

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DAVID STEPHENS, SR., DAVID STEPHENS, JR.,)
AND ELIZABETH BIERBAUER D/B/A LESLIE)
GAS COMPANY)

CASE NO
89-277

_____)
ALLEGED FAILURE TO COMPLY WITH COMMISSION)
REGULATION 807 KAR 5:006, SECTION 3(1))

O R D E R

On October 4, 1989, the Commission entered an Order directing David Stephens, Sr., d/b/a Leslie Gas Company, David Stephens, Jr., and Elizabeth Bierbauer to show cause at a hearing to be held before the Commission on November 9, 1989 why they should not be subject to the penalties of KRS 278.990 for their failure to comply with 807 KAR 5:006, Section 3(1). Copies of the Order were served by certified mail upon David Stephens, Jr. and Elizabeth Bierbauer. On November 6, 1989, Elizabeth Bierbauer notified the Commission in writing that she waived the right to a hearing for herself and on behalf of David Stephens, Sr. as his attorney-in-fact.

A hearing was conducted before the Commission on November 9, 1989. David Stephens, Sr., David Stephens, Jr., and Elizabeth Bierbauer did not appear, nor did anyone appear in their behalf.

Now, therefore, based upon the testimony and evidence herein, the Commission makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

David Stephens, Sr., d/b/a Leslie Gas Company, operates facilities used for the production, distribution, and sale of natural gas to the public for compensation. Mr. Stephens is not able to operate the company and consequently his son, David Stephens Jr., manages the daily operations of the company and his daughter, Elizabeth Bierbauer, maintains the books and records of the business and is responsible for filing all documents required by law. Ms. Bierbauer has also been authorized by Mr. Stephens, Sr. to act for him and on his behalf in all matters pertaining to the operations of the utility.

On January 3, 1989, two copies of the Commission's financial and statistical form ("annual report") and two copies of the gross intrastate operating revenues report form ("gross operating report") were mailed by the Commission to Ms. Bierbauer. A letter of instruction was enclosed with the forms informing Ms. Bierbauer that, in accordance with 807 KAR 5:006 Section 3(1), and KRS 278.140, the reports were to be completed for the calendar year 1988 and filed with the Commission on or before March 31, 1989. Neither report was filed by the due date and on April 11, 1989 another letter was sent to Ms. Bierbauer directing that the forms be completed and filed by April 20, 1989 and advising Ms. Bierbauer that penalties could be imposed for failing to comply with the regulation and the statute.

The forms were not filed by April 20, 1989 and between May 8, 1989 and August 21, 1989 Ms. Bierbauer was contacted by the Commission eleven times by telephone and twice by letters

requesting that the information be filed. The gross operating report for 1988 was finally filed on July 7, 1989, but Leslie Gas Company has not filed its 1988 annual report. In addition, during the preceding five years, Leslie Gas Company has failed to file its annual report each year by the date it was due.

CONCLUSIONS OF LAW

Leslie Gas Company is a "utility" as defined by KRS 278.010(3)(b). As such, Leslie Gas Company is subject to regulation by this Commission by KRS 278.040 and is required by KRS 278.230(3) to file any reports, schedules, classifications, or other information reasonably required by the Commission.

KRS 278.140 requires each utility to file an annual report of its gross earnings for the preceding calendar year. The purpose of this report is to ascertain the amount that the utility shall be assessed, pursuant to KRS 278.140, for its share of the expenses in maintaining the Commission. The gross earnings report is due on March 31 of each year and contains the gross earnings derived from intrastate business for the preceding calendar year.

In addition, each utility is required by 807 KAR 5:006 to file a financial and statistical report annually upon forms furnished by the Commission. This report is also due on March 31 of each year.

KRS 278.990 provides that any officer, agent, or employee of a utility who willfully violates any provisions of KRS Chapter 278 shall be fined not more than \$1,000 or imprisoned for not more than six months or both. By failing to file the annual report required by 807 KAR 5:006, Section 3(1), and the gross operation

revenues report as required by both the regulation and KRS 278.140, Elizabeth Bierbauer, as an officer, agent or employee of Leslie Gas Company, has willfully violated the provisions of KRS Chapter 278 and for the continued violation of KRS 278.230(3) and 807 KAR 5:006, Section 3(1), is individually subject to the penalties prescribed in KRS 278.990(1) and should be assessed a penalty of \$500, of which \$400 should be suspended if the report is filed on or after 45 days from the date of the Order.

ORDER

Now, Therefore, upon the foregoing Findings of Fact, Conclusions of Law, and upon the entire record, IT IS HEREBY ORDERED:

1. David Stephens, Sr., d/b/a Leslie Gas Company, is in violation of KRS 278.230(3) and 807 KAR 5:006, Section 3(1), for failure to file when due the annual report and the gross operating report for the 1988 calendar year.

2. Elizabeth Bierbauer, as an officer, agent, and employee of Leslie Gas Company, willfully violated the provisions of KRS 278.230(3) and 807 KAR 5:006, Section 3(1), by failing to file the reports when due, and for such failure Elizabeth Bierbauer, in her individual capacity, is hereby assessed a penalty of \$500.

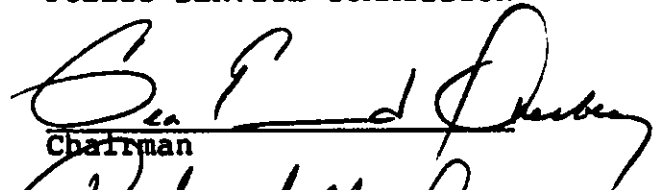
3. Within 20 days of the date of this Order, \$100 of this penalty shall be paid by certified check or money order made payable to "Treasurer, Commonwealth of Kentucky." Said check or money order shall be delivered to the Office of General Counsel,

Public Service Commission of Kentucky, P.O. Box 615, Frankfort, Kentucky 40602.

4. The remainder of the penalty assessed herein is suspended for a period of 45 days from the date of this Order. If within that period Leslie Gas Company has filed with the Commission its annual report for calendar year 1988, the remaining penalty shall be vacated. If the annual report is not filed within that time, the remaining penalty shall become immediately due and payable in the manner set forth in the preceding paragraph.

Done at Frankfort, Kentucky, this 12th day of January, 1990.

PUBLIC SERVICE COMMISSION



Chairman



Vice Chairman

Commissioner

ATTEST:

Executive Director