

**Commonwealth of Kentucky
Before the Public Service Commission**

In the Matter of:

APPLICATION OF KENTUCKY)	Case No.
MANUFACTURED HOUSING INSTITUTE)	2016 - 00305
FOR DECLARATORY ORDER)	

APPLICATION FOR A DECLARATORY ORDER

Comes now the Kentucky Manufactured Housing Institute (“KMHI”), by counsel, pursuant to 807 KAR 5:001, Section 19 and other applicable law, and hereby requests that the Kentucky Public Service Commission (“Commission”) enter an Order declaring that mobile home communities (“MHCs”) within the Commonwealth of Kentucky that employ sub-metering of water service do not provide service to the public, fall outside the Commission’s definition of a Utility under KRS 278.010(3), and therefore outside the Commission’s jurisdiction under KRS 278.040.

APPLICABLE LAW

1. KRS 278.010(3) in part defines a “Utility” as “any person... who owns, controls, operates, or manages any facility used or to be used for or in connection with: (d) The diverting, developing, pumping, impounding, distributing, or finishing of water to or for the public, for compensation.”
2. KRS 278.040(2) states “The Jurisdiction of the commission shall extend to all utilities in this state. The commission shall have exclusive jurisdiction over the regulation of rates and service of utilities...”

COMMISSION PRECEDENT

3. "One offers service to the 'public' ... when he holds himself out as willing to serve all who apply up to the capacity of his facilities."¹
4. "Utility service limited to a specific class of persons is not service to the public. A landlord providing such service only to his tenants would not be considered a utility."²
5. When specifically considering service provided within a MHC, the Commission found: "No private landowners are served by the system. No one outside the park is served. Accordingly, [the owner/operator] does not serve the public and cannot, therefore, be considered within the statutory definition of a utility."³
6. In Case No. 96-456, the Commission found that because a mobile home community owner/operator only provided service to the residents of the mobile home community and did not provide water service to the public for compensation, the MHC was not a utility, and therefore was not subject to the Commission's jurisdiction.⁴
7. In Case No. 96-448, as part of the Commission's rationale for the decision, it relied on a Maryland decision finding a landlord was not operating a utility because "the landlord was making a private sale limited to its tenants and made as an incident to the business of renting commercial space."⁵

¹ *In the Matter of: The Application of Metropolitan Sewer District for Approval to Acquire and Operate The Fairhaven Mobile Home Village Sewage Treatment Plant*, Case No. 90-169, Order dated June 22, 1990. (Citing: *North Carolina ex. rel. Utilities Comm'n v. Carolina Tel. & Tel. Co.*, 148 S.E.2d 100, 109 (N.C. 1966)).

² *Id.* (Citing: *City of Sun Prairie v. Wisconsin Pub. Serv. Comm'n*, 154 N.W.2d 360 (Wis. 1967)).

³ *Id.*

⁴ *In the Matter of: Pine Tree Mobile Home Court Sewage Treatment Facilities*, Case No. 96-456, Order dated Nov. 4, 1996.

⁵ *In the Matter of: An Investigation of the Rates, Charges, Billing Practices and Provision of Utility Service by Envirotech Utility Management Services*, Case No. 96-448, Order dated April 29, 1997. (Citing *Pub. Serv. Comm'n of Maryland v Howard Research & Development Corp.*, 314 A.2d 682 (Md. 1974)).

STATEMENT OF FACTS

8. KMHI is a trade association for the manufactured and modular housing industries. KMHI is located at 2170 US 127 South Frankfort, KY 40601.
9. KMHI represents 87 manufactured and modular home retailers; 51 manufacturers; 93 service and supply companies including insurance companies, certified installers, lenders, and transport companies; and 67 manufactured home community owners and operators.
10. Manufactured homes are an important source of affordable housing for Kentuckians, accounting for 13.6% of the state's overall residential stock.
11. 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 (HUD Code).
12. A modular home is a single-family residential dwelling constructed in accordance with the Kentucky Residential Building Code or the Industrialized Systems Code.
13. Herein, all references to MHCs include both manufactured and modular homes.
14. In each MHC, the owner of the park is the landlord and rents lots to individuals. A home is then placed on the lot by the renter. The renter typically owns the home that is placed on the lot. The renter then pays monthly rent to the landlord for use of the lot within the MHC.
15. The practice of sub-metering in MHCs is growing in frequency across Kentucky. The Owners of MHCs that either currently use sub-metering or are considering implementing sub-metering desire assurances regarding the three questions posed by this Application.

16. Current owners of MHCs in Kentucky have been reluctant to adopt sub-metering in their MHCs, despite enormous monthly water bills, due to regulatory uncertainty associated with the practice.
17. Sub-metering in a MHC is the practice of placing meters on each of the independent lots housing a mobile home, and charging each of the tenants of the MHC for the amount of water individually used during the month. Water is received from a utility through a master meter, and then the water is distributed to the lots within the mobile home community via service pipes run through the MHC. The sub-meters then track the usage in each individual mobile home. The MHC then allocates the water costs based on each homes usage during the month. This transaction does not generate a profit for the MHC owner.
18. The practice of sub-metering has multiple benefits. Primarily, the accurate pricing signals sent to consumers encourage conservation of water. Many park owners/operators have seen reductions in usage of 50% upon instituting sub-metering. This Commission has previously recognized that “[w]ater is a finite resource and every effort should be made to promote conservation on a consistent, continuing basis.”⁶
19. Additionally, line breaks are quickly identified and resolved as a result of individual renters notifying the MHC owner/operator of increased water bills. This Commission has previously recognized “that the master-metering concept could represent a reasonable solution to the problems of significant line loss and unsanitary conditions.”⁷

⁶ *In The Matter Of: Application of Kentucky-American Water Company to Increase Its Rates*, Case No. 2000-00120, Order dated Nov. 27, 2000.

⁷ *In the Matter of: Application of Harding County Water District No. 1 to Modify Water Utility Tariff of Master Meters for Billing Multi-Unit Residential Properties*, Case No 2009-0113, Order dated Oct. 22, 2010. (Referencing *In the Matter of: Harding County Water District No. 1’s Proposed Tariff Allowing the Use of Master Meters in Manufactured Housing Communities*, Case No. 2007-00461, Order dated Aug. 14, 2008.)

20. Finally, sub-metering provides a logistical and financial benefit to both mobile home park owner/operators as well as the tenants. In MHCs that have not implemented sub-metering, the only recourse for non-payment of rent is eviction. Eviction can be a very expensive process for the renter, as relocating a mobile or manufactured home requires multiple significant expenditures. In MHCs utilizing sub-metering, disconnecting water service to a residence is a simple and efficient means for ensuring payment of rent. This provides both the renter and owner/operator a preliminary step in collecting delinquent rent without necessitating immediate commencement of eviction. MHCs utilizing sub-metering have seen a considerable reduction in initiated eviction proceedings.
21. Since 1992, Commission staff have examined the issue of sub-metering in seven (7) separate advisory opinions,⁸ with two (2) of those opinions specifically addressing MHCs.⁹
22. Staff used nearly identical language in all of its opinions dealing with sub-metering issues. Since 1998, every staff opinion dealing with sub-metering contains the following:

“According to the majority view, the characterization of a service as public or private “does not depend ... upon the number of persons by whom it is used, but upon whether or not it is open to the use of the public who may require it, to the extent of its capacity.” Ambridge v. Pub. Serv. Comm'n of Pennsylvania, 165 A . 47, 49 (Pa. Super.1933). See 64 Am. Jur. 2d Public Utilities §1 (1972). Stated another way, “[o]ne offers service to the 'public' ...

⁸ Letter to Coleman Bush, May 26, 1992; Letter D. Michael Holbrook, April 1, 1993; Letter to Debra Bridges, July 18, 1995; Letter to David K. Ullerich, March 5, 1998; Letter to Michael L. Kurtz, May 26, 1999; Letter to BJ Murray, June 1, 2015; Letter to Rocco D’Ascenzo, March 13, 2015.

⁹ Letter to Coleman Bush, May 26, 1992; Letter to Debra Bridges, July 18, 1995.

when he holds himself out as willing to serve all who apply up to the capacity of his facilities. It is immaterial . . . that his service is limited to a specified area and his facilities are limited in capacity." North Carolina ex rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 148 S.E2d 100, 109 (N.C. 1966).”

23. In every staff opinion referenced above, staff advised that sub-metering in a landlord-tenant instance (1) did not constitute the provision of service to the public, (2) fell outside the definition of a utility, and (3) was outside the Commission’s jurisdiction.
24. Commission staff opinions are not binding on the Commission. KMHI desires finality on this issue that only the Commission can provide via a Declaratory Order.
25. A finding by the Commission that sub-metered MHCs do not provide service to the public, fall outside the definition of a utility, and are outside the Commission’s jurisdiction would sit in accord with twenty (20) years of staff’s advisory opinions.

PRAYER FOR RELIEF

WHEREFORE, KMHI respectfully requests that the Commission enter an Order declaring that mobile home communities within the Commonwealth of Kentucky that employ sub-metering of water service:

1. Do not provide service to the public;
2. Fall outside the definition of a Utility under KRS 278.010(3); and
3. Therefore fall outside the Commission’s jurisdiction under KRS 278.040.

Respectfully submitted this September ^{23rd}, 2016.



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