

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

CASE NO. 2010-00142

O R D E R

Elam Utility Company d/b/a Elam Utility Company, Inc. ("Elam") is a local gas distribution company subject to the Commission's jurisdiction pursuant to KRS 278.040.

Elam's filed tariff contains a Gas Cost Adjustment ("GCA") clause which requires Elam to file a Gas Cost Recovery ("GCR") rate with the Commission for each calendar quarter.¹ Elam's GCA further requires each filing to be made 30 days prior to the first day of each calendar quarter and provides a list of the calendar quarters. On March 16, 2010, Elam filed a proposed GCA to be effective April 1, 2010.² However, Elam's GCA on file as part of its tariff with this Commission requires Elam to file its GCA 30 days in

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

² Case No. 2010-00117, Purchased Gas Adjustment Filing of Elam Utility Company (Ky. PSC Apr. 6, 2010).

advance of the first day of the calendar quarter beginning April 1, which for the second quarter would be March 1, 2010.

In Case No. 2009-00362,³ the Commission issued an Order to Elam and Wilma B. Ison, President of Elam, to show cause why each should not be found in violation of having failed to make timely filings of the required GCA pursuant to its filed tariff for four quarters and why penalties should not be assessed against the utility and its officers pursuant to KRS 278.990(1). On November 9, 2009, Elam and Wilma B. Ison filed a signed Settlement Agreement⁴ in Case No. 2009-00362 in which Elam and Wilma B. Ison, personally, agreed to abide by specific filing requirements and to pay certain penalties. The Settlement Agreement stated:

4. 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.

To this end, Elam retained an accounting firm to obtain the required information and to file the GCA in a timely manner. Neither Elam, Ms. Ison, nor the accounting firm contacted the Commission for assistance or direction prior to the late filing. No explanation was given for the untimely filing in Case No. 2010-00117.⁵

Pursuant to the terms of the Settlement Agreement, Elam agreed to pay a civil penalty of \$100. Wilma Ison agreed to pay \$10,000, of which \$2,500 was to be paid within 60 days and the balance of \$7,500 suspended for 12 months, to be forgiven if

³ Case No. 2009-00362, Elam Utility Company, Inc. and Wilma B. Ison, Individually and as an Officer of the Utility (Order dated September 25, 2009).

⁴ *Id.*, Appendix to Order of December 16, 2009.

⁵ See Case No. 2010-00117, *supra*, note 2.

there were no further violations. That Settlement Agreement and payment of penalties were approved and made part of a Commission Order dated December 16, 2009. Commission records indicate that Elam has paid in full its civil penalty of \$100. Wilma B. Ison paid \$2,500, with the civil penalty balance of \$7,500 remaining suspended.

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

1. The Order dated December 16, 2009 in Case No. 2009-00362 is a final Order from which all rights of appeal have been exhausted.

2. Elam failed to timely file its GCA with the Commission for the second calendar quarter: April, May, and June 2010.

3. The failure to timely file Elam's GCA is a violation of paragraph 5 of the Settlement Agreement and makes the suspended balance of \$7,500 immediately due and payable.

4. Wilma B. Ison has not paid the balance of the civil penalty of \$7,500.

5. Elam's last Annual Report for Corporations as filed with the Kentucky Secretary of State lists Wilma B. Ison as President of the corporation.⁶

6. A prima facie showing has been made that Elam has violated the Commission's Order of December 16, 2009 by failure to timely file its GCA for the second quarter.

7. A prima facie showing has been made that Wilma B. Ison aided and abetted Elam in the violation of its filed tariff and of the Commission's Order of December 16, 2009.

⁶ Elam Annual Report for Corporations filed June 2, 2009.

8. A prima facie showing has been made that Wilma B. Ison is in violation of the Commission's Order of December 16, 2009, and such violation renders the suspended civil penalty of \$7,500 due and payable.

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

1. Elam and Wilma B. Ison, both personally and as President of Elam, shall appear before the Commission on August 17, 2010 at 10:00 a.m., Eastern Daylight Time, in Hearing Room 1 of the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky, for the purpose of presenting evidence concerning their failure to timely file Elam's second quarterly GCA and to pay the balance of a civil penalty as ordered and for showing cause why Elam and Wilma B. Ison, jointly and severally, should not be subject to the penalties prescribed in KRS 278.990(1).

2. The Commission does not favor motions for continuance and will grant them only when such a motion is filed with the Commission in writing at least one week before the hearing is scheduled to commence and states compelling reasons for granting the motion.

3. Corporate entities are advised that, under Kentucky law, a corporation, its employees, and any representatives who are not licensed to practice law in Kentucky are not permitted to make objections, examine, or cross-examine witnesses in administrative hearings.⁷

4. A certified copy, pursuant to KRS 278.370, of the final Order in Case No. 2009-00362 dated December 16, 2009 is appended hereto.

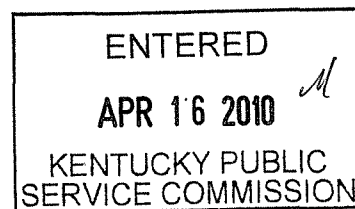
⁷ Turner v. Kentucky Bar Ass'n., 980 S.W.2d 560 (Ky. 1998); and Administrative Case No. 249, Practice Before the Commission by Attorneys Non-Licensed in the Commonwealth of Kentucky (Ky. PSC June 15, 1981).

5. Within 20 days of the date of this Order, Elam and Wilma B. Ison shall each file a written response to the Commission concerning the allegations contained herein.

6. Any motion requesting an informal conference with Commission Staff to consider any matter that would aid in the handling or disposition of this proceeding shall be filed with the Commission no later than 20 days from the date of this Order.

7. Pursuant to KRS 278.360, the record of the formal hearing shall be kept by videotape.

By the Commission



ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2010-00142 DATED APR 16 2010

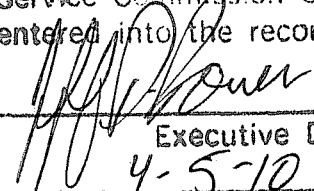
COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

CERTIFICATE

This is a true and complete copy of the Kentucky Public Service Commission Order entered into the record.

In the Matter of:

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)



Executive Director
4-5-10
Date

CASE NO. 2009-00362

O R D E R

On September 19, 2009, an Order was issued to Elam Utility Company, Inc. ("Elam") and Wilma B. Ison, individually and as an officer of Elam, requiring each of them to show cause why each should not be assessed penalties pursuant to KRS 278.990 for willful violations of Elam's filed tariff by failure to timely file four quarterly Gas Cost Adjustments ("GCA"), each being a separate violation of KRS 278.160(2).

The Commission found that Elam's filed tariff contains a GCA clause which requires Elam to file a Gas Cost Recovery ("GCR") rate with the Commission for each calendar quarter. Elam's GCA further requires each filing to be made 30 days prior to the first day of each calendar quarter and provides a list of the calendar quarters.

Elam, Wilma B. Ison, and Commission Staff negotiated and entered into a Settlement Agreement among Elam, Wilma B. Ison, and Commission Staff in this case.

As part of that process, Elam stated that it had engaged Harrod & Associates, an accounting firm, to assemble supplier invoices and to prepare and file each GCA. Mr. David Harrod confirmed that his company has been retained by Elam to obtain the required information and to prepare and file Elam's GCA applications in a timely manner. The Commission will require Elam to notify the Commission if Elam discharges the accounting firm or otherwise changes its method of preparing and filing its GCA applications.

In reviewing the Settlement Agreement and the record, the Commission makes the following findings:

1. Elam failed to file its GCA with the Commission for calendar quarter three: July, August, and September 2008.

2. Elam failed to file its GCA with the Commission for calendar quarter four: October, November, and December 2008.

3. Elam failed to file its GCA with the Commission for calendar quarter one: January, February, and March 2009.

4. Elam failed to file its GCA with the Commission for calendar quarter two: April, May, and June 2009.

5. Elam failed to timely file its GCA with the Commission for calendar quarter three: July, August, and September 2009.

6. Wilma Ison is the President and sole officer of Elam.

7. Elam and Wilma B. Ison each waived a formal hearing of all issues in this case.

8. Elam has contracted with an accounting firm to assemble supplier invoices and to prepare and file Elam's GCA applications in a timely manner.

9. The Settlement Agreement entered into between Commission Staff, Elam, and Wilma B. Ison, individually and as president of Elam, is in accordance with the law, does not violate any regulatory principle, results in a reasonable resolution of this case, and is in the public interest.

IT IS THEREFORE ORDERED that:

1. The Settlement Agreement dated November 9, 2009 is incorporated into this Order as if fully set forth herein and is attached hereto as an Appendix.

2. The terms and conditions set forth in the Settlement Agreement are adopted and approved.

3. Elam shall notify the Commission if it discharges the accounting firm of Harrod & Associates or makes any changes in its method of preparing and filing its GCA applications. If the accounting firm is discharged, Elam shall notify the Commission, within 20 days of the date of discharge, of the name and address of its new accounting firm.

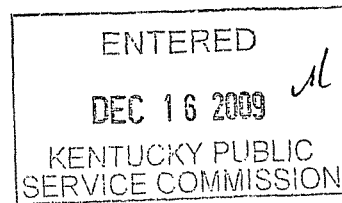
4. Elam is assessed a civil penalty of \$100, to be paid within 30 days of the date of this Order. Payment is to be made by cashier's check payable to "Kentucky State Treasurer" and mailed or delivered to the Office of the General Counsel, Public Service Commission of Kentucky, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602.

5. Wilma B. Ison, individually, is assessed a total civil penalty of \$10,000, with \$2,500 payable within 60 days of the date of this Order. The \$7,500 balance of the civil penalty is suspended for 12 months from the date of this Order, at which

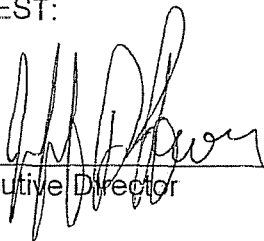
time the balance will be forgiven if no further violations have occurred. Payment is to be made by cashier's check payable to "Kentucky State Treasurer" and mailed or delivered to the Office of the General Counsel, Public Service Commission of Kentucky, 211 Sower Boulevard, Post Office Box 615, Frankfort, Kentucky 40602.

6. Upon the timely payment by Elam and Wilma B. Ison of the penalties assessed herein, this case shall be closed and removed from the Commission's docket without a further Order of the Commission.

By the Commission



ATTEST:



Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2009-00362 DATED DEC 16 2009

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

NOV 9 2009

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.)
_____)
VIOLATIONS OF FILED TARIFF GAS COST)
ADJUSTMENT CLAUSE)

CASE NO.
2009-00362

SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered into this 6 day of November, 2009, by and between the STAFF OF THE PUBLIC SERVICE COMMISSION OF KENTUCKY ("Commission Staff") and ELAM UTILITY COMPANY, INC. ("Elam") and Wilma B. Ison, individually and as an officer of Elam.

WITNESSETH:

WHEREAS, Elam operates a natural gas distribution system in Morgan and Wolfe counties, Kentucky and is subject to Commission jurisdiction pursuant to KRS 278.040; and

WHEREAS, Elam's only corporate officer is Wilma B. Ison, President; and

WHEREAS, on September 19, 2009, an Order was issued in this case to Elam and Wilma B. Ison, individually and as an officer of Elam, requiring each to show cause why each should not be assessed penalties pursuant to KRS 278.990; and

WHEREAS, Elam is alleged to be in willful violation of the provisions of its filed tariff by failure to timely file four quarterly Gas Cost Adjustments ("GCA"), each being a separate violation of KRS 278.160(2); and

WHEREAS, Wilma B. Ison, individually and as an officer of Elam, is alleged to have aided and abetted Elam in its willful violations of the provisions of its filed tariff by failure to timely file four quarterly GCAs, each being a separate violation of KRS 278.160(2); and

WHEREAS, an informal conference was held on October 22, 2009 between the parties and Commission Staff for the purpose of discussing the issues and of entering into a Settlement Agreement through compromise to settle the proceeding herein; and

WHEREAS, at the conference, Elam and Wilma B. Ison came to an agreement in principal with Commission Staff, subject to Commission approval, to dispose of all issues contained in this proceeding.

NOW, THEREFORE, Elam, Wilma B. Ison, and Commission Staff agree that:

1. Elam is in willful violation of findings 1-4 as contained in the Commission Order of September 19, 2009. Elam agrees to be assessed a civil penalty of \$25 for each of the violations, with the total of \$100 to be paid within 30 days of the date of an Order of the Commission approving this settlement.

2. Wilma Ison, as President of Elam, aided and abetted Elam in its willful violation of tariff provisions by failure to timely file its GCAs as stated in findings 1-4 above, being four separate violations of KRS 278.160(2) as contained in the Commission Order of September 19, 2009. Wilma Ison, individually, is to be assessed a civil penalty of \$2,500 for each of the four violations, for a total of \$10,000, of which

\$2,500 is to be paid within 60 days of the date of an Order of the Commission approving this settlement. The balance of the civil penalty of \$7,500 is to be suspended for 12 months from the date of an Order of the Commission approving this settlement, at which time, if no further violations have occurred, the balance of the civil penalty will be forgiven.

3. Elam and Wilma B. Ison each waive a formal hearing of all matters in this case.

4. 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.

5. This Agreement is subject to the acceptance of and approval by the Public Service Commission.

6. If the Public Service Commission fails to accept and approve this Settlement Agreement in its entirety, this proceeding shall go forward, and neither the terms of this Settlement Agreement nor any matters raised during settlement negotiations shall be binding on or be construed against Wilma B. Ison or Elam or Commission Staff.

7. Commission Staff shall recommend to the Public Service Commission that this Settlement Agreement be accepted and approved.

IN WITNESS WHEREOF, Elam, Wilma B. Ison, and Commission Staff have executed this Settlement Agreement on the date first above written.

STAFF OF THE PUBLIC SERVICE
COMMISSION OF KENTUCKY

BY: James R. Goff
James R. Goff, Staff Attorney

WILMA B. ISON AND
ELAM UTILITY COMPANY, INC.

Wilma B. Ison
Wilma B. Ison, Individually and as President of
Elam Utility Company, Inc.

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