

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF WKG STORAGE, INC. FOR RATE)	CASE NO.
ADJUSTMENT FOR SMALL UTILITIES PURSUANT TO)	2016-00053
807 KAR 5:076)	

ORDER

On March 11, 2016, the Commission issued an Order establishing a procedural schedule for this proceeding, including a March 18, 2016 deadline to request intervention.¹ On March 15, 2016, Atmos Energy Corporation (“Atmos Energy”) filed a motion to intervene, which was granted on March 24, 2016. On March 21, 2016, the Attorney General of the Commonwealth of Kentucky, by and through his office of rate intervention (“AG”), moved to intervene. Subsequently, on March 25, 2016, the AG filed a motion to deviate from the procedural schedule established for this proceeding to permit him time to determine whether WKG Storage, Inc. (“WKG”) is a utility under the Commission’s jurisdiction, and if so, to look into the relationship between WKG and Atmos Energy, WKG’s only customer.

On March 31, 2016, WKG responded to the AG’s motion to deviate from the procedural schedule, stating that the AG cited no authority and provided no reasoning for his concern that WKG may not be a utility whose rates and terms of service are

¹ The March 11, 2016 procedural schedule set certain deadlines to be adhered to, including: (1) March 18, 2016 for requesting intervention; (2) March 25, 2016, for requests for information to WKG to be filed; (3) April 8, 2016, for WKG to file responses to requests for information; (4) April 22, 2016, for supplemental requests for information to WKG to be filed; (5) May 6, 2016, for WKG to file responses to supplemental requests for information; and, (6) May 18, 2016, for any request for a formal hearing to be held in this matter.

subject to the jurisdiction of the Commission. Further, WKG stated that its currently effective tariff was accepted by this Commission, effective October 15, 2001, and that it has operated under that tariff since its effective date. WKG also stated that its rates and terms of service are subject to the jurisdiction of the Commission under KRS Chapter 278. WKG further stated that it has a good faith intent to cooperate with the AG, and despite the AG's failure to timely file his motion to intervene, WKG did not object to the late filing, or to extending the procedural dates by a reasonable amount of time to accommodate the AG.

On April 6, 2016, we amended the procedural schedule to allow discovery by the AG on the jurisdictional issue. Based upon this amended procedural schedule, the AG filed his Request for Information Related to Jurisdiction to WKG ("AG's Second Request") on April 12, 2016, to which WKG responded on April 22, 2016. On April 28, 2016, the AG filed a motion to compel WKG to "fully respond to the Attorney General's Request for Information Related to Jurisdiction and to amend the procedural schedule in light of WKG's avoidance of its obligation to respond. In the alternative, the Attorney General requests dismissal of the case in its entirety due to the refusal of WKG to effectively participate in the discovery process."² On May 4, 2016, WKG responded to the AG's motion to compel, stating that the Commission's April 6, 2016 Order was specifically limited to the issue of jurisdiction and that "most of the requests are totally unrelated and irrelevant to the issue of jurisdiction. Those that were related to

² AG's Motion to Compel (filed Apr. 28, 2016) at 1.

jurisdiction, often called for legal conclusions, legal opinions or legal research—none of which are appropriate information requests.”³ WKG continues that “[t]he majority of the questions from the Attorney General are beyond the scope of the Commission’s procedural order” On May 5, 2016, the AG filed his third request for information to WKG, to which WKG responded on May 20, 2016. On June 1, 2016, the AG moved for a ruling on his motion to compel WKG to fully respond to his Second Request and abeyance of the procedural schedule, which established June 1, 2016, as the deadline to request a formal hearing. The AG states that as he “still has unanswered requests which are essential to fully participate in this proceeding going forward, it is first necessary to have his motion ruled upon before requesting a formal hearing in this matter.”⁴

The AG’s motion to compel, WKG’s response, and the AG’s motion for a ruling and abeyance are currently before us. Having considered the AG’s motions and WKG’s responses, we find that the AG’s Second Request, which is the subject of the pending motions and response, consists of 20 items, to which WKG has objected, at least in part, to Item 3 and Items 6 through 20. We find that for some of the items with multiple parts, WKG’s objection does not pertain to all of the parts, and for some of the items, despite objections, WKG has responded. Further, because the request is not related to the issue of WKG’s jurisdictional status—which was the specific subject on which the Commission granted the AG’s request for discovery in his April 6, 2016 order—we find that WKG’s objections should be sustained. We further find that WKG’s objections to

³ WKG’s Response to the AG’s Motion to Compel (filed May 4, 2016) at 1.

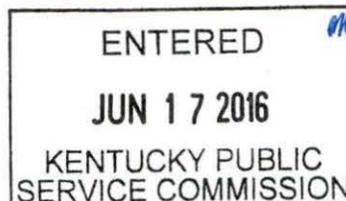
⁴ AG’s Motion for a Ruling and Abeyance of Procedural Schedule (filed June 1, 2016) at 1.

questions that request legal research, opinions, and conclusions, or, that assume facts not found in the record, should also be sustained. Therefore, we find that the AG's motion to compel should be denied. Finally, we find that the AG's request to hold the procedural schedule in abeyance pending our ruling on his motion to compel should be granted, and that the parties should have additional time to request a formal hearing or to submit comments or briefs on the record.

IT IS THEREFORE ORDERED that:

1. The AG's motion to compel is denied.
2. Any request for an evidentiary hearing shall be filed by June 24, 2016.
3. If no request for an evidentiary hearing is filed by June 24, 2016, any written comments on all issues including the jurisdictional issue shall be filed by July 8, 2016.
4. Any responses to written comments shall be filed by July 22, 2016.
5. Nothing shall prevent the Commission from issuing further orders in this matter.

By the Commission



ATTEST:


Acting Executive Director

*Kent Chandler
Assistant Attorney General
Office of the Attorney General Utility & Rate
1024 Capital Center Drive
Suite 200
Frankfort, KENTUCKY 40601-8204

*Lawrence W Cook
Assistant Attorney General
Office of the Attorney General Utility & Rate
1024 Capital Center Drive
Suite 200
Frankfort, KENTUCKY 40601-8204

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

*WKG Storage, Inc.
2929 W Sam Houston Pkwy
Houston, TX 77043

*T. Tommy Littlepage
Wilson, Hutchinson & Littlepage
611 Frederica Street
Owensboro, KENTUCKY 42301