

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

ELECTRONIC EMERGENCY DOCKET RELATED)
TO THE NOVEL CORONA VIRUS COVID-19) CASE NO. 2020-00085

SENTRA CORPORATION’S REQUEST FOR DECLARATORY RELIEF

Comes now Sentra Corporation (“Sentra”), by counsel, pursuant to the Commission’s March 16, 2020 Order in the above-styled docket, and hereby requests a declaration as to the Commission’s jurisdiction and a deviation, pursuant to 807 KAR 5:001 Section 22, for the reasons set forth below:

I. Background

Sentra is a local gas distribution company furnishing gas to approximately 209 residential and commercial customers in Monroe County, Kentucky. It was established pursuant to KRS Chapter 278. Sentra is a “utility,” as that term is defined in KRS 278.010, and is therefore subject to the Commission’s jurisdiction pursuant to KRS 278.040(2).

Congress enacted the Paycheck Protection Program (“PPP”) as part of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”), S.3548, on March 27, 2020. The CARES Act was subsequently signed into law by President Donald Trump later that same day. The PPP provides 100% federally guaranteed loans to eligible small businesses, with loan forgiveness built-in for certain eligible expenses if payrolls are maintained during or restored after the COVID-19 pandemic. The program will be administered under a modified and expanded Small Business Administration (“SBA”) 7(a) loan program. Borrowers may obtain

loans of up to 2.5 times their average monthly payroll expenses, not to exceed \$10 million. If borrowers maintain their payrolls during the pandemic or restore their payrolls afterward, loan forgiveness is available where loaned funds are used to pay certain qualified expenses for up to twenty-four (24) weeks. The loans still essentially cover eight (8) weeks of expenses, as the possible funding remains 2.5 times of a month's operating costs. Loans will be available through SBA-certified banks, credit unions, and nonbank lenders, including newly eligible financial institutions under the CARES Act. Importantly, SBA PPP loans have a maturity of two (2) years and an interest rate of 1%.¹ The window for applying for PPP loans opened on April 3, 2020 and will close on June 30, 2020.

II. Request for Declaratory Relief

Utilities are generally required to gain Commission approval prior to issuing any securities or evidences of indebtedness.² Sentra believes that a PPP loan would constitute an evidence of indebtedness under the statute. However, two exceptions would appear to make it possible for a regulated utility to enter into a PPP loan arrangement through the SBA without having to first obtain Commission approval.

First, KRS 278.300(8) provides: "This section does not apply to notes issued by a utility, for proper purposes and not in violation of law, that are payable at periods of not more than two (2) years from the date thereof...." As set forth above, the term of a PPP note is two years. On this basis, Sentra believes an evidence of indebtedness arising from the PPP would not be subject to the requirement in KRS 278.300(1) to first obtain the Commission's

¹ See "Paycheck Protection Program" Small Business Administration <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program-ppp#section-header-4> (Apr. 3, 2020).

² See KRS 278.300(1).

approval.³ Second, although the PPP involves funds issued by private financial institutions, the program is administered, supervised and controlled by the SBA, which is an agency of the United States government. Thus, another exception to the general requirement to obtain Commission approval prior to entering into an evidence of indebtedness is also implicated. Specifically, KRS 278.300(10) provides: “This section does not apply in any instance where the issuance of securities or evidences of indebtedness is subject to the supervision or control of the federal government or any agency thereof....” Because the PPP is to be conducted under the “supervision” and “control” of the SBA, KRS 278.300(10) provides another basis for declaring that the Commission lacks jurisdiction over PPP loans.

In light of the foregoing, Sentra respectfully requests the following declaratory relief that as a utility under KRS Chapter 278, it does not need Commission approval under KRS 278.300 prior to entering into any loans, notes or other obligations under the PPP program. Moreover, based upon the importance of acting timely, Sentra respectfully requests that the Commission grant it declaratory relief as expeditiously as possible.

III. Request for Deviation

Pursuant to 807 KAR 5:001, Section 19, a request for declaratory relief is required to be filed as an application. However, as set forth above, the deadline for seeking relief under the PPP ends on June 30, 2020. Furthermore, due to the expected demand for the limited fund proceeds, time is of the essence for obtaining declaratory relief, as the PPP arises directly out of the federal government’s response to the COVID-19 pandemic and the Commission has opened

³ While the proceeds of a PPP loan are not limited to payroll, rents and utilities, the CARES Act creates a heavy incentive for recipients of PPP loans to use the proceeds of such loans for these purposes. Sentra affirms and commits that its use of the proceeds of a PPP loan would be used for the categories of expenses that would make the loan forgivable, which firmly establishes that the loan would be for a “proper purpose” and “not in violation of law” under the statute.

this docket for the express purpose of addressing various issues related to said pandemic as they arise, Sentra respectfully requests -- pursuant to 807 KAR 5:001, Section 22 -- a deviation to file this request for declaratory relief as a motion rather than as a separately docketed application for declaratory relief under 807 KAR 5:001, Sections 14 and 19.

WHEREFORE, for the above-stated reasons, Sentra respectfully requests the Commission to:

(1) Declare that Sentra Corporation, as a utility established under KRS Chapter 278, does not need Commission approval under KRS 278.300 prior to entering into any loans, notes or other obligations under the PPP program in light of the statutory exceptions set forth in KRS 278.300(8) and (10);

(2) Make such declaration on an expedited basis, since the deadline for filing an application for a PPP loan is June 30, 2020;

(3) Grant a deviation from 807 KAR 5:001, Section 19, so as to allow Sentra to file this request for declaratory relief as a motion rather than as a new application; and

(4) Award any other relief to which Sentra may be entitled.

Dated this 22nd day of June, 2020.

VERIFICATION

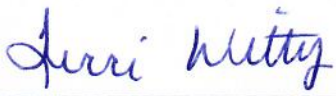
COMMONWEALTH OF KENTUCKY)
)
COUNTY OF MONROE)

Comes now Darren Cleary as Secretary of Sentra Corporation, in my official capacity, and, after being duly sworn, I do hereby solemnly swear that the averments set forth above are true and correct to the best of my knowledge and belief as of this 22nd day of June, 2020.



DARREN CLEARY

Subscribed and sworn to before me, by Darren Cleary, Secretary of Sentra Corporation, this 22 day of June, 2020.



NOTARY PUBLIC
Commission ID No. 611293
My Commission Expires: 11/16/22



Respectfully submitted,

/s/ Robert C. Moore

Robert C. Moore

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