

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF ELAM UTILITY COMPANY,)	
INC., MORGAN COUNTY, KENTUCKY, FOR)	
AUTHORIZATION TO BORROW \$180,000)	
FROM THE ECONOMIC DEVELOPMENT)	CASE NO. 2000-339
ADMINSTRATION THROUGH THE DEPARTMENT)	
OF LOCAL GOVERNMENT)	

O R D E R

On June 30, 2000, Elam Utility Company, Inc. ("Elam") submitted its application seeking Commission approval to borrow \$180,000 from the Economic Development Administration through the Kentucky Department of Local Government ("DLG"). Elam will execute notes in conjunction with the borrowing from DLG, which will be for a term of 15 years and will bear a fixed interest rate to be determined by DLG at the time of loan closing based on the federal prime rate less four hundred basis points. The proceeds from the loan will be used to pay off outstanding debts to Gasco, Inc. ("Gasco") and to Commercial Bank of West Liberty, Kentucky ("Commercial Bank"). None of the proceeds of the DLG loan will be used by Elam to acquire property.

Elam requested a waiver of the requirement contained in 807 KAR 5:001, Section 6, that an applicant's financial exhibit be for a period ending not more than 90 days prior to the filing of its application. By Order dated July 14, 2000, the Commission granted Elam's request for waiver and the case was considered filed.

Elam has filed information indicating that since March 1998 it has failed to make payments to Gasco for its purchases of natural gas and that it has used the proceeds of the loans from Commercial Bank to pay operating expenses. Elam has shown that

during this time it was making monthly payments to Mr. and Mrs. B. C. Phillips on the Phillipses' loan to Doug and Wilma Ison, the current owners of Elam. The purpose of that loan was to finance the Isons' purchase of Elam's stock from the Phillipses. This has resulted in Elam paying approximately \$42,200 in annual principal and interest payments on the Isons' loan from the Phillipses. These are amounts that could have been used to pay Elam's operating expenses. Elam's information also shows that at least once during the past two years it was on the verge of having its wholesale gas supply cut off by Gasco for non-payment.

It is obvious that Elam is in a financial dilemma created, in part, by the impact of the series of mild winters that Kentucky has experienced in recent years. Obviously the weather is a factor not within Elam's control. However, other factors within Elam's control have also contributed to its current financial problems.

First and foremost, contrary to the Commission's Order in Case No. 92-488¹ approving the transfer of Elam's stock from the Phillipses to the Isons, the loan from the Phillipses to the Isons has been carried on the books of the utility. Secondly, Elam recognized it was facing financial difficulties over 18 months ago when, in January 1999, it began charging increased rates to its customers without first seeking Commission approval. After resolution of that incident, Elam was advised by Commission Staff that it should file for an increase in rates and that the Staff would be available to assist Elam in the preparation of a rate application. Although Elam has frequently advised Staff that it will make such a filing, it has yet to file a rate application with the Commission.

¹ Case No. 92-488, Application for Approval of the Transfer and Sale of Elam Utility Company, Order dated February 24, 1993.

Having recounted the circumstances that produced the situation Elam has brought before the Commission, we must now determine how to remedy that situation. Ordinarily, Elam's request would be denied on the grounds that long-term financing should not be approved for the purpose of paying prior period operating expenses. Ratepayers should not be required to pay, on a long-term basis, for short-term operating expenses. However, rejecting the proposed financing would potentially inure to the long-term detriment of both the utility and its ratepayers by compromising both Elam's financial viability and its ability to provide continued service to its customers. Given Elam's current situation with its creditors and recognizing its relatively low base rates for a gas distribution utility of its size, the Commission is persuaded that approving the proposed financing will be in the best long-term interests of both Elam and its ratepayers. Elam will remain viable as a going concern and Elam's ratepayers will continue to receive gas service. In short, this decision is based on the unique circumstances present in this case.

This approval is, moreover, conditioned as follows: Elam may not use any of the proceeds of this DLG financing to make any payments on the Isons' loan from the Phillipses. In addition, as Elam has indicated to Commission Staff that it expects to file a general rate application in the near future, such application should be filed within three weeks from the date of this Order or immediately upon receiving DLG's formal approval of the \$180,000 loan that was the subject of this application, whichever is later. Next, Elam has also communicated to Commission Staff that it will soon be filing with the Commission a new Gas Cost Adjustment ("GCA") tariff and shortly thereafter, its first GCA filing since 1993. Elam should file its new GCA tariff within 10 days of the date of

this Order and make its GCA filing within one week of notification by the Commission that its tariff has been accepted.

FINDINGS AND ORDERS

The Commission, having considered the evidence of record and being otherwise sufficiently advised, finds as follows:

1. The proposed financing from DLG, in the amount of \$180,000, is for lawful objects within the corporate purposes of Elam, is necessary and appropriate for, and consistent with, the proper performance by the utility of its service to the public and will not impair its ability to perform that service, and is reasonable, necessary, and appropriate for such purposes.

2. The Commission has generally held that it is not appropriate to issue long-term financing to fund operating expenses, however, given the existing circumstances, in this instance, the Commission is permitting such financing based on our conclusion that the utility cannot survive as a going concern without this capital funding and that such approval is in the best long-term interests of both the utility and its ratepayers.

3. The proceeds of the financing approved herein should be used only for the purposes stated in Elam's application. None of the proceeds should be used to make payment on the loan carried on Elam's books for the financing of the purchase of Elam by its current owners, Doug and Wilma Ison, when the Isons acquired the utility from Mr. and Mrs. B. C. Phillips.

4. Elam should file its application for a general rate adjustment with the Commission, submit its GCA tariff for review, and make the requisite GCA filing with the Commission as set out in the body of this Order.

IT IS THEREFORE ORDERED that:


1. Elam is authorized to borrow \$180,000 from DLG subject to the provisions and terms contained within its application.
2. The proceeds from the transaction authorized herein shall be used only for the lawful purposes set out in the application.
3. Elam shall not use the proceeds from the transaction authorized herein to make payment on the loan from Mr. and Mrs. B .C. Phillips to Doug and Wilma Ison to fund the Isons' purchase of the utility.
4. Elam shall file its general rate application, its GCA tariff, and its GCA rate application with the Commission in accordance with the timetables set forth in this Order as a condition for obtaining the Commission's approval of the requested financing.

Nothing contained herein shall be deemed a warranty or finding of value of securities or financing authorized herein on the part of the Commonwealth of Kentucky or any agency thereof.

Done at Frankfort, Kentucky, this 22nd day of August, 2000.

By the Commission

ATTEST:



Executive Director