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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
randy@whplawfirm.com
ttommy@whplawfirm.com

July 22, 2016

Kentucky Public Service Commission
211 Sower Blvd.
P. O. Box 615
Frankfort, KY 40602

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

Dear Sir:

I am enclosing herewith an original, plus ten (10) copies of the Reply Comments 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

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IN RE THE MATTER OF:

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

REPLY COMMENTS OF WKG STORAGE, INC. TO THE ATTORNEY GENERAL

WKG Storage, Inc., by counsel, pursuant to the Commission's order of June 17, 2016, submits its reply to the July 8, 2016, filed comments of the Attorney General ("AG Comments").

I. WKG is a regulated utility

The AG claims that WKG, "has never acted as if they [sic] were a regulated utility."¹ In stark contrast to the AG's assertion, WKG acts exactly as required by the Public Service Commission (Commission) to be a regulated utility. KRS 278.010 defines a gas utility as including storage services:

(3) "Utility" means any person except a regional wastewater commission established pursuant to KRS 65.8905 and, for purposes of paragraphs (a), (b), (c), (d), and (f) of this subsection, a city, who owns, controls, operates, or manages any facility used or to be used for or in connection with: . . .

(b) The production, manufacture, storage, distribution, sale, or furnishing of natural or manufactured gas, or a mixture of same, to or for the public, for compensation, for light, heat, power, or other uses; . .

It maintains a tariff, which is on file with the Commission.

278.160 Utilities to file and display general schedules of rates and conditions for service -- Adherence to schedules -- Exclusion from disclosure of confidential

¹ AG Comments at 1.

or proprietary provisions in special contracts.

(1) Under rules prescribed by the commission, each utility shall file with the commission, within such time and in such form as the commission designates, schedules showing all rates and conditions for service established by it and collected or enforced. The utility shall keep copies of its schedules open to public inspection under such rules as the commission prescribes

807 KAR 5:011 defines "tariff":

Section 1. Definitions. (1) "Commission" is defined by KRS 278.010(15). . . .

(9) "Tariff" means the schedules of a utility's rates, charges, regulations, rules, tolls, terms, and conditions of service **over which the commission has jurisdiction.** (Emphasis Added)

Based on the definitions of the applicable statutes and the regulations governing the Commission and its jurisdiction, WKG is a utility subject to Commission jurisdiction. Whether the AG believes WKG has acted like a utility, or not, the key point is that the Commission has treated WKG as a regulated utility.

II. WKG offers service to the public

The AG claims that WKG does not provide natural gas storage services to the public, but rather only provides service to Atmos Energy Corporation ("Atmos Energy").² The AG continues "...WKG has made it clear it has no intention to contract with or ascertain additional customers."³ Pursuant to its tariff, WKG provides natural gas storage and related storage transportation "to or for the public" in accordance with KRS 278.010(3) and has done so for the last fifteen (15) years. The Commission has defined "public" as:

The characterization of a service as public or private "does not depend . . . upon the number of persons by whom it is used, but upon whether or not it is open to the use of the public who may require it, to the extent of its capacity." Ambridge v. Pub. Serv. Comm'n of Pennsylvania, 165 A. 47, 49 (Pa. Super. 1933). See 64 Am. Jur. 2d Public Utilities §1 (1972). Stated another way, "[o]ne offers service to the 'public' . . . when he holds himself out as willing to serve all who apply up to the capacity of his facilities. It is immaterial . . . that his service is limited to a specified area and his facilities are limited in capacity." North Carolina ex real. Utilities Comm'n v. Carolina Tel. & Tel. Co., 148 S.E.2d 100, 109 (N.C. 1966). "Envirotech, Case No. 96-448, April 29, 1997, p. 5."

To the extent that capacity is available in the storage field, any creditworthy party may agree to pay the tariff rate and contract for service. Alternatively, pursuant to its tariff's terms, WKG may "provide special storage and transportation services in accordance with individual

² AG Comments at 4.

³ Id at 5.

contracts with the customer.”⁴ Such a contract must be filed with the Commission pursuant to 807 KAR 5:011 Section 13.

Contrary to the AG’s assertions, WKG is a public utility and thus is obligated to contract with an additional customer to the extent of its remaining capacity at its tariff rate or, in the alternative, negotiate an individual contract with a customer. WKG could not simply refuse to contract with a prospective customer. Atmos Energy’s contract for most of WKG’s storage capacity does not alter WKG’s offer of service to all who are able and willing to meet the tariff requirements, i.e. “the public”. Similarly, should the contract with Atmos Energy be terminated, WKG would offer that additional storage to anyone. It is the dedication of its facilities to anyone, rather than restricting its facilities to the use of one customer of its choosing, that makes WKG a “public utility”.

III. WKG acts as a regulated utility

The AG contends that WKG is not a utility because it does not file annual reports with the Commission or pay the PSC assessment.⁵ WKG contends that the mere filing of annual reports is not dispositive of an entity’s status as a utility. The Commission has not required WKG, as well as numerous other gas utilities, to file annual reports or to pay the annual assessment. WKG believes this is simply an example of the Commission exercising its proper discretion and not an example of the Commission disclaiming jurisdiction over what are in fact Kentucky utilities. If the AG is correct, then all of the companies listed on the Commission’s website as “gas transmission” companies are not utilities and are being improperly regulated.

A search of the Commission’s Annual Reports failed to disclose any Annual Report being filed by any of the gas transmission companies. If the filing of an Annual Report is determinative of utility status as the AG surmises, then there are a number of additional entities being subjected to unnecessary, unlawful regulation. Had the AG simply looked at the Commission’s website, it would have noticed that the gas distribution companies (Utility Type - 300) are required to file annual reports as indicated by the “Y” under the “Report Required” column. Yet, the gas pipeline companies, including WKG (Utility Type – 310) have “N” in that column. Copies of sample utilities pages are attached.

IV. The AG confuses “utilities” with “public service companies”

The AG points to the requirement that public service companies file certain annual reports with the Department of Revenue, coupled with the Department of Revenue not considering WKG as a “state assessed” company, as evidence that WKG is not subject to the jurisdiction of the Commission.⁶ However, “utilities” and “public service companies” are two

⁴ WKG Storage, Inc. Tariff, Sheet No. 2, Section 4 H.

⁵ *Id.* at 2.

⁶ *Id.* at 3.

different concepts in two separate and distinct Chapters of the Kentucky Revised Statutes. ‘Corporation’ as used in KRS 136.120 through 136.180 means any corporation, company, association, partnership, or person performing any public service.”⁷ The definition of a “utility” as used by the Commission appears in KRS 278.010(3). Just as the Commission does not rely on definitions contained in the Revenue Cabinet statutes, the Revenue Cabinet does not rely on Commission definitions for its tax policies. It is noteworthy that the word “service” is not a component of the definition of utility in KRS 278.010(3).

The determination of a corporation’s status for one government agencies’ purposes is not dispositive of or binding on the determination by any other agency. Public Service Companies as defined by the Revenue Cabinet file a Form 61A200 with the Cabinet. Because of the nature of public service property, the valuation and assessments are centralized, rather than being made by each county Property Valuation Administrator (PVA). The Revenue Cabinet does not classify WKG as a public service company. Rather, WKG files a property tax return at the county level with the Hopkins County PVA. The enforcement of the Revenue Cabinet’s determination of WKG’s tax status is not a matter for the Commission, nor indicative of its “public utility” status for regulatory purposes.

V. The AG’s arguments regarding the PGA are perplexing

WKG earns a “profit” by selling its storage service on a firm basis pursuant to a negotiated contract with Atmos Energy at rates slightly below its filed tariff rate. Atmos Energy is obliged to pay those rates by virtue of its contract with WKG. The fact that WKG’s customer, Atmos Energy, subsequently includes all of its storage and transportation charges in its purchased gas adjustment (PGA) filings does not in any way mean that WKG is earning a profit through Atmos Energy’s PGA. WKG recovers its contract fee when it is paid by Atmos Energy according to the terms of the contract. The recovery of that fee is unrelated to Atmos Energy’s PGA filing or the Commission’s approval of the filing. Atmos Energy’s gas cost is reviewed quarterly by the Commission. All components of that cost are subject to adjustment. Should Atmos Energy’s gas cost recovery be rejected by or modified by the Commission, the contract fee owned to WKG would still be due and owing.

The AG contemplates a world where utilities separate the “purchase, transportation, and storage of their supply in an effort to identify each entity as a utility, thus “eligible to earn a return (profit)...via the PGA.”⁸ This makes no sense. Assuming that the separate functions were each a utility, then each would have cost of service rates set by the Commission and the total return would be identical.⁹ The book value of transportation assets would not change. The sum would be equal to the whole of its parts. Even though the local distribution entity in the AG’s

⁷ KRS 136.115(1)

⁸ AG Comments at 6.

⁹ This assumes there were no additional administrative costs created through breaking up a single company into multiple entities.

scenario would be including all of its transportation and storage charges in its PGA, it would not be earning any rate of return on them. They would all flow through on a dollar-for-dollar pass-through basis. The individual companies would each separately be earning a rate of return based on their cost of service based rates set by the Commission.

In his conclusion, the AG continues to demonstrate a lack of understanding of the operation of Atmos Energy's PGA, stating that "[WKG] should not be allowed to pass through profits under the guise of a cost associated with the PGA."¹⁰ WKG does not pass anything through Atmos Energy's PGA. Whatever profits WKG earns, it books when it receives payment from its customers for storage services. WKG's profits will remain the same regardless of what does or does not subsequently get filed in a PGA, regardless of whether that PGA is filed by a WKG affiliate or not.

CONCLUSION

WKG respectfully submits that the AG is simply wrong, under the facts and law, when it argues that WKG's rates and terms of service are not subject to the jurisdiction of this Commission.

As to the merits of WKG's request, the AG has presented no argument, let alone evidence, in opposition to WKG's requested rate relief. The new tariff rates being requested by WKG are fair, just and reasonable and are needed to provide sufficient revenue for WKG to meet its financial and operational obligations, with a reasonable amount remaining for equity growth. The current tariff rates have been in effect, without change, for some 25 years and the rate relief requested is warranted by the evidence.

Respectfully submitted this 22 day of July, 2016.



T. Tommy Littlepage

WILSON, HUTCHINSON & LITTLEPAGE

611 Frederica Street

Owensboro, KY 42301

(270) 926-5011

ttommy@whplawfirm.com

¹⁰ AG Comments at 8.

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 22 day of July, 2016.



T. Tommy Littlepage