

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)

ALLEGED FAILURE TO COMPLY WITH)
KRS 278.230)

CASE NO.
91-010

ORDER TO SHOW CAUSE

David Stephens, Sr., David Stephens, Jr., and Elizabeth Bierbauer ("Respondents"), doing business as Leslie Gas Company, own, operate, and manage facilities used for the production, distribution, sale, and furnishing of natural gas to the public for compensation, for heat and power, and are therefore a utility under the jurisdiction of the Commission.

KRS 278.230(3) provides that every utility, when required by the Commission, shall file with it any report that the Commission requires. KRS 278.040 furthermore permits the Commission to adopt reasonable regulations to implement the provisions of KRS Chapter 278. Pursuant to this authority, the Commission promulgated Commission Regulation 807 KAR 5:006, Section 3(1), which requires all utilities to file on or before March 31 of each year a financial and statistical report for the previous calendar year upon forms furnished by the Commission.

Commission Staff has advised the Commission that the Respondents have yet to file a financial and statistical report on their utility operations for the 1989 calendar year as required by KRS 278.230(3) and Commission Regulation 807 KAR 5:006, Section 3(1), nor have they requested an extension of time to file this report. Commission Staff has further advised the Commission of its repeated and unsuccessful efforts to obtain submission of the required report. See Exhibit A.

The Commission, on its own motion, HEREBY ORDERS that:

1. Respondents shall appear on February 27, 1991, at 10:00 a.m., Eastern Standard Time, in Hearing Room 2, of the Commission's offices at 677 Comanche Trail, Frankfort, Kentucky, for the purposes of presenting evidence concerning their submission of the financial and statistical report on their utility operations for the 1989 calendar year, and of showing cause, if any they can, why they should not be subject to the penalties of KRS 278.990 for their alleged failure to comply with KRS 278.230.

2. The Respondents shall file the financial and statistical report of their utility operation for the 1989 calendar year no later than February 27, 1991.

3. Respondents may, if they so desire, waive their right to an evidentiary hearing in this matter and instead submit a written statement in their own behalf. Any Respondent choosing to waive his right to an evidentiary hearing shall submit to the Commission within 20 days of this Order a verified written statement

expressly waiving this right and responding in detail to the allegations contained in Exhibit A to this Order.


4. Exhibit A to this Order is hereby made part of the record of this case.

Done at Frankfort, Kentucky, this 14th day of January, 1991.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

STATE OF KENTUCKY)
) ss
COUNTY OF FRANKLIN)

A F F I D A V I T

The affiant, William Feldman, being duly sworn, states as follows:

1. I am currently employed by the Public Service Commission of Kentucky ("Commission") as a Statistical Supervisor and have held that position since 1984.

2. As Statistical Supervisor, I am custodian of the financial and statistical reports filed annually with the Commission pursuant to KRS 278.140 and the Commission Regulation 807 KAR 5:006, Section 3(1) and am responsible for the receipt, logging, cataloging and review of these reports.

3. Pursuant to Commission Regulation 807 KAR 5:006, Section 3(1), two copies of the financial and statistical form (annual report) were mailed on the first business day of each calendar year to every regulated utility doing business in the state of Kentucky.

4. On January 2, 1990, two copies of the financial and statistical were mailed to Ms. Elizabeth Bierbauer of Leslie Gas Company. A copy of the letter accompanying these reports is attached hereto as Exhibit 1.

5. On several occasions Ms. Bierbauer and Mr. David Stephens, Jr., advised me that they were the persons responsible for the operation and management of the Leslie Gas Company.

6. Neither the financial and statistical report for Leslie Gas Company nor a request for an extension of the filing deadline from Leslie Gas Company was received by the Commission on or before March 31, 1990.

7. On April 11, 1990, a letter requesting submission of the required report, a copy of which is attached as Exhibit 2, was sent to Ms. Bierbauer.

8. I spoke to Ms. Bierbauer by telephone on two different occasions between June 25, 1990 and August 22, 1990, advised her that the required reports were overdue, and requested their submission. Additionally, I left messages on her answering machine on 7 different occasions between April 23, 1990 and October 10, 1990. I spoke to Dave Stephens, Jr., on 19 different occasions between June 20, 1990 and November 12, 1990, advising him that the reports were over due, and requested their submission. A list of these contacts is attached as Exhibit 3.

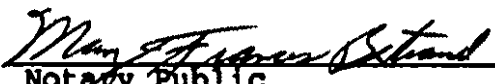
9. As of this date, the Commission has not received a financial and statistical report for 1989 for Leslie Gas Company.

FURTHER THE AFFIANT SAITH NOT



William Feldman

Subscribed and sworn to before me by William Feldman this 14th day of January, 1991.



Notary Public

My commission expires: Nov. 30, 1992



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

January 2, 1990

Elizabeth Bierbauer
Manager/Trustee
Leslie Gas Company
9909 Nicoma Lane
Orlando, FL 32817

Dear Elizabeth Bierbauer:

Enclosed are two copies of the financial and statistical form (annual report) and two copies of the gross intrastate operating revenues report form (gross operating report). These reports are to be completed for the calendar year 1989 and the original should be filed with this Commission on or before March 31, 1990, as required by Public Service Commission regulation 807 KAR 5:006, Section 3(1), KRS 278.140.

For good cause shown, the Commission may, upon written request sent to me, allow a reasonable extension of time for filing of the annual report. However, the request must be made before the March 31, 1990, deadline. An extension of time for filing the gross operating report cannot be granted.

The prompt and timely filing of the annual report and gross operating revenues report is essential to the efficient operation of this Commission. Any utility failing to comply with these statutes shall be subject to KRS 278.990, including the imposition of penalties provided therein.

Sincerely,

Phyllis Lannan
Phyllis Lannan
Director
Division of Rates & Tariffs

Enclosures



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
710 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-1940
April 11, 1990

Ms. Elizabeth Bierbauer, Manager/Trustee
Leslie Gas Company
9909 Nicoma Lane
Orlando, FL 32817

Dear Ms. Bierbauer:

On January 2, 1990, your utility company was sent two (2) copies of both the Annual Report Form and the Gross Operating Revenues Report Form. These reports were to be completed for the calendar year 1989, and the original of each form filed with this Commission on or before March 31, 1990, as required by the Public Service Commission Regulation 807 KAR 5:006, Section 3(1), and KRS 278.140.

To date, the Commission has not received the Annual Report Form, nor a request for an extension of time to file the report. It is now too late to request an extension. It must be completed and filed with this Commission by April 30, 1990. If you have any questions, please contact Mr. Bill Feldman at (502) 564-7418.

Failure to comply with Commission Regulation 807 KAR 5:006, Section 3(1), and KRS 278.140 will result in the imposition of penalties as provided in KRS 278.990 (copy attached).

Sincerely,

Phyllis R. Fannin
Phyllis R. Fannin, Director
Division of Rates and Tariffs

PF:BF:kms

Attachments

DELINQUENT ANNUAL REPORT

LESLIE GAS (36 CUSTOMERS)

606-886-6940

- 4/11/90 FOLLOW-UP LETTER
4/23/90 LEFT MESSAGE ON BIERBAUER'S ANSWERING MACHINE
5/14/90 LEFT MESSAGE ON BIERBAUER'S ANSWERING MACHINE
6/05/90 DAVE STEPHENS - TALKED WITH MARY ANNE - SAID HE HAD TO GET A HOLD OF SISTER (LIZ BIERBAUER 407-671-5049) TO FIND OUT WHAT IS HAPPENING - DID NOT GET A HOLD OF SISTER - MAYBE IN TWO WEEKS - HE'S GOING IN THE HOSPITAL, IN LOUISVILLE, NEXT WEEK
6/11/90 LEFT MESSAGE ON LIZ BIERBAUER'S ANSWERING MACHINE
6/20/90 DAVE STEPHENS CALLED AND SAID THAT HE WOULD TRY TO GET REPORTS COMPLETED WHEN HE GOT OUT OF HOSPITAL (SOMETIME NEXT WEEK)
6/25/90 CALLED LIZ BIERBAUER - SHE SAID THAT SHE HAS SENT ALL THE FORMS TO DAVE STEPHENS (HER BROTHER) AND THAT HE HAS AN ACCOUNTANT, IN PRESTONSBURG, THAT IS SUPPOSED TO COMPLETE THE ANNUAL REPORT WHEN DAVE GETS OUT OF THE HOSPITAL. AFTER ALL THE DELINQUENT REPORTS ARE FILED, SHE IS GOING TO TURN THE ENTIRE COMPANY OVER TO DAVE STEPHENS. SHE IS GOING TO SEND IN THE GROSS REVENUES FORM. SHE GAVE ME THE AMOUNT OVER PHONE (\$7,945.32).
7/03/90 CALLED LIZ BIERBAUER - LEFT MESSAGE ON HER ANSWERING MACHINE TO FIND OUT WHERE THE GROSS REVENUE FORM, THAT SHE PROMISED, WAS
7/03/90 CALLED DAVE STEPHENS - SAID HE HOPES TO BE STRONG ENOUGH NEXT WEEK TO BE ABLE TO START ON REPORT - HELP WAS OFFERED - HE SAID HE WOULD CALL IF HE NEEDED HELP (THEY HAVE STILL NOT FILED THEIR 1988 ANNUAL REPORT)
7/17/90 DAVE STEPHENS CALLED - SAID HIS SISTER IS SENDING HIM ALL THE INFORMATION THAT HE WILL NEED TO COMPLETE REPORTS. HE WILL CALL ME WHEN HE GETS IT OR DOESN'T GET IT
7/23/90 DAVE STEPHENS CALLED - HE WILL CALL BACK
7/25/90 CALLED DAVE STEPHENS - HE IS GOING TO FLORIDA EARLY IN AUGUST TO ATTEMPT TO GET ALL THE NE- THINGS TO TRANSFER UTILITY, FROM HIS SISTER. HE WILL C. 'N HE GETS BACK.
7/25/90 CALLED LIZ BIERBAUER - LEFT MESSAGE ON HER ANSWERING MACHINE
8/01/90 DAVE STEPHENS CALLED - SAID HE WILL BE LEAVING FOR FLORIDA ANY DAY NOW (AS SOON AS HE CAN FIND SOMEBODY TO GO WITH HIM). HE ASKED THAT WE HOLD OFF ANY LEGAL ACTION UNTIL 8/10/90
8/13/90 DAVE STEPHENS CALLED - SAID HE HAS GOTTEN ALL THE RECORDS FROM HIS SISTER AND WANTED ASSISTANCE IN COMPLETING THE ANNUAL REPORTS FOR BOTH 1988 AND 1989. AN APPOINTMENT HAS BEEN SET UP FOR 8/14/90 (BETWEEN 9 AM AND 10 AM). MARY ANNE HAS BEEN ASKED TO HAVE SOMEONE ON HER STAFF TO ASSIST. SHE SAID THAT MENDY AND CHRIS WILL BE ASKED TO HELP.
8/14/90 DAVE STEPHENS CAME TO COMMISSION FOR ASSISTANCE. MENDY AND CHRIS HELPED HIM. HE IS TO GATHER THE INCOME, EXPENSES, AND CUSTOMER DATA AND SEND IT IN. I TALKED TO LIZ BIERBAUER. SHE IS GOING TO SEND IN THE BANK STATEMENTS AND CANCELLED CHECKS FOR BOTH 1988 AND 1989. RECEIVED GROSS OPERATING REPORT.
8/20/90 DAVE STEPHENS CALLED - SAID HE IS WORKING ON THE ANNUAL REPORTS

DELINQUENT ANNUAL REPORT
PAGE -2-

LESLIE GAS

- 8/22/90 DAVE STEPHENS CALLED - SAID HE CANNOT GET THE BANK STATEMENTS AND CANCELLED CHECKS FROM HIS SISTER. MADE AN APPOINTMENT FOR 8/29/90 FOR AUDITORS TO GO THERE & GET MORE INFO. CHANGED APPOINTMENT TO 8/27/90 (MENDY & CHRIS GOING TO PRESTONSBURG)
- 8/22/90 I CALLED LIZ BIERBAUER. SHE IS GOING TO SEND IN THE BANK STATEMENTS AND CANCELLED CHECKS FOR BOTH 1988 AND 1989 ON 8/22/90 (TO ME)
- 8/26/90 MENDY & CHRIS PICKED UP SOME INFO FROM DAVE STEPHENS
- 9/06/90 DAVE STEPHENS CALLED & WANTS TO KNOW WHAT IS HAPPENING
- 9/07/90 DAVE STEPHENS CALLED & SAID HE IS GOING TO HAVE TO GO TO FLORIDA AND GET THE INFORMATION
- 9/10/90 DAVE STEPHENS CALLED ASKING UNTIL THE END OF THE MONTH TO GET NEEDED INFO. HE SAID HE CANNOT GET TO FLORIDA BEFORE THEN
- 9/11/90 DAVE STEPHENS CALLED SAYING THAT HE WAS GOING TO GO TO FLORIDA WITH HIS SON TO TRY TO GET CONTROL OF THE COMPANY FROM HIS FATHER. HE ALSO WANTED TO KNOW THE LEGAL PROBLEMS THAT HE MIGHT BE FACING WITH THE COMMISSION. I HAD JERRY WUETCHER CALL HIM.
- 9/13/90 DAVE STEPHENS CALLED & SAID THAT HIS SISTER WAS COMING IN ON 9/17/90 AND THAT SHE WOULD BE HERE ON 9/18/90
- 9/19/90 DAVE STEPHENS SAID THAT HIS SISTER WAS THERE YESTERDAY AND TRANSFERRED THE BANK ACCOUNT OVER TO HIM. HE ALSO SAID THAT SHE WAS SUPPOSED TO COME HERE TODAY. ASKED FOR ME TO CALL HIM BACK AFTER SHE COMES OR IF SHE DOESN'T COME
- 9/20/90 DAVE STEPHENS CALLED TO FIND OUT IF HIS SISTER HAD BEEN HERE. HE SAID TO GO AHEAD & DO WHAT EVER WE HAD TO DO
- 9/25/90 DAVE STEPHENS CALLED TO FIND OUT IF WE HAD FOUND OUT ANYTHING AND TO SEE WHAT ACTION WE WERE/ARE GOING TO TAKE. I TOLD HIM THAT WE HAD NOT DONE ANYTHING YET & THAT I WAS GOING TO TRY TO CALL HIS SISTER ONCE MORE.
- 9/27/90 CALLED LIZ BIERBAUER - LEFT MESSAGE ON HER MACHINE THAT I WAS GOING TO TURN THIS OVER TO LEGAL AND THAT HER FATHER WOULD BE THE RESPONSIBLE PERSON (PER JERRY WUETCHER)
- 9/28/90 LIZ BIERBAUER SENT BANK STATEMENTS (VIA EXPRESS MAIL). I CALLED DAVE STEPHENS & ADVISED HIM. I GAVE THE BANK STATEMENTS TO THE FINANCIAL AUDITORS. SHE SAID THAT SHE WILL SEND THE REST OF THE INFORMATION NEXT WEEK
- 10/10/90 CALLED LIZ BIERBAUER - LEFT MESSAGE THAT WE STILL DID NOT HAVE THE BALANCE OF ITEMS SHE WAS TO SEND. ALSO CALLED DAVE STEPHENS TO KEEP HIM AWARE OF WHAT IS GOING ON
- 10/22/90 DAVE STEPHENS CALLED TO ASK STATUS. I TOLD HIM THAT THE ITEMS HIS SISTER SENT WAS INCOMPLETE AND THAT SHE SAID SHE WOULD SEND THE BALANCE & THAT WE HAVE NOT GOTTEN IT YET. HE SAID HE WAS GOING DOWN THERE THE 27TH AND WOULD SEE WHAT HE COULD DO ABOUT GETTING IT. HE ALSO ASKED THAT WE RETURN HIS BILLING SHEETS. WE MADE A COPY OF THEM AND RETURNED THE ORIGINALS

DELINQUENT ANNUAL REPORT
PAGE -3-

LESLIE GAS

10/25/90 DAVE STEPHENS CALLED AND SAID THAT HE WAS GOING TO FLORIDA AGAIN AND WOULD SEE WHAT HE COULD DO

11/12/90 I CALLED DAVE STEPHENS TO SEE WHAT HAPPENED. HE SAID THAT HE WAS UNABLE TO GET ANYTHING FROM HIS SISTER AND SAID THAT THERE IS NOTHING ELSE HE COULD DO ABOUT THIS. I TRIED TO GET IN TOUCH WITH LIZ BIERBAUER & LEFT A MESSAGE ON HER MACHINE. I DO NOT THINK THAT ANYTHING THAT RATES & TARIFFS CAN DO WILL RESULT IN GETTING THE 1988 OR 1989 ANNUAL REPORTS AND THAT THIS SHOULD BE TURNED OVER TO THE LEGAL DIVISION FOR THEM TO TAKE WHATEVER LEGAL STEPS ARE NECESSARY TO GET THIS INFORMATION.