

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELAM UTILITY COMPANY, INC.)
AND WILMA B. ISON, INDIVIDUALLY)
AND AS AN OFFICER OF)
ELAM UTILITY COMPANY, INC.)

CASE NO. 2010-00142

_____)
FOR ALLEGED VIOLATION OF)
A COMMISSION ORDER AND)
FAILURE TO TIMELY FILE ITS)
TARIFFED GAS COST ADJUSTMENT)

O R D E R

On April 16, 2010, the Commission ordered Elam Utility Company d/b/a Elam Utility Company, Inc. ("Elam") and its president, Wilma B. Ison-Sorrell,¹ to show cause in this matter why they should not be penalized for failing to file Elam's Gas Cost Adjustment ("GCA")² as required by its tariff and be required to pay the balance of a suspended civil penalty that was assessed in Case No. 2009-00362.³ We further ordered both Elam and Ms. Ison-Sorrell to file written responses to the allegations contained in that Order. After failing to receive a response from either party, the

¹ The Commission has previously referred to Ms. Ison-Sorrell as Wilma B. Ison; however, during the pendency of this investigation, she married Dale Sorrell.

² Elam's tariff refers to this as a gas cost recovery rate and uses the abbreviation "GCR."

³ Case No. 2009-00362, *Elam Utility Company, Inc., and Wilma B. Ison, Individually and as an Officer of Elam Utility Company, Inc.: Violations of Filed Tariff Gas Cost Adjustment Clause* (Ky. PSC Dec. 16, 2009).

Commission expanded the scope of the show cause investigation to include why they should not be penalized for failing to comply with the Commission's April 16, 2010 Order. By this Order, the Commission orders Ms. Ison-Sorrell to pay civil penalties of \$5,000. In addition, we vacate the suspension of the \$7,500 civil penalty against Ms. Ison-Sorrell.

Elam, a Kentucky corporation, owned and operated facilities in Morgan and Wolfe counties that are used for and in connection with the distribution, sale, and furnishing of natural gas to approximately 460 customers.⁴ Accordingly, it is a utility subject to the Commission's jurisdiction.⁵ Ms. Ison-Sorrell is Elam's President and sole officer.

On July 16, 2010, Elam entered into an asset purchase agreement with the city of West Liberty whereby Elam would transfer all of its utility assets to West Liberty in consideration of West Liberty's assumption of Elam's outstanding indebtedness to Columbia Gulf Transmission Company and Columbia Gas Transmission, LLC in the approximate amount of \$700,000; outstanding indebtedness to Commercial Bank in West Liberty in the approximate amount of \$10,000; and a mortgage debt of approximately \$180,000 in favor of Community Trust Bank. The Commission approved

⁴ Annual Report of Elam Utility Company to the Kentucky Public Service Commission for the Calendar Year Ending December 31, 2008 at 1, 11.

⁵ KRS 278.010(3)(b); KRS 278.040.

West Liberty's application for approval to acquire the assets of Elam by an Order dated August 13, 2010 in Case No. 2010-00302.⁶

Since October 1, 2000, Elam's tariff has contained a GCA clause which required that it file a GCA with the Commission for each calendar quarter.⁷ A GCA clause is invaluable to gas utilities and their customers because it permits utilities to collect from customers the cost of gas as a commodity, no more and no less, and rates are adjusted on a quarterly basis as opposed to waiting for a general rate case. Elam's GCA clause required each application to be filed with the Commission 30 days prior to the first day of each calendar quarter.

The Commission has previously investigated Elam's failure to make timely GCA filings. In Case No. 2009-00362,⁸ the Commission found that Elam failed to file its GCA for four consecutive quarters from July 2008 to June 2009 and to timely file its GCA for the third quarter of 2009. The Commission resolved that case by approving a settlement agreement among Elam, Ms. Ison-Sorrell, and Commission Staff. Pursuant to the terms of the settlement agreement, Ms. Ison-Sorrell, individually, agreed to pay \$10,000, of which \$2,500 was to be paid within 60 days and the balance of \$7,500 was to be suspended for 12 months. The amount that was suspended was to be forgiven if

⁶ Case No. 2010-00302, *Application of the City of West Liberty, Kentucky for Approval to Acquire the Utility Assets of Elam Utility Company, Inc. and for Approval of a Management Agreement* (Ky. PSC Aug. 13, 2010).

⁷ Tariff of Elam Utility Company, First Revised Sheet No. 4 (effective Oct. 1, 2000).

⁸ Case No. 2009-00362, *Elam Utility Company*, Order dated Dec. 16, 2009.

there were no further violations. Elam agreed to pay a civil penalty of \$100. In addition, the settlement agreement stated:

Elam and Wilma B. Ison both agree to timely file Elam's GCA as set out in its tariff. However, if Elam experiences any difficulties in preparing its GCA, it will contact Commission Staff for assistance and direction prior to the due date of the GCA.⁹

Within six months after the Commission entered its final Order in Case No. 2009-00362, Elam failed to timely file its GCA. On March 16, 2010, Elam filed a proposed GCA for the second quarter of 2010.¹⁰ Because Elam's GCA requires Elam to file its GCA with the Commission 30 days prior to the first day of the calendar quarter, Elam should have filed its GCA for the second quarter of 2010 no later than March 2, 2010. Elam's filing was 14 days late. Elam did not contact Commission Staff for assistance and direction prior to the GCA's required filing date.

In response to Elam's untimely filing, the Commission initiated this case on April 16, 2010 and ordered Elam and Ms. Ison-Sorrell to show cause why they should not be penalized for failing to file Elam's GCA as required by its tariff and pursuant to the settlement agreement and Order in Case No. 2009-00362. Ms. Ison-Sorrell was further ordered to show cause why the balance of the civil penalty assessed in Case No. 2009-00362 should not be vacated and the remaining penalty become immediately due and payable. The Commission further ordered Elam and Ms. Ison-Sorrell to each file a written response to the allegations set forth therein. The Commission served a

⁹ *Id.* at Appendix at 3.

¹⁰ Case No. 2010-00117, *Purchased Gas Adjustment Filing of Elam Utility Company*, filed Mar. 16, 2010.

copy of that Order by certified mail to Elam's office in West Liberty, Kentucky. Kim Bolin, an Elam employee, accepted delivery.¹¹

The Commission did not receive a written response to its April 16, 2010 Order from either party. Accordingly, on August 3, 2010, the Commission ordered that the scope of the present case be expanded to include why Elam and Ms. Ison-Sorrell should not be penalized for failing to comply with the Commission's Order. Ms. Ison-Sorrell accepted delivery of this Order on August 10, 2010.

The Commission conducted a formal hearing in this matter on August 17, 2010 which Ms. Ison-Sorell and Elam attended, represented by counsel. Neither Elam nor Ms. Ison-Sorrell have presented any credible evidence to show cause why penalties for the violations as listed herein should not be assessed.

Having reviewed the evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. The Commission's Order of December 16, 2009 in Case No. 2009-00362 is an Order from which all rights of appeal have been exhausted.
2. The Commission's Order of December 16, 2009 in Case No. 2009-00362 adopted and approved the conditions set forth in the settlement agreement of November 9, 2009 among Commission Staff, Elam, and Ms. Ison-Sorrell.
3. The settlement agreement of November 9, 2009 among Commission Staff, Elam, and Ms. Ison-Sorrell states: "Elam and Wilma B. Ison both agree to timely file Elam's GCA as set out in its tariff."

¹¹ See VR: 8/17/10; 10:25:25.

4. Elam's tariff states that Elam "shall file a gas cost recovery rate (GCR) with the Commission a[t] least 30 days prior to the first day of each calendar quarter."

5. For the second calendar quarter of 2010, beginning April 1, 2010, Elam filed its GCA on March 16, 2010.

6. Elam's failure to file its GCA for the second quarter of 2010 at least 30 days prior to the start of the quarter is a willful violation of the Commission's Order of December 16, 2009 in Case No. 2009-00362.

7. Ms. Ison-Sorrell is the principal and only officer of Elam and its only shareholder and, as such, has principal responsibility for ensuring compliance with regulatory requirements. Ms. Ison-Sorrell's failure to file Elam's GCA for the second quarter of 2010 at least 30 days prior to the start of the quarter is a willful violation of the Commission's Order of December 16, 2009 in Case No. 2009-00362.

8. Neither Elam nor Ms. Ison-Sorrell has provided any credible evidence rebutting the Commission's findings of prima facie evidence that Elam and Ms. Ison-Sorrell willfully violated the Commission's Order of December 16, 2009 in Case No. 2009-00362.

9. On December 16, 2009, the Commission assessed Ms. Ison-Sorrell a civil penalty of \$10,000 in Case No. 2009-00362, of which \$7,500 was suspended for 12 months, at which time the balance would be forgiven if no further violations had occurred.

10. Ms. Ison-Sorrell's failure to file Elam's GCA for the second quarter of 2010 at least 30 days prior to the start of the quarter occurred less than 12 months after the Commission's Order of December 16, 2009 in Case No. 2009-00362.

11. Ms. Ison-Sorrell's failure to file Elam's GCA for the second quarter of 2010 at least 30 days prior to the start of the quarter has triggered the revocation of the suspension of the \$7,500 penalty.

12. Ms. Ison-Sorrell has not provided any evidence as to why the suspension of the penalty balance from the Commission's Order of December 16, 2009 in Case No. 2009-00362 of \$7,500 should not be revoked.

13. The suspension of Ms. Ison-Sorrell's penalty balance from the Commission's Order of December 16, 2009 in Case No. 2009-00362 of \$7,500 should be revoked and the penalty balance due and payable.

14. The Commission's Order of April 16, 2010 required Elam and Ms. Ison-Sorrell to file written responses to the allegations set forth therein.

15. The Commission served a copy of its Order of April 16, 2010 in this case by mailing a copy by United States mail, postage prepaid, to Ms. Ison-Sorrell and Elam at the utility's address pursuant to KRS 278.380.

16. Neither Elam nor Ms. Ison-Sorrell filed with the Commission a written response to the allegations set forth therein.

17. By their failure to file a written response to the Commission's Order of April 16, 2010, Elam and Ms. Ison-Sorrell have willfully violated an Order of the Commission.

18. Ms. Ison-Sorrell aided and abetted Elam's violations of the provision of KRS Chapter 278 and the Commission's Order of April 16, 2010.

19. In light of her repetitive willful violations, Ms. Ison-Sorrell should be penalized so as to discourage similar future conduct.

20. The effect of the approval of the transfer of Elam's assets by the August 13, 2010 Order in Case No. 2010-00302 renders Elam without any plant or means of natural gas distribution. While the corporation still exists, with the transfer of all of its assets, Elam can no longer function as a viable utility.¹² Elam should be dismissed as a party.

21. Ms. Ison-Sorrell, personally and as an officer of Elam, should be assessed a \$2,500 penalty for her failure to file Elam's GCA for the second quarter of 2010 at least 30 days prior to the start of the quarter as ordered by the Commission's Order of December 16, 2009 in Case No. 2009-00362, a willful violation pursuant to KRS 278.990(1).

22. Ms. Ison-Sorrell should be assessed a civil penalty of \$2,500 for her willful failure to file a response to the Commission's Order of April 16, 2010.

The Commission, having examined the record and having heard evidence at a formal hearing, and being sufficiently advised, HEREBY ORDERS that:

1. The suspension of the balance of the civil penalty assessed in Case No. 2009-00362 against Ms. Ison-Sorrell, personally and as an officer of Elam, is revoked. The balance of the civil penalty is due and payable within 30 days of the date of this Order and shall be made by cashier's check made payable to "Kentucky State Treasurer" and delivered to the Office of the General Counsel, Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602.

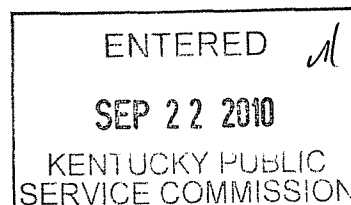
¹² KRS 278.010 (3)(b).

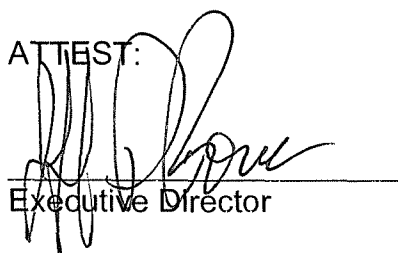
2. Ms. Ison-Sorrell is assessed a civil penalty of \$2,500 for her willful failure to timely file Elam's 2010 second quarter GCA. The civil penalty shall be paid within 30 days of the date of this Order by cashier's check made payable to "Kentucky State Treasurer" and delivered to the Office of the General Counsel, Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602.

3. Ms. Ison-Sorrell is assessed a civil penalty of \$2,500 for her willful failure to file a response to the Commission's Order of April 16, 2010. The civil penalty shall be paid within 30 days of the date of this Order. Payment is to be made by cashier's check payable to "Kentucky State Treasurer" and mailed or delivered to the Office of the General Counsel, Public Service Commission, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602.

4. Elam is dismissed as a party to this case.

By the Commission



ATTEST:

Executive Director

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