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OVERNIGHT DELIVER

July 7, 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 the Written Consents of WKG Storage, Inc. for filing in your office.

If you have any questions regarding this matter, please feel free to contact me.

Sincerely,

T. Tommy Littlepage

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JUL 08 2016

PUBLIC SERVICE COMMISSION

In the Matter of:

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

WRITTEN COMMENTS OF WKG STORAGE, INC.

Procedural History of This Case

On January 21, 2016, WKG STORAGE, INC., ("WKG" or "Company") filed an Application for Rate Adjustment For Small Utilities pursuant to 807 KAR 5:076 ("Alternate Rate Filing" or "ARF"). Section 2 of 807 KAR 5:076 provides that a utility may apply for an adjustment of rates under the procedure for small utilities if it:

(1) Had gross annual revenue in the immediate calendar year of $5,000,000 or less;

(2) Maintained adequate financial records fully separated from a commonly owned enterprise; and

(3) Filed with the commission fully completed annual reports for the immediate past year and for the two (2) prior years if the utility has been in existence that long.

WKG clearly satisfied the requirements of (1) and (2) above, but sought a deviation from the requirements of subsection (3) relating to annual reports.

WKG had not filed annual reports because the Commission did not require it to file such reports. However, all of the equivalent information and financial data that would have haven reflected in the annual reports for 2013 and 2014 had they been filed, were reflected in the financial reports appended to the Company's Application under the Tabs designated as "Annual Report 2013" and "Annual Report 2014." Accordingly, since the Commission was being provided with the information and financial data that would have been reflected in the annual reports for 2013 and 2014 had they been filed, a deviation was appropriate. The data for 2015 was not available at the time of filing, but the twelve months' prior information through June 30, 2015, was included under the Tab designated as "Statement of Adjusted Operations."

On January 29, 2016, the Commission notified WKG of certain filing deficiencies, including the failure of WKG to have filed completed annual reports for the immediate past year and for the two (2) prior years. Inclusion of this deficiency effectively denied WKG's request for a deviation relating to the annual reports.

On February 3, 2016, WKG filed a Motion for Reconsideration of the Commission's denial of WKG's request for a deviation relating to annual reports. WKG also requested, by motion filed February 3, 2016, an enlargement of time to respond to the other deficiencies noted by the Commission in its deficiency letter of January 29, 2016.

On February 16, 2016, an informal telephonic conference ("IC") was conducted with Commission Staff. On February 26, 2016, the Staff filed its Intra-Agency Memorandum outlining the results of the IC. Concerning the annual reports, Staff concluded that there was sufficient information contained in WKG's application to satisfy the requirement of annual reports for 2013 and 2014. WKG's original Application used the fiscal year ending June 30, 2015, for its test year. Staff advised that the Alternative Rate Filing ("ARF") procedure for small utilities required use of a calendar year therefore WKG agreed it would revise its Application and use calendar year 2015 data. WKG further advised Staff that cost of service data was being updated from June 30, 2015, to calendar year 2015.

On March 1, 2016, WKG filed its revised Application for Rate Adjustment that contained, for its historic test year, the financial information for the calendar year ending December 31, 2015. By letter dated March 2, 2016, the Commission Staff determined that WKG's revised Application satisfied the minimum filing requirements.

By Order dated March 11, 2016, the Commission ruled that pursuant to 807 KAR 5:076, Section 11, a staff report would not be issued in this proceeding. A procedural order was appended to the Commission's Order.

On March 15, 2016, Atmos Energy Corporation ("AEC") filed for full intervention. By Order entered March 24, 2016, AEC was granted full intervention. AEC is currently WKG's only customer.

On March 21, 2016, the Attorney General of Kentucky, by and through his Office of Rate Intervention, ("AG") moved for full intervention in this proceeding.

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 is a "utility" under the Commission's jurisdiction. On March 31, 2016, WKG responded to the AG's motion to deviate on the grounds that the AG had cited no authority and provided no reasoning for his concern that WKG may not be a utility whose rates and terms of service are subject to the jurisdiction of the Commission. Notwithstanding, WKG advised the Commission that it did not oppose extending the procedural schedule to accommodate the AG.

By Order dated April 6, 2016, the Commission granted the AG's motion to deviate from the procedural schedule and issued an amended procedure schedule.

DISCOVERY

The Commission Staff has filed two rounds of Requests for Information, to which the Company has responded. The AG filed three rounds of Requests for Information, to which the Company has responded. However, the AG was not satisfied with the Company's responses to his Request for Information Related to Jurisdiction and filed a Motion to Compel on April 28, 2016. WKG filed its Response to the AG's Motion to Compel on May 4, 2016, asking that the AG's Motion to Compel be denied.

On June 1, 2016, the AG filed a Motion for A Ruling And Abeyance of Procedural Schedule. By this Motion, the AG requested the Commission to rule on his previously filed Motion to Compel, as well as to hold the procedural schedule in abeyance pending a ruling on the AG's outstanding motion. The reason for the later request was that June 1, 2016, was the deadline for requesting a formal hearing under the Commission's existing procedural schedule.

On June 17, 2016, the Commission entered an Order in response to the AG's motion for a ruling. In this Order, the Commission denied the AG's Motion to Compel and set June 24, 2016, as the deadline for requesting an evidentiary hearing. The Commission further ordered that if no request for an evidentiary hearing was filed by June 24, 2016, written comments on all issues, including jurisdiction, were to be simultaneously filed by July 8, 2016, with responses to written comments to be filed by July 22, 2016.

These written comments are filed by WKG in accordance with the Commission's Order of June 17, 2016.

SUMMARY OF CASE

In 2001, WKG purchased the assets of Kentucky Pipeline and Storage Company, Inc., ("KPSC") a non-related, non-affiliated company. Those assets included an operating gas storage field (the "East Diamond Storage Field"), numerous injection wells, storage rights and 18 miles of 8 inch transmission line. Approval of the acquisition of these assets by the Commission was sought by WKG. In Case No. 2001-00235, the Commission approved the acquisition. The purchase price for this acquisition was $13,000,000.

WKG's current rates were originally established in 1991, and were still in effect in 2001 when WKG acquired the storage field.[1] WKG adopted the then effective tariff rates of Kentucky Pipeline and

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[1] 1. AG RFI 1-02

Storage, Inc.[2] On May 1, 2004, WKG entered into an Underground Natural Gas Storage Agreement with AEC (the "Storage Agreement"). The Storage Agreement was filed with the Commission and date stamped by the Commission September 3, 2004. The Storage Agreement obligated WKG to make available to AEC the East Diamond Storage Reservoir and pipeline connector, including the surface facilities, injection withdrawal wells and up to 1.75 BCF of working storage capacity. The monthly demand charge for this capacity was $122,500, which included a 10% discount to the Storage Reservation Tariff Charge. There have been no changes to the Agreement, nor any change to the Demand Charge since 2004. There are no riders, surcharges, modifiers or escalators under the Agreement. The Agreement incorporates WKG's tariff rate by reference and provides that AEC shall receive a 10% discount to WKG's effective tariff rates.

COMMENTS

I. Jurisdiction

Although the AG has questioned whether WKG's rates and terms of service are subject to regulation by this Commission, he has cited no authority to support his position. WKG will accordingly refrain from "shadow boxing" this issue until the AG files his comments relating to jurisdiction which will presumably contain citations of authority and argument. Suffice it to say at this point, the Commission, WKG and Kentucky Pipeline and Storage Company, Inc., all believed in 2001 that the ownership and operation of the East Diamond Storage Field, together with the 18.5 miles of 8" pipeline connecting the storage field with the ANR interstate pipeline were subject to the jurisdiction of this Commission.[3] Likewise, WKG and AEC believed that storage transportation rates are subject to the Commission's jurisdiction and accordingly filed the Agreement with the Commission in 2004. As a legal matter, were WKG found to not be subject to the jurisdiction of the Commission, it would no longer be eligible for

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[2] AG RFI 1-03

[3] See Order dated September 24, 2001, in KPSC 2001-235.

Hinshaw pipeline status and would presumably become subject to the sole jurisdiction of the Federal Energy Regulatory Commission.

II. Summary of WKG's Proposed Adjustments

WKG seeks approval of an increase in annual revenue of $903,856 and total revenues from service rates of $2,373,856.[4] If approved the new rates would increase revenues sufficient to provide an overall rate of return on rate base of 7.70% on a test year rate base of $9,504.531.[5]

Under WKG's existing Underground Gas Storage Agreement with AEC, AEC receives a 10% discount on the Storage Reservation Charge. AEC's bill is calculated on a demand basis, regardless of usage. AEC's new monthly bill will be $191,041, an increase of $68,541 per month.[6]

III. Determination of Return

WKG recognizes that in cases filed pursuant to the AFR by small investor-owned utilities with atypical capital structures, the Commission normally determines the utility's revenue requirement using an 88% operating ratio calculation (the "88% ORC").[7] For the reasons set forth below, WKG does not believe application of the 88% ORC is either necessary or appropriate in this case.

In THE APPLICATION OF APACHE GAS TRANSMISSION COMPANY, INC., FOR AN INCREASE IN RATES, KPSC 2007-00354, the Commission stated:

> "Typically, small investor-owned utilities will use a rate of return approval or an operating ratio method to determine its revenue requirement. An operating ratio method is used primarily when there is not a sound basis for a rate of return determination using the return on rate base method. The Commission generally uses an 88 percent operating ratio to determine a reasonable level of earnings for small investor-owned utilities. December 21, 2007 Order, page 7."

In AN INVESTIGATION OF ASHLAND EXPLORATION, INC., KPSC 91-396, the Commission stated:

> "An approval frequently used by the Commission in determining fair, just and reasonable rates is the "Operating Ratio Method". This method is used primarily

[4] Application Sheet 3 of 5, Item 11
[5] Application, Tab "Statement of Adjusted Operations", Schedule A, page 4 of 26.
[6] Application, Tab "Customer Notice", p. 1
[7] Staff RFI – 1-13(b)

> when there is no sound basis for a rate of return on investment or capital devoted to providing utility service as is the situation in this case. The operating ratio generally used by the Commission to provide for equity growth is 88% on allowance operating costs, exclusive of gas costs. Order of July 13, 1993, at page 11.

Lastly, in THE APPLICATION OF CITIPOWER, LLC, FOR AN ADJUSTMENT OF RATES PURSUANT TO THE ALTERNATIVE RATE FILING PROCEDURE FOR SMALL UTILITIES, KPSC 99-225, the Commission again applied the 88% ORC because

> ".....lack of rate base support for equity capital precludes a rate of return on investment in the revenue requirement determination." P. 42-43 of Staff Report appended to Order of March 31, 2000.

Because the record did not contain sufficient information concerning the members' equity, Staff did not have sufficient information necessary to provide the Commission with an informed decision as to the appropriateness of using a required return on capital and rate base. Therefore, Staff concluded the operating ratio method was the only appropriate method that could be used to determine the revenue requirements. Id at 44.

The take away of these prior Commission decisions is that the 88% ORC will be used in determining revenue requirements in cases filed pursuant to 807 KAR 5:076 where there is no sound basis for a rate of return determination using the return on rate base method because: (i) the utility has not maintained its books and records in accordance with the Uniform System of Accounts; (ii) the utility either has no determinable rate base or capital structure upon which a fair return can be calculated; or (iii) its capital structure is so atypical that there is no sound basis for determining a fair rate of return on equity or a fair rate of return on investment.

None of these conditions are present in this proceeding. WKG maintains its books and records in accordance with the Uniform System of Accounts, sufficient for the Commission to make an informed decision as to an appropriate rate of return under traditional rate making principals. Additionally, as the Commission stated in Cow Creek Application Pursuant To The Alternative Rate Procedure, Case No. 2006-00171, pp. 3-4, June 8, 2006, under certain conditions a rate base analysis may be appropriate:

> In the case of an investor-owned utility, the appropriate level of operating income is typically determined based on establishing an appropriate rate of return on the utility's capital investment. However, in order for the rate of return method to be valid, a utility's capitalization must be supported by its net investment rate base.

The same commentary was included in the Application of Elam Utility, Case No. 2000-432, p. 47, March 14, 2001. The rate base for WKG is approximately $9.5M (Response to Staff Item 2-08, May 20, 2016). WKG's capitalization shown on p. 113 of the FERC-2 Form attached to the Application is approximately $11.3M. Given the close relationship of the two factors, WKG falls within the category referenced in the Cow Creek and Elam cases, *supra*. As such, WKG asserts that it should be regulated on rate base, rather than ORC.

As to capital structure and ROE, WKG is a wholly owned indirect subsidiary of AEC.[8] The Company believes it is appropriate for it to utilize its ultimate corporate parent's (AEC) capital structure because this is the sole source of capital for WKG and is a reasonable proxy for the rate making capital structure in this proceeding.[9] The Company utilized the 9.8% return on equity because at the time WKG filed its case, this was the most recently approved ROE for AEC's distribution operations in Kentucky.[10]

WKG's investment in plant can be determined because these were assets purchased in 2001 from an un-related third party for which a definitive cash payment was made and because WKG

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[8] AG RFI 2-11(d)
[9] Staff RFI 1-13(a)
[10] Id.

maintains its books and records in accordance with the uniform system of accounts so additions/retirements since 2001 are reflected in the December 31, 2015 rate base.

Although WKG qualifies as a small utility for purposes of 807 KAR 5:076, its corporate structure, financial methods of operating, including maintaining books and records in according with the Uniform System of Accounts, an established capital structure and precisely defined rate base, all support the use of a return on rate base, rather than the simplified ORC, which the Commission has recognized to be appropriate in this type of situation. .

IV. Rate Adjustment

Unlike the typical Kentucky rate adjustment proceeding, where intervenors, following discovery, make various proposed adjustments to an applicant's request, there are no proposed adjustments from intervenors to which WKG can respond. The AG and AEC are the only intervenors in this case. Presumably whatever adjustments, if any, that they propose to WKG's filing will be contained in their written comments which are due to be filed July 8. Under the Commission's procedural order, each party may file responsive or rebuttal comments by July 22. Any issues raised by the intervenors concerning the specifics of WKG's filing, including any issues related to cost of service and return on investment, will be addressed in WKG's rebuttal comments.

WKG does, however, want to address in these comments, one issue that arose during discovery concerning WKG's classification of most of its assets as "non-utility" property. WKG was asked by Staff to confirm that of the Total Gross Plant of $14,882,143 included in rate base, $14,428,949 is not considered Gas Utility Plant in Service.[11] WKG did not confirm this was an accurate statement, explaining that when the original acquisition occurred in 2001, the purchase price was booked to non-utility property Account 121 as the assets were held in the legal entity WKG Storage, Inc., which was

[11] Staff RFI 2-08(c)

part of the non-regulated subsidiary Atmos Energy Holdings.[12] WKG further represented to the Commission that it will move all of the WKG assets to Utility Plant at the conclusion of this proceeding to eliminate the disconnect that exists between the Utility Plant reported on the Annual Report and the Plant in Service reported on Schedule B of the filing.[13] Clearly these assets are in fact utility Plant assets and should be reclassified from Account 121 to Account 101.

Based on the information submitted by WKG, there is adequate support in the record to find that the proposed rate adjustment is fair, just and reasonable and WKG requests that the Commission issue an order approving the rates.

Respectfully submitted this 7th day of July, 2016.

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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 7th day of July, 2016.

T. Tommy Littlepage

[12] Id.
[13] Staff RFI 2-08(b)