

*Kim Ison Gevedon, P.S.C.*

ATTORNEY AT LAW

579 MAIN STREET, SUITE 2

P.O. BOX 216

WEST LIBERTY, KENTUCKY 41472

(606) 743-7811

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PUBLIC SERVICE  
COMMISSION



**FAX COVER SHEET**

**FAX NUMBER: 606-743-1332 (Office)**

**606-743-2203 (Home)**

DATE: 11-19-08

NAME/FAX SENT TO: Stephanie Stumbo

COMPANY/BUSINESS: Public Service Commission

ADDRESS: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

FAX NUMBER: 502-564-~~3910~~3460

NUMBER OF PAGES: 19

This facsimile is sent from the following:

NAME: Hon. Kim Ison Gevedon, Attorney at Law *KIG*

ADDRESS: 579 Main Street, Suite 2, P.O. Box 216, West Liberty, KY 41472

MESSAGE: Original to follow in U.S. express mail. KIG

The information contained in this transmission is privileged, confidential, and intended only for the use of the individual or entity named above. If you have received this communication in error, please notify us by phone immediately and return the original message to us at the listed address via the U.S. postal service. We will reimburse you for your telephone call to us or any postage incurred by you in returning this facsimile to us. Thank you.

*Kim Ison Geredon, P.S.C.*

ATTORNEY AT LAW

579 MAIN STREET, SUITE 2

P.O. BOX 216

WEST LIBERTY, KENTUCKY 41472

(606) 743-7811



PUBLIC SERVICE COMMISSION  
P.O. BOX 615  
FRANKFORT, KY 40602  
ATTN: MS. STEPHANIE STUMBO

RE: 2008-00394 AND 2005-00348

MS. STUMBO:

On June 23, 2005 Elam signed an agreement (see attached) with Frontier Gas that would allow Frontier to examine Elam Utility Company and their records, for a proposed purchase to expire November 2005. This did not take affect. At that time Frontier was proposing a Stock purchase.

On the July 10, 2008, Frontier proposed a new agreement, hereinafter referred to as Draft 2, which is an Asset Purchase Agreement. In this agreement several offers were different than in the original filing. We do not agree nor did we sign Draft 2.

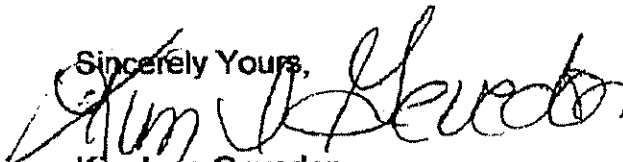
On October 16, 2008, an Order to intervene was approved by the commission. Again, I would to express my opposition at time to sale or liquidation of assets and liabilities with the letter to all parties involved in this case.

It has been five (5) years since the original agreement. Neither Elam nor I feel this sale is in the best interest of the customers of West Liberty and Daysboro, or for the company to be run by someone in Colorado. Mr. Rich, who is the manager of East Kentucky Utilities and Mike Little spends less that 2 weeks at the company each month. The two employees have only one truck and go together to service calls leaving the office unattended except through an answering agency. Frontier feels like this type of service is acceptable. But, if an emergency arose, there is no way those two men could handle the situation safely. Furthermore, there are too many miles between Floyd County companies and Morgan County/Wolfe County customers that so few employees can accommodate their needs successfully. In addition, the original agreement is contingent on IGS or Frontier acquiring an aggregated minimum of 3000, which is not being done.

Ms. Ison has spent thirty (30) years at ELAM UTILITY COMPANY making the company run as smoothly as it does. We believe that our ability to care for the need of our customers is a much better management than it would be if run by Frontier. A local company has the customers' best interest at heart. We're local, we care, and we need

to keep Elam in West Liberty. Our banks need Elam, our stores need Elam, and our customers need Elam.

Elam asks the commission to remove them from the purchase/sale proceeding and to ask GOLD to allow Elam to pay their fair share of the debt. Elam does not agree to an purchase, whether asset or stock, or the purchase of Elam's debt of any kind to Frontier Gas or IGS.

Sincerely Yours,  
  
Kim Ison Gevedon  
Attorney at Law

Copy by express mail to:

**INDUSTRIAL GAS SERVICES**  
Bob Oxford  
4891 Vance Street, Suite 200  
Wheat Ridge, CO 80033

Larry Rich  
104 Sand Castle Drive  
Emerald Isle, NC 28594

Mr. Bud Rifle  
B & H Gas Company, Inc.  
P.O. Box 99  
Stanville, KY 41659

Mike Little Gas Company  
22946 Ky Rt. 122  
Melvin, KY 41650

John Hughes, Esq.  
124 West Todd Street  
Frankfort, KY 40601

Governor's Office for Local Government  
1024 Capital Center Drive  
Frankfort, KY 40601

Wheelwright Utilities  
P.O. Box 353  
Wheelwright, KYU 41169

Johnson County Gas Company  
U.S. 23  
Harold, KY 41635

Mrs. Ison  
Page 2

year, plus insurance and retirement benefits that are currently being paid by Company. We anticipate you will be based in West Liberty and work in sales and customer service throughout the consolidated gas utility system in Eastern Kentucky. The intention is not to sell this company, but if the company should be sold, a compensation of \$55,000 for each year left on the original term of the contract shall be paid to Mrs. Ison.

As an incentive to increase sales in the Elam system, the 5 annual payments on the purchase price shall be increased by a formula that reflects an increase in the weather-adjusted volume of gas sold annually in excess of a base volume and other factors as more fully described in Exhibit A. This incentive will terminate at the end of 5 years.

IGS intends to continue the employment of the two Company employees after the closing of the sale of the Company with substantially the same compensation and benefit package as now in effect.

Upon execution of this Agreement, IGS will schedule a time with the Company to review financial statements, customer records, DOT reports, KPSC reports, tariffs, notices, rate cases and other communications, gathering system and distribution system maps, maintenance reports, cathodic protection surveys and reports, rights of way permits and agreements, franchise agreements, gas sales and purchase agreements, third party contracts, employee information, payroll records, federal and state income tax reports, schedule of assets (vehicles, construction equipment, buildings, storage yards; pipe, meters, valves and fittings; office equipment and furnishings), plus any other items relevant to the acquisition.

During the process of due diligence IGS or its agents will notify the Company of any concerns that may adversely affect the closing of the sale of the Company, or result in the adjustment of the purchase price. IGS and the Company agree to work diligently to resolve these issues quickly.

IGS is concurrently making offers to other operators of small gas distribution systems in Eastern Kentucky. This offer is contingent on IGS acquiring an aggregated minimum of 3000 customers. IGS will inform Company of the status of this goal.

Closing on the purchase will be made within six months of date of this Agreement, or two months after approval by Kentucky Public Service Commission (KPSC) and Kentucky Governor's Office of Local Development (GOLD), whichever last occurs.

Mrs. Ison  
April 29, 2005  
Page 3

If you are in agreement with the terms of this Agreement for Sale, please so indicate by signing in the space provided below.

Sincerely,

INDUSTRIAL GAS SERVICES, INC.

Robert J. Oxford  
Chairman, CEO

Accepted this \_\_\_\_ day of \_\_\_\_\_, 2005

ELAM UTILITY COMPANY, INC.

By: \_\_\_\_\_

**DRAFT 2****ASSET PURCHASE AGREEMENT**

THIS AGREEMENT is made as of this 10th, day of July, 2008, by and between Kentucky Frontier Gas, LLC., ("Purchaser") and Elam Utility Company, Inc., ("Seller").

This Agreement sets forth the terms and conditions pursuant to which Purchaser will purchase from Seller and Seller will sell and convey to Purchaser, the Elam natural gas system (the "System") owned by Seller.

In consideration of the representations, warranties, covenants and agreements contained herein, intending to be legally bound, the parties agree as follows:

**ARTICLE I. TRANSFER OF ASSETS.**

1.01. Assets to be Sold. Subject to the terms and conditions of this Agreement, Seller will at the closing provided for in Section 1.03 (the "Closing") sell, convey, assign, transfer and deliver to Purchaser all of the assets of the System (the "Assets") free and clear of all liens, claims and encumbrances wherever located and whether carried or reflected on the books and records of Seller, which relate to or arise from Seller's business.

"Assets" includes, without limitation, the following:

(a) All machinery, equipment, tools, natural gas transmission, distribution, service and gathering pipelines and appurtenant facilities, and other fixed assets owned or leased by SELLER, (the "Fixed Assets") as may be further depicted on the Facilities Drawings attached hereto as Exhibit A;

(b) All inventory of SELLER held in the ordinary course of business by SELLER (the "Inventory");

(c) All of SELLER's right, title and interest in the commercial, industrial and residential contract and non-contract customer accounts, customer account contracts, and other rights to provide services to the customers of SELLER (the "Customer Accounts");

(d) All of SELLER's permits, licenses, governmental approvals, contracts, corporate names, drawings, design and manufacturing documentation and other proprietary rights and documents (the "Proprietary Rights");

(e) All operating data, books, files, documents and records of SELLER, including, without limitation, customer lists, financial, accounting and credit records, marketing information, budgets and other similar documents and records (the "Records");

(f) The current assets listed and described on the books and records of SELLER as of the Closing date; and

(g) All accounts receivable listed and described on the books and records of SELLER as of the Closing date.

(h) All real property (the "Real Property") and all leases, licenses, easements, rights-of-ways, encroachment permits and other agreements granting SELLER the right and authority to establish, operate and maintain its gas transmission facilities in their present location

and the easements, privileges and appurtenances in Morgan and surrounding Counties, Kentucky. Included with the Real Property shall be all buildings, structures, erections, improvements, appurtenances and fixtures situated on or forming a part of the real property.

(i) Assets specifically excludes any and all debts except that of the Kentucky Governor's Office for Local Development (GOLD) in the amount of Seven Hundred Seventy Four Thousand Seven Hundred and No/100 Dollars (\$774,700), plus accrued interest; [REDACTED] and commitments, liabilities, or other obligations of Seller whether known or unknown, accrued, contingent or otherwise.

1.02. Consideration. Subject to the terms and conditions of this Agreement in consideration of the transfer, conveyance and assignment of the stock, Purchaser will deliver to Seller at the Closing the amount of One Hundred Seventy Five Thousand Dollars (\$175,000) (the "Purchase Price"), [REDACTED]

The Purchase Price shall be paid as follows:

(a) To the extent that after Closing, the Seller shall receive any payments from any third parties relating to the operations of the Company and attributable to the period after the Closing, the Seller shall promptly make delivery thereof to the Purchaser who was entitled to such payment from such third party.

1.03. Closing. The closing of the transaction contemplated in this Agreement shall take place at the offices of Seller, or at such other place as the parties shall agree, on or before September 15, 2008. The date on which the Closing occurs is referred to as the Closing Date. Purchaser shall be entitled to possession of the Assets and to begin operating the System on the Closing Date.

1.04. Deliveries by Seller. At the Closing, Seller will deliver the following to Purchaser:

(a) The opinion of counsel referred to in Section 8.07; and  
(b) Such other documents as may be reasonably necessary to effect the transactions contemplated.

1.05. Deliveries by Purchaser. At the Closing, Purchaser will deliver the following to Seller:

(a) Cashier or Certified check as provided in Section 1.02(a) .  
(b) The opinion of counsel referred to in Section 7.05;  
(c) Such other documents as may be necessary to effect the transactions contemplated.

## ARTICLE II. RELATED MATTERS.

2.01. Seller's Personal Items. (a) On the Closing Date, Seller shall remove from the Company's premises the Seller's personal items which are described in Exhibit B.

### ARTICLE III. REPRESENTATIONS AND WARRANTIES OF SELLER.

Seller represents, covenants and warrants to Purchaser the following:

3.01. Organization. Seller represents that it is a Kentucky utility in good standing under the laws of the Commonwealth of Kentucky and is duly qualified and authorized to do business as a utility in good standing in the Commonwealth of Kentucky.

3.02. Authority. Seller represents that Seller has full power and authority to carry on its business in connection with its natural gas distribution system (the "System") as it is now being conducted and has good and marketable title to the Assets, Easements and the Real Property.

3.03. Consents and Approvals; No Violations. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated will violate or conflict with, or constitute a default (or constitute an event which, with notice or lapse of time or both, would constitute a default) under, or give rise to any right of termination, cancellation or acceleration under, any note, bond, mortgage, indenture, license, agreement, lease or other instrument or obligation to which Seller is a party or by which it may be bound, or violate any statute of law of any judgment, decree, order, regulation or rule of any court or governmental authority applicable to Seller.

3.04. Lease; Contracts. Seller has delivered to Purchaser copies of all leases, supplements, amendments and modifications in effect at time of closing. The leases have not been further modified or amended or assigned, whether as collateral security or otherwise, and are in full force and effect; there are no existing defaults by Seller under the leases; no event has occurred or does any circumstance exist which (whether with or without notice, lapse of time or the happening or occurrence of any other event) would constitute any default.

3.05. Litigation. At the date of execution of this Agreement, continuing through the Closing, Seller has not received notice that it is or may be in violation of any material order, writ, injunction, rule, regulation or decree of any court or of any federal, state, municipal or other governmental authority or agency having jurisdiction with respect to Seller or the System. Seller is neither engaged in nor threatened with, any legal action or other proceeding which would have an adverse effect on the County or the System.

3.06. Brokers and Finders. The Seller has not taken any action with respect to any broker or finder which would give rise to any liability on the part of Purchaser or incurred any liability for any brokerage fees, commissions or finder's fees in connection with the transactions contemplated by this Agreement which would give rise to any liability on the part of Purchaser.

3.07. Seller's Financial Statement. Attached as Exhibit B is the 2007 financial statement of Seller. Seller will deliver to the Purchaser prior to closing a letter from the President or Chief Executive Officer of Seller certifying that there has been no material adverse change or variation in its sales, royalties, rents, property taxes and utility costs since December 31, 2007.



**3.08 . Condition of System and Absence of Undisclosed Liabilities.** The System will be in good working order and condition as of the Closing Date and has no debts, liabilities or obligations (whether absolute, accrued, contingent or otherwise) of any nature whatsoever, including, without limitation, any other debts, liabilities or obligations relating to or arising out of any act, omission, transaction, circumstance, sale of goods or services, state of facts or other condition, except those incurred in the ordinary course of business. There is not any condition or event or any threatened or prospective condition or event, which could materially and adversely affect the Assets, or the operation of Seller's business.

#### ARTICLE IV. REPRESENTATIONS AND WARRANTIES OF PURCHASER.

Purchaser represents, covenants and warrants to Seller the following:

**4.01. No Defaults.** The execution, delivery and performance at the closing of this Agreement by the Purchaser will not (i) result in a breach of any of the terms or provisions of, or constitute a default under, any agreements of Purchaser or any indenture or other agreement or instrument to which Purchaser is a party or by which it is bound; (ii) constitute a default under any mortgage, deed of trust or encumbrance to which Purchaser is a party; or (iii) conflict with, or result in a breach of, any law, order, judgment, decree or regulation binding on Purchaser.

**4.02. Brokers and Finders.** The Purchaser has not taken any action with respect to any broker or finder which would give rise to any liability on the part of Seller or incurred any liability for any brokerage fees, commissions or finder's fees in connection with the transactions contemplated by this Agreement which would give rise, to any liability on the part of the Seller.

**4.03. Consents and Approvals.** Except for the approval of the Kentucky Public Service Commission (KPSC) as described in Section 8.04 and GOLD, as described in Section 8.02, no consent, approval or authorization of, or declaration, filing or registration with, any governmental or regulatory authority is required by Purchaser in connection with the execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby.

**4.04. Litigation.** At the date of the execution of this Agreement, Purchaser has not received notice that it is or may be in violation of any material order, writ, injunction, rule, regulation or decree of any court or of any federal, state, municipal or other governmental authority or agency having jurisdiction over Purchaser. There is no decree or judgment of any kind in existence enjoining or restraining Purchaser from taking any action required or contemplated by this Agreement. Purchaser is not engaged in nor, to the best knowledge of Purchaser, threatened with, any legal action or other proceeding, nor has Purchaser incurred or been charged with nor, to the best knowledge of Purchaser, is Purchaser under investigation with respect to any violation of any federal, state or local law or administrative regulation with respect to which, if adversely determined, there is a reasonable probability of a material adverse effect on Purchaser's ability to acquire any of the System or to conduct or own the business being conducted and owned by the Seller in substantially the same manner as owned and conducted by the Seller.

4.05. Knowledge. Purchaser has no knowledge of any present facts or circumstances relating to Purchaser which would materially adversely affect the ability of it to perform its obligations under this Agreement.

#### ARTICLE V. COVENANTS OF THE PARTIES.

5.01. Purchaser's Rights of Inspection. From and after the date of the execution of this Agreement, Seller shall, from time to time, on business days, during business hours, make the System available to Purchaser or Purchaser's representatives for inspection. Seller may have a representative or employee of Seller accompany the Purchaser or the Purchaser's representative during any such inspection.

5.02. Consents. Seller will use its best efforts to obtain at the earliest practicable date and prior to the Closing all consents of lessors of any leased property required for the consummation of the transactions contemplated.

5.03. Sales and Transfer Taxes and Fees. All sales, ad valorem, and transfer, recording, filing and similar taxes and fees (including any penalties or interest), including but not limited to, any sales or use taxes assessed for the purchase of the System, incurred in connection with this Agreement and the transactions contemplated will be borne solely by Purchaser. The parties will assist each other in the filing of all necessary tax returns and other documentation, with respect to all such sales, ad valorem, transfer and recording taxes and fees and, if required by applicable law, will join in the execution of any such tax returns or other documentation.

5.04. Expenses. If Purchaser fails to satisfy any of the "Conditions to Obligations of Purchaser" in Article VIII, all legal fees, costs and expenses incurred by the Seller to such date the Purchaser notifies Seller of his inability to meet the condition in said Article shall be borne by the Purchaser. In addition, all legal fees, costs and expenses of any hearing or administrative filing with any governmental agency required for the approval of the transactions contemplated by this Agreement, shall be borne by the Purchaser.

5.05. Notices. The parties shall immediately inform the other parties in writing of the occurrence of any events or the existence of any circumstances the effect of which would constitute a breach of any covenant or warranty in this Agreement, or which would result in any representation in this Agreement being or becoming untrue or misleading.

5.06. Conduct of Business at the System Pending Closing. Seller agrees that from the date of the execution of this Agreement until the Closing Date, unless otherwise consented to by Purchaser in writing, Seller will carry on the business of the System in the ordinary course in substantially the same manner as normally conducted including, without limitation, all sales, purchases, contractual dealings, management of stocks and employee relations, and will not enter into any agreement or make any commitment relating to the business conducted in the System except in the ordinary course of business and consistent with past practice.

5.07. Removal of Assets. Seller will not enter into any agreement or contractual

arrangement providing for, or requiring the sale of, any of the System's assets.

5.08. Licenses. Seller will not enter into any agreement or contractual arrangement, nor will Seller take any action or forbear from taking any action, which would result in the termination of any license, franchise or other distribution agreement, contract or insurance policy which Company holds, owns or to which it is a party and which are necessary or efficacious to the operation of Company's business in the ordinary course.

5.09. Compliance. Except for the applicable bulk sales law, Seller will duly comply with all applicable laws, rules and regulations as may be required for the valid and effective sale of the System.

5.10. Access to Purchaser. Seller will provide Purchaser and the authorized representatives of Purchaser with full access during normal business hours to all properties, books records, contracts, operating statements and documents of Seller and will allow Purchaser and the authorized representatives of Purchaser to perform such audit work as may be deemed appropriate. Seller will provide such access from the date of the execution of this Agreement until the Closing Date.

Seller has already provided Purchaser and the authorized representatives of Purchaser with access, and will continue to do so during normal business hours, commencing upon the execution date of this Agreement and ending on the Closing Date, to examine the title and condition of Seller's assets; provided, however that Purchaser's examination will not disrupt the operation of the System. Purchaser shall notify Seller in writing prior to closing of any defects known to it, and Seller shall have a reasonable time to cure such defects.

## ARTICLE VI. EMPLOYEES.

6.01. Hiring of Seller's Employees. It is Purchaser's non-binding intention, as of the Closing Date, to offer employment to all employees of the Seller then employed at the System (collectively the "Employees"), all such offers of employment to be pursuant to Purchaser's standard employment practices and policies. Purchaser's intent to offer employment to such Employees as of the Closing Date shall not create any written contractual right of employment on the part of any such Employee, except as otherwise agreed by the parties in writing.

## ARTICLE VII. CONDITIONS TO OBLIGATIONS OF SELLER.

Each and every obligation of Seller under this Agreement to be performed at the Closing shall be subject to the satisfaction, on or before the Closing Date, of each of the following conditions, unless waived in writing by Seller:

7.01. Representations and Warranties True. The representations and warranties of Purchaser shall be true, complete and accurate in all material respects as of the date when made and as of the Closing Date as though such representations and warranties were made at and as of such date.

7.02. Performance. Purchaser shall have performed and complied with all agreements, obligations and conditions required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

7.03. Purchaser's Certificate. Purchaser shall have delivered to Seller a certificate, dated the Closing Date, certifying to the fulfillment of the conditions specified in Sections 7.01 and 7.02.

7.04. No Injunction, Etc. On the Closing Date, (a) there shall be no effective injunction, writ, preliminary restraining order or any order of any nature issued or threatened by a court or other governmental authority of competent jurisdiction directing that the transactions provided for or any of them not be consummated as so provided or imposing any conditions on the consummation of the transactions contemplated; and (b) no action, suit or proceeding shall be pending before any such court or other governmental authority seeking such relief.

7.05. Opinion of Purchaser's Counsel. Purchaser shall have delivered to Seller an opinion of counsel to Purchaser, dated as of the Closing Date, to the effect that:

(a) This Agreement has been duly executed and delivered by Purchaser and is the valid and binding obligations of Purchaser.

(b) Neither the execution and delivery of this Agreement, nor the consummation of the transaction contemplated, will violate or conflict with, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or give rise to any termination, cancellation or acceleration, under, any note, bond, mortgage, indenture, license, agreement, lease or other instrument to which Purchaser is bound.

7.06. Regulatory Approval. The Kentucky Public Service Commission shall have granted to the Purchaser the right to purchase and the right to operate the System; and Purchaser shall have satisfied all terms, conditions and requirements pertaining to the granting of said right to operation.

#### ARTICLE VIII. CONDITIONS TO OBLIGATIONS OF PURCHASER.

Each and every obligation of Purchaser under this Agreement to be performed at the Closing shall be subject to the satisfaction, on or before the Closing Date, of each of the following conditions, unless waived in writing by Purchaser:

8.01. Representations and Warranties True. The representations and warranties of Seller contained shall be true, complete and accurate in all material respects as of the date when made and as of the Closing Date as though such representations and warranties were made at and as of such date, except for changes expressly permitted by the terms of this Agreement.

8.02. Assumption of Kentucky Loan. Purchaser has obtained permission in writing from GOLD, to purchase Seller's note as described in 1.01 (i).

8.03. Pay Off of Seller's Loan. On or before the Closing the Seller shall pay off any loans, other than the GOLD loan, for the purpose of removing any liability of the Purchaser for the payment of or guaranty of performance of payment of such loans.

8.04. Regulatory Approval. Upon execution of this Agreement Purchaser will file with the KPSC a petition (the "Petition") requesting approval of the acquisition and transfer of the System. Purchaser shall pay all filing fees, attorney fees, costs and expenses of the Purchaser and the Seller incurred as a result of filing the Petition or seeking the regulatory approval of the KPSC. It is anticipated that KPSC approval will take sixty days.

8.05. Performance. Seller shall have performed and complied with all agreements, obligations and conditions required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

8.06. No Injunction, Etc. on the Closing Date.

(a) There shall be no effective injunction, writ, preliminary restraining order or any order of any nature issued or threatened by a court or other governmental authority of competent jurisdiction directing that the transactions not be consummated as so provided or imposing any conditions on the consummation of the transactions contemplated; and (b) no action, suit or proceeding shall be pending before any such court, or other government authority seeking such relief.

8.07. Opinion of Seller's Counsel. Seller shall have delivered to Purchaser an opinion of its counsel, dated as of the Closing Date, in form and satisfactory to Purchaser, to the effect that:

(a) Seller is a Kentucky utility in good standing under the laws of the Commonwealth of Kentucky and is duly qualified and authorized to do business in the Commonwealth of Kentucky;

(b) Seller has the authority to carry on its business as it is now being conducted and to own the properties used in such business;

(c) This Agreement has been approved by the stockholders and board of directors of Seller as provided by law and has been executed and delivered by Seller acting by and through its President or Chief Executive Officer empowered to execute this Agreement in accord with applicable law and is the valid and binding obligation of Seller.

(d) Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated will violate any provision of the Kentucky Revised Statutes governing utilities or conflict with, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or give rise to any right of termination, cancellation or acceleration under, any note, bond, mortgage, indenture, license, agreement, lease or other instrument known to Seller to which Seller is a party;

(e) To the best knowledge of Seller's counsel, there are no lawsuits pending or threatened which would in any way effect or impede the ability of the Seller to consummate this transaction or which would in any way effect the value of the System.

#### ARTICLE IX. SURVIVAL OF REPRESENTATIONS; INDEMNIFICATION.

9.01. Survival of Representations. The representations and warranties made by Seller and Purchaser under this Agreement shall survive the Closing.

9.02. Agreement of Seller to Indemnify Purchaser. Subject to the terms and conditions of this Agreement, Seller agrees to indemnify, defend and hold Purchaser harmless at any time after consummation of the Closing, from and against all demands, claims, actions or causes of action, assessments, losses, damages, liabilities, costs and expenses, including without limitation, interest, penalties and attorneys' fees and expenses ( collectively "Damages") asserted against, resulting to, imposed upon or incurred by Purchaser, by reason of or resulting from (a) liabilities, obligations or claims whether absolute, accrued, contingent or other existing as of the Closing Date or arising out of facts or circumstances existing at or prior to, whether or not such liabilities or obligations were known at the time of the Closing, relating to or arising out of the ownership, possession or use of the System, except those assumed in writing by Purchaser; (b) a breach of any representation, warranty or agreement of Seller contained in or made pursuant to this Agreement; (c) the employment or termination of each employment by Seller of any employees of Seller; and (f) any claim or liability occurring by reason of non-compliance by Seller with any federal, state or local laws (except for non-compliance with bulk sales laws as provided herein) and any rules and regulations relating to the business to be purchased.

9.03. Agreement of Purchaser to Indemnify Seller. Subject to the terms and conditions of this Agreement, Purchaser agrees to indemnify, defend and hold Seller harmless, at any time after consummation of the Closing, from and against all Damages asserted against, resulting to, imposed upon or incurred by Seller, directly or indirectly, by reason of or resulting from the following items after the closing Date (a) liabilities, obligations or claims (whether absolute, accrued, contingent or other) arising from and after the Closing Date relating to or arising out of the ownership, possession or use of Seller's assets or the conduct of its business by Purchaser and/or Seller following the Closing Date, except those expressly assumed or agreed to by Seller; (b) a breach of any representation, warranty or agreement of Purchaser contained in or made pursuant to this Agreement or any facts or circumstances constituting such a breach; (c) the employment or termination of employment of Employees by Purchaser and/or Seller provided that this provision will not apply to any event constituting a breach of Section 3.12; (d) liability of Purchaser and/or Seller for unpaid federal, state or local, income., sales and intangible taxes; (e) liabilities of Purchaser and/or Seller under laws governing workers' compensation, unemployment compensation, social security or income tax withholding; and (f) any claim or liability occurring by reason of non-compliance of Purchaser and/or Seller with any federal, state or local laws and any rules and regulations thereunder relating to the business to be purchased.

9.04. Procedures Relating to Indemnification. The obligations and liabilities of the party making the indemnity pursuant to Sections 9.02 and 9.03 (the "Indemnitor") with respect to claims made by third parties against the party or parties being indemnified pursuant to such

Sections (the "Indemnitee") shall be subject to the following terms and conditions:

(a) The Indemnitee will give the Indemnitor prompt notice of any such claim, and Indemnitor shall have the right to undertake (at the Indemnitor's sole cost and expense) the defense by representatives chosen by it and reasonably acceptable to the Indemnitee;

(b) If the Indemnitor, within a reasonable time after notice of any such claim, fails to defend the Indemnitee against which such claim has been asserted, the Indemnitee will (upon further notice to the Indemnitor) have the right to undertake the defense, compromise or settlement of such claim on behalf of and for the account and risk of the Indemnitor, subject to the right of the Indemnitor to assume the defense of such claim at any time prior to settlement, compromise or final determination thereof;

(c) In connection with all claims defended, the Indemnitee will give the Indemnitor prompt written notice of all material developments in connection with all claims, will promptly supply the Indemnitor with all the papers, documents and evidence in the Indemnitee's possession and such other information within the Indemnitee's knowledge pertinent to such claims, and will produce at the appropriate place or places, at reasonable times, such witnesses under the Indemnitee's control as may reasonably be requested by the Indemnitor or its representatives.

#### ARTICLE X. TERMINATION.

10.01 Methods of Termination. This Agreement may be terminated prior to the Closing:

a) By mutual written agreement of Purchaser and Seller;

(b) By Purchaser if the Closing has not occurred by November 1, 2008 provided that a default by Purchaser is not responsible for the Closing not having occurred;

(c) By Seller if the Closing has not occurred by November 1, 2008, provided that a default by Seller is not responsible for the Closing not having occurred; or

(d) By Purchaser if any condition precedent to its obligation to perform has not occurred or been satisfied as of the Closing Date;

(e) By Seller if any conditions precedent to its obligation to perform has not occurred or been satisfied as of the Closing Date.

#### ARTICLE XI. MISCELLANEOUS PROVISIONS.

11.01. Amendment and Modification. Subject to applicable law, this Agreement may be amended, modified and supplemented only by written agreement of the parties at any time prior to the Closing with respect to any of the terms contained herein.

11.02. Waiver of Compliance. Any failure of Purchaser or Seller to comply with any obligation, covenant, agreement or condition may be expressly waived in writing by the Purchaser or Seller, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

11.03. Notices. All notices, requests, demands and other communications required or permitted shall be in writing and shall be deemed to have been given if delivered by hand or mailed, certified or registered mail with postage prepaid:

(a) If to Purchaser, to:

Steven E. Oxford  
4891 Independence St., Suite 200  
Wheat Ridge, CO 80033

With photocopy to:

John Hughes, Esq.  
124 West Todd St.  
Frankfort, KY 40601

(b) If to Seller, to:

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

With photocopy to:

or to such person or address as Seller shall furnish to Purchaser in writing.

11.04. Assignment. This Agreement and all of its provisions shall be binding upon and inure to the benefit of the parties and their respective successors and assigns

11.05. Seller's Representative. Seller appoints \_\_\_\_\_ to be its representative and attorney-in-fact for the purpose of acting on behalf of the Seller in the performance of the Seller's obligations or duties or the exercise of the Seller's rights.

11.06. Governing Law. This Agreement and the legal relations among the parties shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky applicable to contracts made and to be performed in the Commonwealth.

11.07. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute



one and the same instrument.

11.08. Headings. The Headings of the Sections and Articles of this Agreement are inserted for convenience only and shall not constitute a part or affect in any way the meaning or interpretation of this Agreement.

11.09. Entire Agreement. This Agreement, including the Exhibits, and the other documents and certificates delivered pursuant to the terms of or referred to, set forth the entire agreement and understanding of the parties, and supersedes all prior agreements, promises, covenants, arrangements, communications, representations or warranties, whether oral or written, by any officer, employee or representative of any party.

11.10. Third Parties. Except as specifically set forth, nothing expressed or implied is intended or shall be construed to confer upon or give to any person or corporation other than the parties and their successors or assigns, any rights or remedies under or by reason of this Agreement.

11.11. Cooperation. Seller and Purchaser agree to cooperate in effecting the lawful transfer of all licenses, distributorship agreements, leases and other contracts as are necessary to permit Purchaser to operate the System in substantially the same manner as it is now being conducted. The primary responsibility for the foregoing is that of the Purchaser.

11.12. Waiver. Any party may waive in writing compliance by another party with any of the covenants or conditions contained in this Agreement, except those conditions imposed by law.

11.13. Risk of Loss. Seller assumes all risk of destruction, loss or damage due to fire, storm, or any other casualty prior to the, Closing Date. Upon such destruction, loss, or damage of the facility, or a substantial part of the System or inventory, Purchaser shall have the option to terminate this Agreement and, in the event of the exercise of such option, all rights of Purchaser and Seller shall terminate without liability to any party. Purchaser shall notify Seller within seven (7) days after receiving written notice of said destruction, loss or damage of the decision to terminate this Agreement. If Purchaser does not timely notify Seller of termination, this Agreement shall remain in full force and effect, provided, however, that the Purchase Price shall be adjusted to reflect such destruction, loss or damage, and if Purchaser and Seller are unable to agree upon the amount of such adjustment, the contract will stand terminated.

11.14. No Merger. This Agreement shall survive the execution and delivery of all documents of conveyance contemplated and no merger shall occur.

11.15. Full Disclosure. No representation or warranty made by the Seller contained in this Agreement nor any statement or certificate furnished or to be furnished contains or will contain any untrue statements of a material fact, or omits or will omit to state any material fact known to the Seller.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as

of the day and year first above written.

**SELLER:**

Elam Utility Company, Inc.

By: \_\_\_\_\_

**PURCHASER:**

Kentucky Frontier Gas, LLC.

By: \_\_\_\_\_

EXHIBIT A

Maps of Distribution System