

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELAM UTILITY COMPANY D/B/A ELAM UTILITY)
COMPANY, INC; AND WILMA B. ISON AND)
ROBERT D. ISON, INDIVIDUALLY)
_____) CASE NO. 2006-00080
)
FAILURE TO COMPLY WITH THE)
COMMISSION'S ORDER OF MARCH 8, 2004 IN)
CASE NO. 2003-00488)

O R D E R

Elam Utility Company, Inc. ("Elam"), a corporation organized under the laws of Kentucky,¹ owns and operates facilities in Morgan and Wolfe counties, Kentucky that are used for and in connection with the distribution, sale and furnishing of natural gas to the public for compensation. Accordingly, it is a utility subject to the Commission's regulation and jurisdiction. KRS 278.010(3)(b); KRS 278.040.

Wilma B. Ison is currently the president and sole shareholder of Elam.²

On or before January 1, 2004, Robert D. Ison has served as vice-president of Elam.

¹ On November 1, 2005, the Kentucky Secretary of State administratively dissolved Elam Utility Company for its failure to file an annual report. See <http://apps.sos.ky.gov/corpscans/92/0015492-09-99999-20051101-ADS-469735-PU.pdf> (last visited Mar. 29, 2006). KRS 271B.14-210(3) provides that, while a corporation that is administratively dissolved continues in its corporate existence, it may not conduct any business other than that necessary to wind up and liquidate its business.

² See Report of Elam Utility Company, Inc. to the Public Service Commission for the Calendar Year Ended December 31, 2004 at 1. See also Sixty (60) Notice and Annual Report to Kentucky Secretary of State (September 7, 2004) of Elam Utility Co., [http://apps.sos.ky.gov/business/obdb/\(vwX5iv55dh4m4lakyfjSlN45\)/OBDBDisplayImage.aspx?id=26814](http://apps.sos.ky.gov/business/obdb/(vwX5iv55dh4m4lakyfjSlN45)/OBDBDisplayImage.aspx?id=26814) (last visited Mar. 29, 2006).

In Case No. 2003-00488,³ the Commission ordered Elam, Wilma B. Ison, and Robert D. Ison to show cause why each should not be penalized pursuant to KRS 278.990(1) for their willful failure to comply with certain provisions of the Commission's Orders of October 24, 2003 and November 24, 2003 in Case No. 2003-00171.

To resolve the issues presented in Case No. 2003-00488, Elam, Wilma B. Ison, and Robert D. Ison on January 23, 2004, entered into an Agreement with Commission Staff that provided:

1. Elam, Wilma B. Ison, and Robert D. Ison had willfully violated or otherwise failed to comply with certain provisions of the Commission's Orders of October 24, 2003 and November 24, 2003 in Case No. 2003-00171.

2. For its violations, Elam would be assessed civil penalties that totaled \$7,500. These penalties would be suspended for a period of two years and then vacated if Elam performed certain acts.

3. For her violations, Wilma B. Ison would be assessed civil penalties that totaled \$7,500. Ms. Ison would immediately pay \$2,000 of these penalties, but the remaining penalty amounts would be suspended for a period of two years and then vacated if Elam performed certain acts.

4. For his violations, Robert D. Ison would be assessed civil penalties that totaled \$1,500. Mr. Ison would immediately pay \$500 of these penalties, but the remaining penalty amounts would be suspended for a period of two years and then vacated if Elam performed certain acts.

5. The acts that Elam must perform for continued suspension and ultimate revocation of the suspended penalties were:

a. File with the Commission its Gas Cost Adjustment ("GCA") on or before January 30, 2004, and quarterly thereafter;

b. File with the Commission its supplemental accrued interest filing by January 30, 2004;

³ Case No. 2003-00488, Elam Utility Company d/b/a Elam Utility Company, Inc. and Wilma B. Ison and Robert D. Ison, Individually and as Officers of the Utility – Alleged Violations of the Commission's Order (Ky.P.S.C. Mar. 8, 2004).

c. File with the Commission its general ledger and bank statements by the 30th of each month; and

d. Comply with all applicable provisions of KRS Chapter 278, the Commission's administrative regulations, and Commission Orders.

6. If at any time during the two years following Commission approval of the Settlement Agreement Elam failed to perform the required actions set forth in the Settlement Agreement, all unpaid penalties would become immediately due and payable.

On March 8, 2004, the Commission entered an Order in which it approved the terms of the Settlement Agreement between Commission Staff, Elam, Wilma B. Ison, and Robert D. Ison and incorporated the terms of the Settlement Agreement into its Order.

Neither Elam, Wilma B. Ison nor Robert D. Ison petitioned for rehearing or brought an action for review of the Commission's Order of March 8, 2004. All rights of appeal of that Order have been exhausted.

Commission records show that Elam has not filed a GCA with the Commission since June 2005 and not filed its general ledger or bank statements for the period from October 2005 through January 2006.

Based on the above, the Commission finds that *prima facie* evidence exists that Elam, Wilma B. Ison, and Robert D. Ison have failed to comply with the provisions of the Settlement Agreement of January 23, 2004 and the Commission's Order of March 8, 2004 and that penalties assessed in the Commission's Order of March 8, 2004 have become due and payable.

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

1. Elam shall appear before the Commission on May 24, 2006, at 9:30 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky, to present evidence on its alleged failure to timely file a GCA with the Commission and to file its general ledger or bank statements for the period from October 2005 through January 2006, and to show cause why the suspended penalty of \$7,500 assessed against it in Case No. 2003-00488 should not become immediately due and payable.⁴

2. Wilma B. Ison, individually and as an officer of Elam, shall appear before the Commission at the time and place listed above to present evidence on Elam's alleged failure to timely file a GCA with the Commission and to file its general ledger or bank statements for the period from October 2005 through January 2006, and to show cause why the suspended penalty of \$5,500 assessed against her in Case No. 2003-00488 should not become immediately due and payable.

3. Robert D. Ison shall appear before the Commission at the time and place listed above to present evidence on Elam's alleged failure to timely file a GCA with the Commission and to file its general ledger or bank statements for the period from October 2005 through January 2006, and to show cause why the suspended penalty of \$1,500 assessed against him in Case No. 2003-00488 should not become immediately due and payable.

⁴ Elam is advised that under Kentucky law employees or representatives of a corporation who are not licensed to practice law in Kentucky may not on behalf of the corporation make objections, examine or cross-examine witnesses at an administrative hearing. Turner v. Kentucky Bar Association, 980 S.W.2d 560 (Ky. 1998); Practice Before the Commission by Attorneys Non-Licensed in the Commonwealth of Kentucky, Administrative Case No. 249 (Ky.P.S.C. June 15, 1981).

4. Within 20 days of the date of this Order, Elam, Wilma B. Ison, and Robert D. Ison shall each file a written response to the allegations that Elam failed to timely file a GCA with the Commission and to file its general ledger or bank statements for the period from October 2005 through January 2006.

5. The record of Case No. 2003-00488 is incorporated by reference into the record of this proceeding.

6. Any party wishing an informal conference with Commission Staff shall file a motion for such conference within 20 days of the date of this Order.

7. Unless a party to this proceeding requests, no later than May 12, 2006, that a stenographic transcript be made of the formal hearing in this matter, the record of the formal hearing in this matter shall be made in videotape.

Done at Frankfort, Kentucky, this 11th day of April, 2006.

By the Commission

ATTEST:


Executive Director

Case No. 2006-00080