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COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ATTORNEY GENERAL’S RESPONSE TO WKG STORAGE INC.’S COMMENTS

The Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, submits the following Response to WKG Storage Inc.’s (“WKG” or “Company”) Comments in the above-styled matter. With this Response, the Attorney General reiterates that the Public Service Commission (“PSC”) should not afford WKG status as a utility, thus allowing WKG’s parent company, Atmos Energy (“AEC”) to earn a rate of return, passed through to customers via the Purchased Gas Adjustment (“PGA”).

Introduction

In the spirit of economy and efficiency, the Attorney General has no disagreement with WKG’s recitation of the procedural history or discovery contained in its July 8, 2016 Comments. Nonetheless, the Company provided no evidence that would rebut the assertion the Attorney General made in his previously filed Comments, and it is WKG who carries the burden of proof, and additionally must provide substantial evidence in order to receive a finding in an administrative proceeding.¹ The Attorney General’s responses to WKG’s Comments are as follows:

¹ *Energy Regulatory Commission v. Kentucky Power Company*, 605 S.W.2d 46, 50 (Ky. App. 1980); *Kentucky Board of Nursing v. Ward*, 890 S.W.2d 641, 642 (Ky. App. 1994).

Jurisdiction

The Company states in its Comments that in order to refrain from “shadow boxing” the issue of jurisdiction they would wait until the Attorney General provided citations of authority and argument.² Nevertheless, WKG provided information that it argued would help prove that its rates have been continuously regulated by the PSC. As evidence of being regulated, the Company again points to the fact that in 2001 the PSC believed that the activities carried out in East Diamond Storage facility was subject to PSC jurisdiction.³ The Attorney General has already commented on this assertion, noting the requirement for a CPCN to transfer ownership of the relevant assets in 2001 in no way proves the PSC has jurisdiction over WKG *today*.⁴

Additionally, the Company states that should WKG be found to not be under the jurisdiction of the PSC, “it would no longer be eligible for Hinshaw pipeline status and would presumably become subject to the sole jurisdiction of the Federal Energy Regulatory Commission (“FERC”).”⁵ The Attorney General is not convinced of WKG’s argument and further does not believe Hinshaw status is necessary for the Company to fall outside of FERC jurisdiction. Apparently, the Company believes that is not currently subject to FERC jurisdiction due to 15 U.S.C.A. Section 717 (c), stating that certain entities involved in intrastate transactions are exempt from the federal regulation as long as the entity is regulated by a State Commission.⁶ To the contrary, the Attorney General does not believe the Company needs to be exempted from the chapter, as the language of sub section (b) states that the regulation, “shall not apply . . . to

² WRITTEN COMMENTS OF WKG STORAGE, INC., July 8, 2016. Page 5

³ *Id.*

⁴ ATTORNEY GENERAL’S COMMENTS, July 8, 2016. Page 7

⁵ WRITTEN COMMENTS OF WKG STORAGE, INC., July 8, 2016. Page 5 & 6

⁶ 15 U.S.C.A. Section 717 (c)

the local distribution of natural gas or to the facilities used for such distribution . . .”⁷ It is the Attorney General’s position that since WKG’s storage is used as a facility for the distribution of natural gas solely by its parent company, AEC, the federal regulation contemplated by the Natural Gas Act does not apply.⁸ Rather, the Company’s rates should not be regulated, but accounted for as a cost to deliver gas to customers, via the PGA by AEC, with no markup for return. Any return passed on to AEC from WKG’s rates, and then recovered by AEC through the PGA, is by definition not a “cost” to AEC and therefore is the antithesis of what the PGA is intended for; to recover “costs” on a dollar-for-dollar basis.⁹ If though, WKG’s assets were included in AEC’s rate base, then it may be acceptable for AEC to earn a rate of return on its investment.

Conclusion

Based on the information provided to the Attorney General, WKG has heretofore failed to provide sufficient evidence that it is currently rate-regulated by the PSC, and therefore failed to carry its burden. Should the PSC approve the Company’s Application, in the alternative, the Attorney General requests that the PSC order WKG to file annual reports with both the Department of Revenue and PSC, and pay all associated fees and assessments, for the both the

⁷ 15 U.S.C.A. Section 717 (b)


⁸ ATTORNEY GENERAL’S COMMENTS, July 8, 2016. Page 7; Tucker, Bruce. “Atmos Energy, Atmos Pipeline and Storage Inc. Safety Publication.” Web PDF. 28 March 2016.
<http://sitemanager.pdigm.com/user/file/Kentucky/Atmos_Pipeline_and_Storage_LLC.pdf> ; Revised Application, Page 8; WKG Storage Rate Tariff, filed with the Commission, effective date 15 Oct. 2001. Page 1; *See Also, EMERALD COAL AND COKE COMPANY, Republic Steel Corp, Emerald Land Co., and W.J. Rainey, Inc. v. EQUITABLE GAS COMPANY*, 107 A.2d 734, 736 & 737 (Pa. 1954), *stating*, in this section “language is plain and unambiguous and necessarily concludes any control by the Federal Power Commission over the facilities for storage, i. e., facilities for gathering and distributing gas locally. These are left to local regulation and control. Such facilities are not within the jurisdiction of the Federal Power Commission.

⁹ ATTORNEY GENERAL’S COMMENTS, July 8, 2016. Page 6, citing, The Purchased Gas Adjustment: Frequently Asked Questions <http://psc.ky.gov/agencies/psc/consumer/pgaqanda.pdf> Page 1.

current year and any year it has been deemed to have operated as a rate-regulated utility in the Commonwealth of Kentucky.

Respectfully submitted,

ANDY BESHEAR
ATTORNEY GENERAL



KENT CHANDLER
REBECCA GOODMAN
ASSISTANT ATTORNEYS GENERAL
1024 CAPITAL CENTER DRIVE
SUITE 200
FRANKFORT, KY 40601-8204
(502) 696-5458
FAX: (502) 573-1009
Kent.Chandler@ky.gov
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 Talina Mathews, 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 22nd day of July, 2016



Assistant Attorney General