

RECEIVED

APR 28 2016

PUBLIC SERVICE  
COMMISSION

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ATTORNEY GENERAL’S MOTION TO COMPEL

Comes now, the Attorney General of the Commonwealth of Kentucky, by and through his office of rate intervention, and hereby moves the Public Service Commission (Commission) to compel WKG Storage, Inc. (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. The Attorney General states the following in support of his motion.

The Attorney General filed his Request for Information Related to Jurisdiction according to the schedule set forth by Commission, only to receive WKG’s response containing more than 30 objections on the last day afforded by Commission’s procedural schedule.

On April 6, 2016, the Commission placed an order in the record amending the previous procedural schedule and approving the Attorney General’s March 25, 2016 Motion to Deviate, allowing the Attorney General to conduct discovery in order 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 Corporation, WKG's only customer.”<sup>1</sup> In WKG’s

---

<sup>1</sup> In the Matter of: APPLICATION OF WKG STORAGE, INC, FOR RATE ADJUSTMENT FOR SMALL UTILITIES PURSUANT TO 807 KAR 5:076, Case No. 2015-00053, Order dated April 6, 2016. (Paraphrasing Attorney General’s Motion to Deviate from the Procedural Schedule, Case No. 2015-00053, dated March 25, 2016, page 1.)

Response to the Attorney General’s Motion to Deviate from the Procedural Schedule, WKG stated it “has a good faith intent to be cooperative with the Attorney General”; a statement that is in complete contradiction to the Company’s responses to the Attorney General’s most recent data request.<sup>2</sup> Although it is apparent that WKG has no issue with wasting the Attorney General’s and Commission’s time, the Attorney General considers this process necessary and essential. Since WKG is unwilling to adequately respond to the data request, the Attorney General now submits to the Commission the importance and relevance of just a few of his requests.

WKG’s first objection was in response to a request to simply cite the specific provision of law under which WKG believes it has been continuously regulated by the Commission since 2001, and explain how the company’s activities fall under that law.<sup>3</sup> Instead, WKG simply noted and attached the 2001 order from the CPCN case in which WKG purchased Kentucky Pipeline and Storage Company, Inc. (KYPSCo), and the tariff adopted by WKG, under which KYPSCo operated.<sup>4</sup> WKG points to both of these documents as proof that it is currently a regulated utility, nearly fifteen (15) years later, but provides no other documentation or explanation to corroborate that assertion.<sup>5</sup> By providing these two (2) documents, WKG did not demonstrate that it is currently a utility regulated by the Commission, but rather, that KYPSCo was a utility when WKG purchased it. This distinction is pointed out by WKG themselves in the 2001 order attached to their response. In the cited 2001 Commission order which transferred the storage facility and related assets from KYPSCo to WKG, the Commission noted that KYPSCo was a utility under KRS 278.504(1) and that in accordance with KRS 278.020(4) Commission approval

---

<sup>2</sup> WKG’s Response to the Attorney General’s Motion to Deviate from the Procedural Schedule, Case No. 2016-00053, dated March 31, 2016, Page 1.

<sup>3</sup> WKG’s Response to the Attorney General’s Second Data Request (Limited to Jurisdiction), Case No. 2016-00053, dated April 22, 2016, page 3.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

was necessary to transfer control and ownership of KYPSCo.<sup>6</sup> All that order proves is that KYPSCo was a utility in 2001, not that WKG should be deemed a utility now.<sup>7</sup> Further, WKG attached a copy of the tariff that the company was ordered to adopt, in an attempt to prove that they are currently regulated by the Commission.<sup>8</sup> Rather than demonstrating what WKG intended, the company has again pointed out the fact that they are currently charging a different amount than the Commission approved them to charge fifteen (15) years ago.<sup>9</sup> In an attempt to be coy, WKG has only further confirmed that there are serious issues as to whether the company is currently regulated by the Commission, and the questions posed by the Attorney General must be answered so he may make informed decisions in proceeding as a party to this case.

The Attorney General submitted specific technical requests to WKG, all related to the jurisdiction of the Commission as it relates to the Company, and in return received basic, boilerplate objections.<sup>10</sup> For instance, the Attorney General requested information regarding whether WKG has paid fees or assessments mandated by state law or under Commission regulations, only for the Company to respond that, “the question is not relevant to the jurisdictional status of WKG.”<sup>11</sup> Additionally, the Attorney General asked WKG, again, to simply provide him with a citation to the applicable law that WKG maintains allows them to operate without filing annual reports.<sup>12</sup> Rather than expediting the process by answering the requests, WKG instead chose again to assert the unfounded and unproven statement that the

---

<sup>6</sup> *Id.* at Page 4 and 6, citing KRS 278.504(1), KRS 278.020(4).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at page 3.

<sup>9</sup> *Id.* at page 9. WKG’s Response to the Attorney General’s First Data Request, Case No. 2016-00053, dated April 8, 2016, Response to AG 1-17.

<sup>10</sup> WKG’s Response to the Attorney General’s Second Data Request (Limited to Jurisdiction), Case No. 2016-00053, dated April 22, 2016.

<sup>11</sup> *Id.* at page 26.

<sup>12</sup> *Id.* at page 29.

Company doesn't have to file annual reports, and that the filing of annual reports in accordance with Commission regulations has no relevance to the jurisdictional status of WKG.<sup>13</sup>

The Attorney General has no interest in unduly impeding or delaying these proceedings, but in order to represent the interest of the citizens adequately, a thorough review of the facts is essential to necessitate a fair, just and reasonable outcome. The Attorney General asked pertinent, technical questions of WKG in hopes of gaining a better understanding of the regulation of WKG. However, rather than responding to the requests, WKG has instead chosen to unjustifiably object to nearly the entire data request, wasting not only the Attorney General's time and resources, but also the Commission's as well. Simply stated, the Attorney General requested information specific to its belief that WKG is not a utility under the Commission's regulation, and rather than providing evidence to the contrary, WKG instead chose to object to nearly the entire request. As previously evidenced, every request of the Attorney General relates specifically to the Commission's jurisdiction of WKG, and WKG's attempt to avoid answering these relevant questions is improper.

WHEREFORE, the Attorney General respectfully prays the Commission to compel WKG to fully answer the Attorney General's Request for Information Related to Jurisdiction, and to do so in a timely manner so as not to further unduly delay the proceedings, and for the Commission to amend the procedural schedule given WKG's refusal to participate in the discovery process. Alternatively, in light of WKG's refusal to provide responses to the majority of requests, the Attorney General respectfully moves the Commission to dismiss the case in its entirety.

---

<sup>13</sup> *Id.*

Respectfully submitted,  
ANDY BESHEAR  
ATTORNEY GENERAL



---

KENT CHANDLER  
REBECCA GOODMAN  
LAWRENCE W. COOK  
ASSISTANT ATTORNEYS GENERAL  
1024 CAPITAL CENTER DRIVE  
SUITE 200  
FRANKFORT, KY 40601-8204  
(502) 696-5458  
FAX: (502) 573-1009  
[Kent.Chandler@ky.gov](mailto:Kent.Chandler@ky.gov)  
[Larry.Cook@ky.gov](mailto:Larry.Cook@ky.gov)  
[Rebecca.Goodman@ky.gov](mailto:Rebecca.Goodman@ky.gov)

*Certificate of Service and Filing*

Counsel certifies that an original and ten photocopies of the foregoing were served and filed by hand delivery to the Acting Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; counsel further states that true and accurate copies of the foregoing were mailed via First Class U.S. Mail, postage pre-paid, to:

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

WKG Storage, Inc.  
2929 W Sam Houston Pkwy N, Ste 200  
Houston, TX 77043

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

This 28<sup>th</sup> day of April, 2016



---

Assistant Attorney General