to enforce KRS 96.5375,[65] it is appropriate to refer to the statute for purposes of determining if Pennyrile Agency would be acting as a city in developing the proposed pipeline project.

Finally, the Commission finds that the exclusion of cities from the statutory definition of "utility" reflects the General Assembly's determination that a city's government should be responsible for overseeing municipal utility facilities, rates, and services, not the Commission. This ensures local control of community assets and gives municipalities the flexibility to set rates, manage operations, and make decisions that best fit the needs of their local communities. The Commission finds that the interest in local control of city utilities simply does not apply to a proposed five-county gas system to be constructed and operated by a public agency formed by two cities in one county.

IT IS THEREFORE ORDERED that:

1. Pennyrile Agency's Application for Declaratory Order that its proposed pipeline facility is exempt from the Commission's jurisdiction over utilities under KRS 278.040 is denied.

[65] *Olive Hill*, 203 S.W.2d 68, 71.

2. Pennyrile Agency shall obtain from the Commission a CPCN pursuant to KRS 278.020 before commencing to provide utility service to or for the public or beginning the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in KRS 278.010.

3. This case is closed and removed from the Commission's docket.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

PUBLIC SERVICE COMMISSION

Chairman

Vice Chairman

Commissioner

ATTEST:

Executive Director

ENTERED
MAY 29 2025 AH
KENTUCKY PUBLIC
SERVICE COMMISSION

*L. Allyson Honaker
Honaker Law Office, PLLC
1795 Alysheba Way
Suite 1203
Lexington, KY 40509

*Atmos Energy Corporation
3275 Highland Pointe Drive
Owensboro, KY 42303

*Heather Temple
Honaker Law Office, PLLC
1795 Alysheba Way
Suite 1203
Lexington, KY 40509

*Jeffrey B. Traughber
81 Public Square
Elkton, KY 42220

*James W Gardner
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street
Suite 1400
Lexington, KY 40507

*Rebecca C. Price
Sturgill, Turner, Barker & Moloney
155 East Main Street
Lexington, KY 40507

*M. Todd Osterloh
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street
Suite 1400
Lexington, KY 40507