

The Law Offices of

**WILSON, HUTCHINSON & LITTLEPAGE**

611 Frederica Street  
Owensboro, Kentucky 42301  
Telephone (270) 926-5011  
Facsimile (270) 926-9394

William L. Wilson, Jr.  
Mark R. Hutchinson  
T. Tommy Littlepage

[bill@whplawfirm.com](mailto:bill@whplawfirm.com)  
[randy@whplawfirm.com](mailto:randy@whplawfirm.com)  
[tommy@whplawfirm.com](mailto:tommy@whplawfirm.com)

**OVERNIGHT DELIVERY**

May 3, 2016

Kentucky Public Service Commission  
211 Sower Blvd.  
PO Box 615  
Frankfort, Kentucky 40602

RE: WKG Storage, Inc.  
Case No. 2016-00053

Dear Sir:

I am enclosing herewith an original, plus ten (10) copies, of a Response to Attorney General's Motion to Compel for filing in your office.

If you have any questions concerning this, please let me know. Thank you.

Very truly yours,



T. Tommy Littlepage

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MAY 04 2016

PUBLIC SERVICE  
COMMISSION

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

MAY 04 2016

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	)	

RESPONSE TO ATTORNEY GENERAL'S  
MOTION TO COMPEL

INTRODUCTION

WKG Storage, Inc. ("WKG") has operated pursuant to, and in accordance with, its Commission approved tariff since 2001. In this proceeding, WKG requested its first adjustment to rates in 15 years. The Attorney General intervened and for reasons not yet clear, questioned whether WKG was even subject to the jurisdiction of the Commission.

The Commission's Order allowing the Attorney General to serve additional information requests on WKG was specifically limited to the issue of jurisdiction. Even a cursory review of the Attorney General's information requests reveals that most of the requests are totally unrelated and irrelevant to the issue of jurisdiction. Those that were related to jurisdiction, often called for legal conclusions, legal opinions or legal research – none of which are appropriate information requests. The majority of the questions from the Attorney General are beyond the scope of the Commission's procedural order and disregard the explicit limitation of CR 26.02(3)(a). WKG's primary objection to the questions is their request for legal research, opinions and conclusions. Such information is protected from disclosure by the civil rules. As the Commission routinely looks to those rules for guidance, ("Craycraft v. Black Mountain Water District", Case No. 2015-00038, July 2, 2015) it is clear that WKG's objections are valid.

The objections by WKG are precisely the objections the Attorney General has filed in Commission proceedings. For example, in Case No. 2013-00199, Q.8: "The Attorney General objects to

this request as it calls for a conclusion of law". In Case 2007-00455, Response 1(a)-(f);(h)-(m) the Attorney General objected to a Commission staff question: "The Commission Staff's discovery request seeks to force the disclosure of mental impressions, conclusions, opinions, or legal theories of the Office of the Attorney General concerning this litigation..." Copies of the pertinent portions of those cases are attached. The Attorney General's complaint that WKG is not being cooperative should fall on deaf ears as he is clearly aware of the limits of discovery and has previously availed himself of the same objections WKG has asserted.

As the Attorney General did not specifically address each objection raised by WKG in its responses (nor did he give reasons why a particular request for information is relevant to the issue of jurisdiction as required by 807 KAR 5:001, Section 4 (12)(e)(2)), WKG will only respond to the information requests specifically referred to by the Attorney General in his Motion To Compel.

#### RESPONSE

The Attorney General first specific reference is to Attorney General's Request #1. That Request and WKG's response are as follows:

##### REQUEST:

Explain in complete detail whether WKG Storage has or has not been regulated by the Commission since 2001. Provide all pertinent documentation, citations to case law, statutes, and regulations that support the answer.

##### RESPONSE:

WKG Storage, Inc. has been regulated by the Commission since 2001. Please see Attachment 1 for a copy of the order approving the transfer and Attachment 2 for the tariff that has been on file since 2001. WKG Storage, Inc. objects to the balance of this request on the grounds it calls for legal opinion and requests legal research.

WKG responded affirmatively that it is regulated by this Commission and provided evidence that both WKG and the Commission have so operated since 2001. WKG should be under no obligation to perform legal research for the Attorney General.

In fact it should be noted that the Attorney General has cited no authority whatsoever to support his position that WKG is not subject to the jurisdiction of the Commission. WKG respectfully

submits that the burden of proof on the issue is on the Attorney General and he has totally failed to carry that burden – or, for that matter, even raise a credible issue concerning jurisdiction.

WKG has no reason to believe it is not regulated. The Commission's actions validate the jurisdiction of the Company. For example, the Commission has accepted for filing the tariffs of WKG. It accepted the filing of this rate application. In cases where the Commission disclaims jurisdiction, it rejects the filing. For example, see the attached order in Bullitt Sanitation District, where the Commission refused to accept for filing a rate application of a sanitation district because it is not a regulated entity. In contrast, in this case the Commission has accepted the application, issued a procedural order and held an informal conference. It has granted the Attorney General specific discovery on the jurisdiction issue, but has not raised any questions about WKG's status. The issues raised by the Attorney General require WKG to prove that the Commission's regulatory activity involving WKG are beyond the statutory definition of a utility. WKG should not be required to disprove the Commission's jurisdiction. The authority for determination of jurisdiction rests with the Commission.

The next request specifically referenced by the Attorney General in his Motion to Compel relates to whether WKG has paid fees or assessments to the Commission. WKG objected to this request as being irrelevant to the issue of jurisdiction. WKG stands by its response. Whether it has paid or not paid fees is simply not relevant to whether the Commission has jurisdiction. WKG has no insight into the Commission's determination of or imposition of the annual assessment. The same is true for the only other request specifically referred to by the Attorney General in his Motion – WKG's objection to providing the Attorney General with legal citations relating to whether WKG is or is not required to file annual reports. Either the Commission has jurisdiction over WKG's rates and terms of service or it doesn't – and whether WKG has paid fees or filed annual reports is not relevant to that question. Again, WKG cannot prove a negative. A review of the Commission's records reflects no annual report filings by any storage or gas transmission companies, yet transmission companies, including WKG, have approved

tariffs. Even if it were obligated to do so, WKG cannot provide statutory authority for the Commission's administrative practices.

The Attorney General complains generally that WKG's Responses included some 30 objections. This is true, but the number of objections is in direct proportion to the number of irrelevant or other inappropriate requests for information.

#### CONCLUSION

Whether the Commission has jurisdiction over WKG is a question of law and the majority of the numerous requests for information propounded by the Attorney General have no bearing on that issue. WKG respectfully submits that it has appropriately responded to all of the Attorney General's requests and his Motion to Compel should be denied in its entirety.

Respectfully submitted, this 3<sup>rd</sup> day of May, 2016.



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T. Tommy Littlepage  
WILSON, HUTCHINSON & LITTLEPAGE  
611 Frederica Street  
Owensboro, KY 42301  
(270) 926-5011  
[ttommy@whplawfirm.com](mailto:ttommy@whplawfirm.com)

#### CERTIFICATE OF SERVICE AND FILING

Counsel certifies that an original and ten copies of the foregoing were served and filed with the Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601 and upon Kent Chandler, Office of Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, KY 40601, by First Class U.S. Mail, and upon John N. Hughes as attorney for Atmos Energy Corporation, 124 West Todd Street, Frankfort, KY 40601, on this 3<sup>rd</sup> day of May, 2016.



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T. Tommy Littlepage

Application of Big Rivers Electric Corporation, Inc.  
For an Adjustment of Rates  
Case No. 2013-00199  
Attorney General's Responses to Data Requests of Big Rivers Electric Corp.

WITNESS RESPONSIBLE:

Bion Ostrander, Counsel

QUESTION No. 8

Page 1 of 1

Refer to the Direct Testimony of Bion C. Ostrander at page 17, please provide the referenced research paper by the National Regulatory Research Institute.

- a. If the Attorney General refuses to provide the requested research paper on the grounds that the paper is copyrighted, please explain in detail how copyright law prohibits the Attorney General from producing the paper in this proceeding, and explain in detail why the Attorney General believes providing the document in this proceeding is not fair use.
- b. If the Attorney General refuses to provide the requested research paper, please explain in detail why Mr. Ostrander's testimony based upon that research paper should not be stricken from the record.

RESPONSE:

- a. The Attorney General objects to this request as it calls for a conclusion of law. The witness is not an attorney and has never held himself out as one. Further, the Attorney General objects to this request as the research paper referenced exists within the public domain and is as equally available to Big Rivers as it is to the witness. Without waiving this objection, counsel states on 21 November 2013, the OAG received permission from the sole author of the referenced report to supply a copy of his briefing paper "Future Test Years: Challenges Posed for State Utility Commissions" into the public record in this proceeding, and attaches a copy of same hereto.

2007-00455  
Big Rivers  
4/17/08

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RESPONSE: 1.(a) — (f); (h)-(m) . Objection. The Commission

Staff's discovery request seeks to force the disclosure of the mental impressions, conclusions, opinions, or legal theories of the Office of the Attorney General concerning this litigation and which are the OAG's trial preparation materials which are not the proper subject-matter for discovery. Further, the request seeks information that is or may be subject to and protected by the Attorney-Client and/or Work Product privileges. Without waving these objections, the Attorney General states the following.

The Attorney General notes the Commission Staff's inference in the data request that the Commission is an entity with limited jurisdiction, and the PSC, as a creature of statute, must have a statutory basis of authority in order to approve each specific rate-making treatments listed. The Attorney General agrees with the inference. That stated: there is no express statutory authority for any of the items in the list. Nonetheless, the legislature's grant of express authority carries with it a judicially recognized power of authority by implication through which the Commission may take actions that are strictly necessary in order to prevent a discontinuance of service or to address a utility facing

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BULLITT COUNTY	)	
SANITATION DISTRICT FOR AN	)	
ADJUSTMENT OF RATES PURSUANT	)	CASE NO. 2003-00230
TO THE ALTERNATIVE RATE FILING	)	
PROCEDURE FOR SMALL UTILITIES	)	

O R D E R

On June 16, 2003, Bullitt County Sanitation District filed with the Commission an application for a rate adjustment pursuant to 807 KAR 5:076.

On July 12, 2002, in an unpublished decision, the Kentucky Court of Appeals held that sanitation districts, including those created pursuant to KRS Chapter 67, were governed by KRS Chapter 220 and were therefore exempt from the jurisdiction of the Commission. Oldham County Sanitation District v. Kentucky Public Service Commission, 2001-CA-001482-MR. On September 9, 2003, the Kentucky Supreme Court denied the Commission's motion for discretionary review. As a result of the Supreme Court's denial of the motion, the Commission must dismiss the application herein.

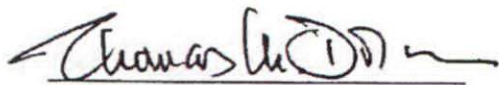
The Commission, having been sufficiently advised, **HEREBY ORDERS** that the application herein is dismissed for lack of jurisdiction.



Done at Frankfort, Kentucky, this 9<sup>th</sup> day of October, 2003.

By the Commission

ATTEST:

A handwritten signature in black ink, appearing to read "Thomas M. O'Donnell", written over a horizontal line.

Executive Director

Case No. 2003-00230