



Andy Beshear  
Governor

Kent A. Chandler  
Chairman

Rebecca W. Goodman  
Secretary  
Energy and Environment Cabinet

Commonwealth of Kentucky  
**Public Service Commission**  
211 Sower Blvd.  
P.O. Box 615  
Frankfort, Kentucky 40602-0615  
Telephone: (502) 564-3940  
Fax: (502) 564-3460  
psc.ky.gov

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## PSC STAFF OPINION 2022-005

Robert C. Moore  
Stites & Harbison, PLLC  
421 West Main Street  
Frankfort, KY. 40601

Re: Request for Staff Opinion – Regarding Sentra Corporation Memorandum of Understanding

Dear Mr. Moore:

Commission Staff acknowledges receipt on March 3, 2022, of your letter sent on behalf of Sentra Corporation (Sentra), in which you requested an opinion regarding a negotiated Memorandum of Understanding (MOU) between Sentra and Middle Tennessee Natural Gas Utility (MTNG).

Your letter presented the following facts: Sentra currently obtains its natural gas from a tap owned by Clay Gas Utility District (CGUD) of Clay County, Tennessee. Sentra takes title to the gas at the tap and distributes the gas to its customers and to CGUD through an 8-inch polypropylene distribution pipeline. The pipeline is owned by CGUD but maintained by Sentra. Sentra pays CGUD a transportation charge. Sentra charges CGUD for the maintenance of the pipeline and for gas CGUD purchases.

The State of Tennessee's Utility Management Review Board had ordered the consideration of a merger between MTNG and CGUD. MTNG is a municipal corporation and a subdivision of the State of Tennessee, its principal place of business is located in Smithville, Tennessee. Due to the possible merger, Sentra's sole source of natural gas would be MTNG. The MOU provides that for one year, MTNG will purchase natural gas on behalf of Sentra. The gas will flow to Sentra on the various taps on the distribution pipeline. The title of the gas will pass to Sentra at any point of receipt which is metered. Sentra is not to exceed 550 dekatherms (Dth) per gas day. MTNG will be responsible for the transportation of the gas to the various points of measurement, at which point Sentra will take title. The NYMEX price at Henry Hub for natural gas on the last trading day of

the month place forty cents (\$.40) per Dth is the price Sentra will pay MTNG for the gas, including the cost of transportation.

Sentra requested a staff opinion relating to four issues in the MOU.

1. Whether the Commission considers it imprudent for Sentra to enter into the MOU with MTNG for a period of one year where the gas price is determined by reference to the NYMEX price at Henry Hub for natural gas on the last trading day of the month.

KRS 278.274 establishes the legal standard for Commission review of natural gas utility's purchasing practices in determining the reasonableness of the proposed rates. KRS 278.274(1) requires the Commission to review a utility's gas purchase practices when determining if a rate is just and reasonable. This creates a responsibility for a gas utility to contract for the best possible gas price, term, and security of supply. Further, KRS 278.274(1) allows the Commission to disallow costs that are deemed to result from imprudent purchasing practices on the part of the utility. KRS 278.274(2) requires the utility to prove the rate is just and reasonable. There are a number of factors the Commission would likely consider in determining if a gas purchase arrangement is imprudent, including but not limited to the rate charged, the term of the agreement, the ability of the supplier to provide the necessary gas, and any other information the Commission found relevant in a particular case. If Sentra does not believe the MOU would meet these criteria in terms of price, it should undertake further negotiations for gas supply. Further, any determination whether a rate is just and reasonable will occur in the context of a Commission proceeding, which is consistent with KRS 278.180, which requires 30 days' notice to allow a minimum amount of time for the Commission to conduct a robust review based upon evidence of record.

2. Whether the Commission will have jurisdiction over MTNG, a political subdivision, to the extent that it enters into the MOU with Sentra, a regulated utility. If the Commission has jurisdiction over MTNG, will the Commission have jurisdiction as to the payment of assessments, changes in rates charged Sentra by MTNG, complaints about rates and service, audits, transfers of assets, or only as to safety.

Under the facts presented, MTNG is a municipal utility located in Tennessee and regulated by Tennessee regulatory authorities. MTNG transports gas to Sentra; MTNG does not transport natural gas to or for the public in Kentucky. As presented, MTNG will provide the same natural gas transportation service to Sentra that CGUD provided to Sentra. From those facts, Staff concludes that the Commission would have the same jurisdiction over MTNG as the Commission had over CGUD.

KRS 278.200 provides that the Commission has the power to regulate rates fixed by agreement with a city. KRS 278.274(1) states, "in determining whether proposed natural gas utility rates are just and reasonable, the commission shall review the utility's gas purchasing practices. The commission may disallow any costs or rates which are deemed to result from imprudent purchasing practices on the part of the utility." Applying the facts as presented to KRS 278.200 and KRS 278.274(1), the Commission has the authority to approve the rate Sentra charges customers for the gas purchased from MTNG through purchase gas adjustment cases under KRS 278.274(1). Said differently, Staff concludes that the Commission does not have jurisdiction over the rates that MTNG

charges to Sentra; the Commission does have jurisdiction over how much Sentra recovers from customers through purchased gas adjustment cases under KRS 278.274.

Regarding assessments, KRS 278.130 provides that the Kentucky Department of Revenue shall annually assess *utilities* in proportion to their earnings or receipts derived from *intrastate* business in Kentucky. [emphasis added]. KRS 278.010(3)(b)-(c) define a utility as a person except a city, who owns, controls, operates, or manages any facility used or to be used in connection with the furnishing of natural gas to or for the public for compensation or the transporting of gas by pipeline to or for the public. The facts presented in your letter reflect that MTNG is a Tennessee municipality that transports natural gas, but the natural gas is transported for wholesale purposes and not to or for the public. Staff concludes that MTNG is not a utility as defined by KRS 278.010(3)(b)-(c), and thus is not subject to assessments because MTNG does not derive revenue from intrastate business in Kentucky for service provided to or for the public.

3. Whether MTNG will be required to provide Sentra with written notice of its intent to terminate service at least 30 days prior to the date of termination of service, even if MTNG is not subject to the Commission's jurisdiction.

KRS 278.022(2) states that any utility that intends to terminate service to a utility regulated by the Commission shall not terminate service without 30 days notice to the Commission. Sentra is a utility regulated by the Commission and would have to provide notice to the Commission if MTNG were to terminate service. MTNG is not a utility, as discussed above, and thus is not required to provide notice pursuant to KRS 278.022(2). Although the Commission does not have jurisdiction over MTNG for notice of termination, Staff concludes that the Commission would look unfavorably at a supplier of natural gas terminating supply without a reasonable amount of notice so the utility can secure alternate gas supply.

4. Whether the interpretation and performance of the MOU will be governed by the laws of the state of Tennessee, or whether the provisions of KRS Chapter 278 will govern MTNG's supply of gas to Sentra.

As discussed above, the Commission's jurisdiction of MTNG is limited to Sentra's contractual arrangements with MTNG and to the safety of pipelines owned or operated by MTNG in Kentucky. KRS 278.495(2) provides, "Notwithstanding any other provision of law, the commission shall have the authority to regulate the safety of natural gas facilities which are: (a) Owned or operated by any public utility, county, or city, and used to distribute natural gas at retail." Under the facts presented, MTNG will own the gas line that Sentra maintains in Kentucky. Staff concludes that, as established by KRS 278.495(2), the Commission will have authority to regulate the safety of the gas pipeline in Kentucky by conducting safety inspections and enforcing safety regulations.

This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and not binding on the Commission should the issues herein be formally presented for Commission resolution. Questions concerning this opinion should be directed to Heather Temple (502) 782-2021 or [heather.temple@ky.gov](mailto:heather.temple@ky.gov).

Sincerely,

*Nancy J. Vinsel*

Nancy J. Vinsel  
General Counsel