

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF ELAM UTILITY COMPANY, )	
INC.'S FINANCIAL CONDITION AND ITS ABILITY )	CASE NO.
TO PROVIDE ADEQUATE, EFFICIENT AND )	2010-00078
RELIABLE SERVICE )	

ORDER

Elam Utility Company, Inc. ("Elam"), a corporation organized under the laws of Kentucky, 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.<sup>1</sup>

The Commission is advised that a default judgment, which is appended hereto as Appendix A, has been entered against Elam in favor of Columbia Gas Transmission, LLC in the amount of \$313,646.35. Based on the Commission's statutory authority under KRS 278.250 to "investigate and examine the condition of any utility subject to its jurisdiction," the Commission finds that an investigation should be initiated to review the financial condition of Elam as well as its ability to provide adequate, efficient, and reliable utility service.

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<sup>1</sup> KRS 278.010(3)(b); KRS 278.040.

The Commission further finds that no person may engage in the practice of law in Kentucky without first obtaining a license to practice.<sup>2</sup> The practice of law is “any service rendered involving legal knowledge or legal advice, whether of representation, counsel or advocacy in or out of court, rendered in respect to the rights, duties, obligations, liabilities, or business relations of one requiring the services.”<sup>3</sup> It includes the representation of a corporation before a state administrative agency, as Kentucky’s highest court held in Kentucky State Bar Association v. Henry Vogt Machine Co., 416 S.W.2d 727 (Ky. 1967).

IT IS THEREFORE ORDERED that:

1. Pursuant to KRS 278.250, an investigation is hereby commenced into the financial condition of Elam and its present ability to provide adequate, efficient, and reliable utility service.

2. a. Within ten days of the date of this Order, Elam shall file an original and ten copies of its response to the request for information set forth in Appendix B, attached hereto and incorporated herein by reference. Responses to requests for information shall be appropriately bound, tabbed, and indexed and shall include the name of the witness responsible for responding to questions related to the information provided.

b. Each response shall be answered under oath or, for representatives of a public or private corporation or a partnership or association or governmental agency, be accompanied by a signed certification of the preparer or

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<sup>2</sup> Kentucky Supreme Court Rule 2.100.

<sup>3</sup> Kentucky Supreme Court Rule 3.020.

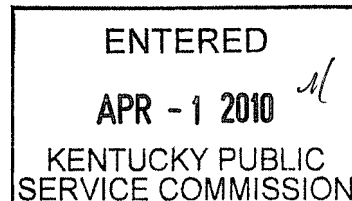
person supervising the preparation of the response on behalf of the entity that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry. Careful attention shall be given to copied material to ensure that it is legible.

c. Any party shall make timely amendment to any prior response if it obtains information which indicates that the response was incorrect when made or, though correct when made, is now incorrect in any material respect.

d. For any request to which Elam refuses to furnish all or part of the requested information, Elam shall provide a written explanation of the specific grounds for its failure to completely and precisely respond.

3. Elam shall be represented by counsel in this proceeding pursuant to Kentucky Supreme Court Rule 3.020.

By the Commission



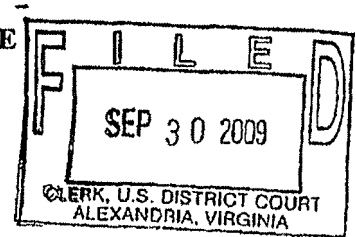
ATTEST:

  
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Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2010-00078 DATED APR - 1 2010

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division



COLUMBIA GAS TRANSMISSION, LLC, )  
Plaintiff, )  
v. )  
ELAM UTILITY COMPANY, INC., )  
Defendant. )

Civil Action No. 1:09cv655

**JUDGMENT ORDER**


Upon consideration of the September 10, 2009 Report and Recommendation of the United States Magistrate Judge designated to conduct a hearing in this matter, no objections having been filed, and upon an independent *de novo* review of the record, it is hereby **ORDERED** that the Court adopts as its own the findings of fact and recommendation of the United States Magistrate Judge, as set forth in the September 10, 2009 Report and Recommendation.

Accordingly, it is hereby **ORDERED** that judgment is **ENTERED** by default in favor of plaintiff and against defendant in the total amount of \$313,646.35.

The Clerk is **DIRECTED** to enter judgment pursuant to Rule 58, Fed. R. Civ. P. and to place this matter among the ended causes.

The Clerk is further **DIRECTED** to send a certified copy of this Judgment Order to defendant and to all counsel of record.

Alexandria, VA  
September 30, 2009

  
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T. S. Ellis, III  
United States District Judge

## APPENDIX B

### APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2010-00078 DATED APR - 1 2010

1. State the amount that is currently due on the September 30, 2009 Columbia Gas Transmission, LLC ("TCO") judgment against Elam.

2. Explain whether Elam has incurred additional indebtedness to TCO since the September 30, 2009 judgment was rendered. If so, state the amount of Elam's current indebtedness to TCO and Elam's current imbalance on the TCO pipeline stated in dekatherms.

3. Provide all invoices and imbalance notices Elam has received from TCO for the last five calendar years and 2010, to date.

4. Provide copies of any and all Settlement Agreements Elam has entered into with TCO over the past five calendar years and 2010, to date.

5. Provide the name of all gas marketers or suppliers with whom Elam has worked to arrange gas supply on the TCO pipeline in the last five calendar years and 2010, to date. Also provide the names of each marketer or supplier with whom Elam is currently working to secure gas for placement on the TCO line.

6. Does Elam designate or nominate the amount of gas its gas marketer or supplier is to place on the TCO line on behalf of Elam? If the response is yes, explain the process of designating or nominating to the supplier and provide the date of Elam's last designation or nomination. If the response is no, explain how the marketer or supplier knows how much gas to secure and place on the TCO line for Elam's use and imbalance repayment.

7. Provide the invoices from all gas marketers and suppliers with whom Elam has worked in the last five calendar years and in 2010, to date.

8. Does Elam have outstanding indebtedness to any of its gas marketers or suppliers, present or past? If yes, state the amount of the indebtedness as of the date of the response to each current gas marketer or supplier, as well as the amount still owed to past suppliers.

9. Identify gas marketers or suppliers, if any, who discontinued their working arrangement with Elam at a time when Elam was indebted to the marketer or supplier and who forgave or wrote off the indebtedness so that it is no longer an outstanding debt of Elam. Provide the amounts that were forgiven or written off.

10. Explain whether Elam's distribution system is interconnected such that one source of supply would be sufficient to provide gas to the entire distribution system.

11. Has TCO provided notice of intent to terminate its service to Elam? If yes, state the following:

- a. When the notice was provided to Elam
- b. How notice was given.
- c. The effective date of the termination.

12. In the event TCO terminates its transmission arrangement with Elam, explain Elam's plan to secure gas for its customers.

13. In Case No. 2009-00257,<sup>1</sup> the Commission found that Elam had over-recovered funds through its Purchased Gas Adjustment Clause in the amount of

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<sup>1</sup> Case No. 2009-00257, Purchased Gas Adjustment Filing of Elam Utility (Ky. PSC Sept. 14, 2009).

\$249,063. Explain whether Elam maintained the over-recovered funds in its accounts or expended the funds. If Elam expended the funds, describe the expenditures. If Elam maintained the over-recovered funds in its accounts, provide the current balance of the accounts and the account type.

14. In previous cases before this Commission,<sup>2</sup> the Commission was advised that Elam was indebted to the Kentucky Department of Local Government<sup>3</sup> (“DLG”) in the approximate amount of \$775,000. State whether Elam is currently indebted to DLG and the amount of the current indebtedness.

15. If Elam is not indebted to DLG, explain the following:

- a. When payment was made to pay off the indebtedness.
- b. The amount of the payoff.
- c. The source of the funds used to pay off the DLG indebtedness.

16. Provide copies of Elam’s state and federal income tax returns for each of the last five fiscal years.

17. Provide the names of all persons employed by Elam for the last five calendar years and 2010, to date. Provide each individual’s job description(s) and total compensation for each of the five calendar years and 2010, to date.

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<sup>2</sup> See Case No. 2005-348, The Application of Kentucky Frontier Gas, LLC, Belfry gas, Inc., Floyd County Gas (East Kentucky Utilities, Inc.), Elam Utility Company, Inc., and Mike Little Gas Company for Approval of Transfer and Acquisition of Assets and Stock and Issuance of a Certificate of Public Convenience and Necessity, If Necessary. (Ky. PSC Oct. 28, 2005) and Case No. 2008-384, The Application of Kentucky Frontier Gas, LLC for Approval of Financing and Transfer of Control (Ky. PSC Nov. 25, 2008)

<sup>3</sup> The Kentucky Department of Local Government was previously known as the Governor’s Office of Local Development. Its name was changed on June 16, 2008. See Executive Order 2008-509 (June 6, 2008).



18. Provide the names of all persons employed by Elam for outside services for the last five calendar years and 2010, to date. Provide a description of the services performed by each person and the total compensation for each person for each of the last five calendar years and 2010, to date.

19. Provide the name(s) of each stockholder in Elam, the shares of stock each owns, and the date that each stockholder acquired the stock.

20. Provide the name of the person served with the papers regarding the initial TCO complaint and the judgment. Confirm the dates of service provided by TCO in the court documents.

21. Explain why Elam did not notify the Commission of the TCO judgment.

Wilma Ison  
President  
Elam Utility Company, Inc.  
459 Main Street  
West Liberty, KY 41472