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July 19, 2010

RECEIVED

JUL 19 2010

PUBLIC SERVICE  
COMMISSION

VIA HAND DELIVERY

Jeff DeRouen  
Executive Director  
Kentucky Public Service Commission  
211 Sower Boulevard  
Frankfort, KY 40601

RE: 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  
Case No. 2010-00 302

Dear Mr. DeRouen:

Enclosed please find and accept for filing the original and ten copies of The City of West Liberty, Kentucky's Verified Application and Request for Expedited Treatment in the above-referenced matter. Please confirm your receipt of this filing by placing the stamp of your Office with the date received on the enclosed additional copies and return them to me via our runner.

Should you have any questions, please contact me at your convenience.

Sincerely,

W. Duncan Crosby III

WDC:ec  
Enclosures  
cc: Parties of Record

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COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

**RECEIVED**

JUL 19 2010

PUBLIC SERVICE  
COMMISSION

CASE NO. 2010-00 302

**In the Matter of:**

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 )

**VERIFIED APPLICATION AND REQUEST FOR EXPEDITED TREATMENT**

The City of West Liberty, Kentucky (“City”) hereby respectfully petitions the Kentucky Public Service Commission (“Commission”) by application pursuant to KRS § 278.020(5) and (6) to issue an order approving the City’s proposed acquisition of the utility assets of Elam Utility Company, Inc. (“Elam”). As shown herein and by the supporting evidence attached hereto, transferring Elam’s utility assets to the City would be very much in the public interest. In addition, the City, as the operator of an award-winning water utility and a sewer utility, has the financial, technical, and managerial abilities to own and operate a natural gas distribution utility, and to provide reasonable service to Elam’s customers. Because service to Elam’s customers is imminent, the City respectfully requests the Commission to issue a Final Order approving the proposed acquisition by July 23, 2010.

**I. Introduction and Background**

The gas suppliers to the Morgan County portion of the Elam system, Columbia Gas Transmission, LLC, and Columbia Gulf Transmission Company (collectively, the “Columbia Entities”), have publicly stated their plan to terminate service to Elam, and therefore to Elam’s customers, on July 26, 2010, because Elam owes the Columbia Entities nearly \$700,000 for gas consumed but not replaced. (A copy of that statement is attached hereto as Exhibit 1.) A nursing home, several businesses, and hundreds of residential customers are among the approximately

410 customers who will lose service if the planned termination takes place. The City is acting to protect its residents from losing service through no fault of their own, and is also acting to protect Elam's approximately 50 customers who reside in Wolfe County from Elam's all-but-certain and imminently impending financial collapse. It is therefore plainly in the public interest for the City immediately to acquire and operate Elam's utility assets, which will enable the City to fulfill Elam's obligation to the Columbia Entities and remove the threat of a termination of service.

If the Commission is unable to enter an Order approving the proposed acquisition by July 23, 2010, the City respectfully requests the Commission to issue an Order by that date approving the proposed management agreement between the City and Elam. Under the management agreement, the City would act as an independent contractor to manage the day-to-day operations of Elam's gas business and guarantee payment to the Columbia Entities for gas consumed on and after the date on which the City assumed management of Elam's gas business.

**Both of the City's requests are contingent on the Columbia Entities agreeing not to terminate service to Elam.** The City is working with the Columbia Entities to obtain assurances that the termination will not occur if the Commission approves the proposed acquisition or, in the interim, the management agreement. If, however, the City is not able to obtain such assurances and the Columbia Entities terminate service to Elam's customers, the City's only purpose for filing this Application will have been frustrated. The City therefore asks the Commission to condition any order approving either agreement upon the Columbia Entities' providing a firm commitment that the approved arrangement (whether the asset purchase or the management contract) will eliminate any chance of a termination of service due to Elam's currently outstanding obligations to the Columbia Entities.

## **II. Applicant**

The City of West Liberty is a city of the fourth class under KRS § 81.010(4). It has all the powers of a municipal corporation under KRS §§ 81.081 and 81.082, including the right to provide utility services under KRS § 96.190. The City's principal office and mailing address is 565 Main Street, West Liberty, Kentucky 41472. The City has 3,277 residents, including a prison population of approximately 1,800 inmates.<sup>1</sup> The City's has net assets of \$12.9 million and a budget for the current fiscal year of over \$4.5 million, of which over \$2.5 million is for the City-owned and -operated water and sewer utilities. (The relevant portion of the City's 2009 audited financial statements and its current budget are attached hereto as Exhibits 2 and 3, respectively.)

The City's government consists of an elected mayor and city council, both of which have approved the proposed acquisition of Elam's assets and the proposed management agreement. (The minutes of the relevant city council meeting are attached hereto as Exhibit 4.) The City Clerk Administrator conducts the day-to-day operations of the City government, including oversight and management of the City's water and sewer utilities. If the Commission approves the City's request to acquire Elam's utility assets, the City Clerk Administrator would be primarily responsible for overseeing and managing the gas utility.

## **III. The Acquisition of Elam's Utility Assets by the City Would Meet All Requirements of KRS §§ 278.020(5) and (6).**

There is a pressing need for a competent and solvent manager to take over Elam immediately to avert a termination of natural gas service to over 400 innocent, bill-paying customers in West Liberty. The City itself, as an experienced utility owner and operator with more-than-adequate financial resources to meet the task at hand, satisfies all of the requirements

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<sup>1</sup> As of the 2000 census.

of KRS §§ 278.020(5) and (6). The City's elected representatives' sole interest in this proceeding is to ensure and protect the best interests of the City's residents; they have unanimously determined that the public interest of the City and Elam's customers would be best served by the City's acquisition of Elam's utility assets to ensure that the gas service to Elam's customers will not be interrupted.

A. Terms of the proposed acquisition.

The terms of the proposed acquisition are set forth in the Asset Purchase Agreement attached hereto as Exhibit 5. In short, the Asset Purchase Agreement provides that Elam will transfer all of its assets of all kinds to the City in consideration of the City's assumption of the following obligations:

1. Elam's outstanding obligation(s) to the Columbia Entities, which the Columbia Entities currently value at approximately \$700,000;
2. Elam's debt to the Commercial Bank in West Liberty, Kentucky, in an approximate amount of \$30,000.00; and
3. Elam's mortgage debt of approximately \$180,000 to Community Trust Bank **if and only if** the Commission approves the City's acquisition of the portion of Elam's natural gas distribution system located in Wolfe County, Kentucky.

The Asset Purchase Agreement is conditioned upon receiving Commission approval and averting the termination of gas service to Elam (and thereby to its customers). As the Agreement makes clear, the City has no interest in acquiring Elam's assets on these terms described above unless it obtains uninterrupted natural gas service to West Liberty's residents as a result.

The proposed acquisition would result in the City owning and operating natural gas distribution assets in neighboring Wolfe County. This is not an uncommon situation, and the City is aware on information and belief that a number of other similar cities have municipal gas utilities that serve customers outside their municipal boundaries. Moreover, nearly 90% of

Elam's customers reside in the City, and the City's purpose in attempting to purchase Elam's utility assets is first and foremost to ensure that its residents do not lose their gas service, even temporarily. The customers outside the City will benefit from the acquisition, as well, by having a competent and solvent provider of natural gas utility service.

- B. The Commission should approve the proposed Asset Purchase Agreement because the public interest would clearly be served by the City's ownership and control of Elam's utility assets.

Elam's current situation is dire and threatens the natural gas service of over 400 customers in the City; only the City is willing and able to prevent what otherwise will happen, namely the termination of service to those customers. Among those customers are a nursing home, several businesses, and hundreds of residential customers. The consequences of terminating service to those customers, even in the heat of summer, will be dramatic. Many will lose hot water for days, if not for weeks or longer. Restaurants that depend on natural gas as a cooking fuel will be unable to provide cooked food. Some residential customers depend on gas-fired electric generators to provide electricity when outages occur, which is not uncommon in the stormy summer months. In short, even if a termination of service to these customers could be safely executed, it would still have significant negative consequences for hundreds of customers.

The only way to avoid such a termination of service and its calamitous results for hundreds of customers is for the Commission to approve the proposed acquisition. There simply is no other responsible party prepared to take on, and make good on, the obligations that imperil continued service to Elam's customers. There may be other entities waiting to buy Elam's assets out of receivership at a bargain price, but by then service will have been terminated and Elam's customers will have suffered the ill effects described above. For that reason, the proposed acquisition is plainly in the public interest, and the City respectfully requests the Commission to approve it no later than July 23, 2010.

C. The City has the financial ability to own, operate, and manage Elam's utility assets.

As noted above, the City has significant financial resources (\$12.9 million in net assets) relative to the size and scope of Elam's utility assets.<sup>2</sup> The City has an annual operating budget (over \$4.5 million) well in excess of Elam's (almost \$900,000),<sup>3</sup> and its current water and sewer utility operations alone have a combined annual budget of over \$2.5 million, also well in excess of Elam's.

Moreover, the City has secured an assurance of a loan of up to \$700,000 from the Commercial Bank, located in the City, to repay the obligations the City will assume from Elam as part of the proposed transaction. (The written assurance from Commercial Bank is attached hereto as Exhibit 6.)

The City therefore has the financial resources, credit, and experience necessary to own, operate, and manage Elam's utility assets.

D. The City has the technical ability to own, operate, and manage Elam's utility assets.

As discussed above, the City has for years operated its own award-winning water utility and a sewer utility. (A collection of the water utility's awards are attached hereto as Exhibit 7.) The City is therefore well versed in basic utility functions such as system maintenance and inspection; compliance with safety and health regulations; and meter-reading, billing, and collection processes. Also, the City plans to employ Elam's current gas utility operational personnel to retain their expertise in operating the Elam system.<sup>4</sup> The City plans also to seek

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<sup>2</sup> According to Elam's 2008 Annual Report to the Commission, Elam had assets of \$299,802.60 (Balance Sheet - Assets and Other Debts (Ref Pg. 2)).

<sup>3</sup> Per Elam's 2008 Annual Report to the Commission, the utility's total gas operating expenses for 2008 were \$888,879.57 (Statement of Income for the Year (Ref Pg. 9)).

<sup>4</sup> It is the City's understanding that the preponderance of the Commission's concerns with Elam over the years has related to Elam's financial health, not the operation or maintenance of Elam's natural gas distribution system. For

additional expertise from other seasoned operators, either in the form of consulting agreements or independent contractor relationships, or by hiring additional full-time personnel with gas system operating experience. The combination of the City's expertise in general utility operations and the expertise of Elam's current operational employees meets the requirement of KRS 278.020(5).

- E. The City has the managerial ability to own, operate, and manage Elam's utility assets.

As the operator of an award-winning water utility and a sewer utility, and as an entity with a budget of over four times Elam's, the City is more than ready, willing, and able to manage Elam's utility assets. The City is already capably managing two utilities, garbage collection, police functions, and other governmental activities. These are functions and activities at least as complex and demanding from a managerial perspective as managing a natural gas distribution utility of Elam's magnitude. Also, as noted above, the City Clerk Administrator already successfully manages the City's existing utility operations; she will bring the same managerial expertise to bear in managing the City's new natural gas distribution utility. The City therefore has more than adequate managerial ability to own, operate, and manage Elam's utility assets.

**IV. The Commission Should Approve the Proposed Management Agreement If It Cannot Approve the Proposed Asset Purchase Agreement by July 23, 2010.**

In the event the Commission is unable to approve the City's proposed acquisition of Elam's utility assets as set forth in the Asset Purchase Agreement, the City respectfully requests the Commission to approve the Management Agreement into which the City and Elam entered on July 19, 2010 (by its own terms, it does not become effective until approved by the Commission). (A copy of the Management Agreement is attached hereto as Exhibit 8.) The

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that reason, the City believes that retaining Elam's current operational employees will provide adequate technical expertise in addition to the City's existing utility technical expertise to meet the requirement of KRS 278.020(5).



Management Agreement would empower the City to oversee all of Elam's operations while remaining an outside, independent contractor. An important part of such oversight would be the City's guaranteeing that the Columbia Entities would be timely paid (or any incremental negative imbalance replenished) for gas supplied on and after July 26 (assuming the Columbia Entities agree not to terminate service to Elam on that date or at any time thereafter during which the City is acting as Elam's manager).

Because the City would gain control over Elam's utility assets if the Commission approved the Management Agreement, the requirements for the City to become Elam's manager are the same as those the Commission must consider to determine whether to approve the City's proposed acquisition of Elam's utility assets. For that reason, all of the evidence discussed above and attached hereto equally supports the City's proposed Management Agreement.

But for that same reason (i.e., the statutory criteria are the same for both proposed agreements), it would also be redundant for the Commission simultaneously to approve both the Management Agreement and the Asset Purchase Agreement. The only reason the City and Elam entered into the Management Agreement, and the only reason for the Commission to approve it, would be to give the Commission additional time to consider the proposed acquisition if it believed it needed such time; however, because the statutory criteria for approving either agreement is exactly the same as the other, the City respectfully encourages the Commission to approve the proposed Asset Purchase Agreement on or before July 23, 2010, to avoid a termination of service to Elam's customers.

V. **Preventing Termination of Service to Elam's Customers Is the City's Sole Purpose for Entering into, and Seeking Commission Approval for, the Proposed Agreements.**

There is one reason, and only one reason, the City is applying to the Commission for approval of the Asset Purchase Agreement and the Management Agreement: to avoid a

termination of service to Elam's customers. The City respectfully requests the Commission to condition any order approving either agreement upon the City's receipt of a firm commitment from the Columbia Entities that the approved arrangement (whether the asset purchase or the management contract) will eliminate any chance of a termination of service due to Elam's currently outstanding obligations to the Columbia Entities. If such assurances are not received, the City desires neither to manage Elam, nor to acquire its assets on the terms contemplated in the Asset Purchase Agreement.

**WHEREFORE**, the City respectfully requests the Commission to issue a Final Order no later than July 23, 2010, approving the City's proposed acquisition of Elam's utility assets according to the terms of the Asset Purchase Agreement. In the alternative, if the Commission requires time beyond July 23 to consider fully the proposed asset purchase, the City respectfully requests the Commission to issue an Order approving the proposed Management Agreement. In either event, the City asks the Commission to condition any order approving either agreement upon the Columbia Entities' providing a firm commitment that the approved arrangement (whether the asset purchase or the management contract) will eliminate any chance of a termination of service due to Elam's currently outstanding obligations to the Columbia Entities.

Dated: July 19, 2010

Respectfully submitted,



W. Duncan Crosby III  
Stoll Keenon Ogden PLLC  
2000 PNC Plaza  
500 West Jefferson Street  
Louisville, Kentucky 40202-2828  
Telephone: (502) 333-6000

D. Joleen Frederick  
City Attorney, City of West Liberty, Kentucky  
P.O. Box 508  
West Liberty, Kentucky 41472  
Telephone: (606) 743-2550

Counsel for the City of West Liberty, Kentucky





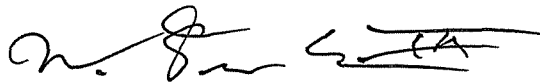
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Verified Application and Request for Expedited Treatment was served on the following persons on the 19th day of July, 2010, U.S. mail, postage prepaid:

Dennis G. Howard II  
Lawrence W. Cook  
Paul D. Adams  
Assistant Attorneys General  
Office of the Kentucky Attorney General  
Office of Rate Intervention  
1024 Capital Center Drive, Suite 200  
Frankfort, KY 40601-8204

Kim Ison Gevedon  
Attorney at Law  
579 Main Street, Suite 2  
P. O. Box 216  
West Liberty, KY 41472

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



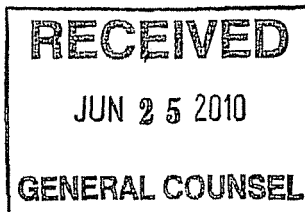
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Counsel for the City of West Liberty, Kentucky





**NiSource Gas  
Transmission & Storage®**



5151 San Felipe, Suite 2500  
Houston, TX 77056  
713.267.4743

**W. Colin Harper**  
Senior Vice President - Commercial Operations

June 22, 2010

RECEIVED

JUN 25 2010

PUBLIC SERVICE  
COMMISSION

**Via Regular, Certified Mail, Facsimile and Electronic Mail**

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

**Re: Notice of Immediate Suspension of Service and Terminate of Service Agreement**

Dear Mrs. Sorrell,

You are hereby advised that as a result of Elam Utility Company's ("Elam") failure to provide adequate credit assurance in response to our letters dated May 17, 2010 and June 11, 2010, Columbia Gas Transmission, LLC ("Columbia") and Columbia Gulf Transmission Company ("Columbia Gulf") must proceed to suspend service to Elam and terminate Elam's service agreement for nonpayment effective July 26, 2010. Attached is a list of the affected contracts. However, if Elam makes payment in full within 30 days for the amount owed to Columbia and provides the required credit assurance for future business, termination of service may be avoided. Columbia and Columbia Gulf have worked with Elam and the Kentucky Public Service Commission to avoid suspension and termination, but Elam has failed to make any meaningful payments or provide credit assurances.

Columbia is acting pursuant to Section 9.7 and Section 10.4 of the General Terms and Conditions of its tariff. Columbia Gulf is acting pursuant to Section 9.6 and 10.7 of the General Terms and Conditions of its tariff. The amount owed Columbia for services provided through June 1, 2010 is \$688,629.76. This amount includes the value of the negative gas imbalance on GTS contract 37816 of 113,465 dekatherms ("Dth") as well as unpaid invoices owed Columbia totaling \$16,851.76. To provide credit assurance (as reflected in Section 9.6 c.1-4 of Columbia's tariff) Columbia would require: a) an irrevocable letter of credit from a creditworthy financial institution in a format agreed to by Columbia; b) a guarantee from a Columbia approved creditworthy entity; c) a cash deposit; or d) a grant to Columbia of a security interest in collateral, the value of which is mutually agreed upon by Columbia and Elam. Columbia and Columbia Gulf are open to discussing any combination of cash deposits and credit assurances to avoid suspension and termination of service.



Elam Utility Company, Inc.  
Attn: Wilma Sorrell  
June 22, 2010  
Page 2 of 2

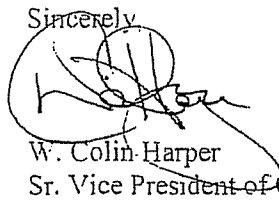
As you are aware, Elam has been in arrears to Columbia and Columbia Gulf due to failure to pay gas imbalance charges and for transportation services since 2006. The Federal Court for the Eastern District of Virginia granted Columbia a judgment against Elam on September 10, 2009 in the amount of \$313,646. Elam has still not made any payment toward satisfying the judgment since it was entered by the court.

Columbia has worked with Elam in the past to make arrangements to pay down what is owed to Columbia for gas imbalances and transportation services provided, but not paid for. Elam has failed to honor any of the past agreements that have been reached. Since the judgment was issued by the Federal Court, Elam has made only minimal payments, and Elam has taken additional gas off of the Columbia system, which has increased the amount of imbalance gas. The imbalance at the time the judgment was entered was negative 51,892 Dth. In the winter of 2009, Elam increased its gas imbalance to negative 113,465 as of June 1, 2010 and has purchased no supply since the end of August, 2009. The amount owed just for gas imbalances is \$671,778 for gas provided through June 1, 2010. The amount owed Columbia has more than doubled since the court issued its judgment in September 2009.

Columbia and Columbia Gulf can no longer provide natural gas service to Elam under conditions of chronic nonpayment. The full amount owed for services provided through June 1, 2010 of \$688,629.76 must be paid in 30 days and the outlined credit assurance must be provided, or service will be suspended and Elam's service agreements with Columbia and Columbia Gulf will be terminated. Columbia and Columbia Gulf regret having to provide this notice of suspension of service to Elam and termination of Elam's service agreement. Elam's failure to make payments for gas delivered for many years, its actions this past winter in continuing to take gas as imbalance gas without making any payments, its failure to make any payments in satisfaction of the judgment issued by the federal court, and its failure to respond the credit assurance letters dated May 17, 2010 and June 11, 2010 has forced Columbia and Columbia Gulf to take this action. Columbia and Columbia Gulf reserve the right to proceed through any and all legal means to collect the outstanding and delinquent invoices, including gas imbalances (or the value thereof), plus interest even after service is suspended and the service agreement is terminated.

Columbia and Columbia Gulf urge Elam to make payment promptly to avoid suspension of service and termination of Elam's service agreements on July 26, 2010.

Sincerely,



W. Colin Harper  
Sr. Vice President of Commercial Operations

cc: Kentucky Public Service Commission  
Kerry Noone, Federal Energy Regulatory Commission

**ATTACHMENT TO NOTICE OF IMMEDIATE SUSPENSION OF SERVICE  
AND TERMINATION OF SERVICE AGREEMENTS**

**CONTRACTS IMPACTED BY NOTICE**

**Columbia Gas Transmission, LLC**  
Service - GTS - General Trans. Service  
Contract # 37816  
Volume - 960 Dth  
Start Date - 11/1/1993  
End Date - 10/31/2011

**Columbia Gulf Transmission Company**  
Service - FTS1  
Contract # 43444  
Volume - 326 Dth  
Start Date - 11/1/1994  
End Date - 10/31/2010



CITY OF WEST LIBERTY  
AUDITED FINANCIAL STATEMENTS

June 30, 2009



WELLS & COMPANY, P.S.C.

*Certified Public Accountants*

865 South Mayo Trail, Suite 7  
Paintsville, Kentucky 41240

(606) 789-3588

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WELLS & COMPANY, P.S.C.

*Certified Public Accountants*

865 South Mayo Trail, Suite 7  
Paintsville, Kentucky 41240-1215

(606) 789-3588

Fax (606) 789-3326

## INDEPENDENT AUDITOR'S REPORT

The Honorable Jim Rupe, Mayor  
Members of the City Council  
City of West Liberty, Kentucky

We have audited the accompanying financial statements of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of City of West Liberty, Kentucky, as of and for the year ended June 30, 2009, which collectively comprise the City's basic financial statements as listed in the table of contents. These financial statements are the responsibility of the City of West Liberty, Kentucky's, management. Our responsibility is to express opinions on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and the significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinions.

In our opinion, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities, the business-type activities, each major fund, and the aggregate remaining fund information of the City of West Liberty, Kentucky, as of June 30, 2009, and the respective changes in financial position, and cash flows, where applicable, thereof for the year then ended in conformity with accounting principles generally accepted in the United States of America.

In accordance with *Government Auditing Standards*, we have also issued our report dated August 24, 2009, on our consideration of the City of West Liberty, Kentucky's internal control over financial reporting and our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* and should be considered in assessing the results of our audit.

**City of West Liberty, Kentucky**  
**August 24, 2009**  
**Page 2**

The City of West Liberty, Kentucky has not presented the management's discussion and analysis that the Governmental Accounting Standards Board (GASB) has determined is necessary to supplement, although not required to be part of, the basic financial statements. The Budgetary Comparison Information is not a required part of the basic financial statement but is supplementary information required by GASB. We have applied certain limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of the budgetary comparison information. However, we did not audit the information and express no opinion on it.

Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise the City of West Liberty, Kentucky's basic financial statements. The accompanying supplemental information as listed in the table of contents are presented for purposes of additional analysis and are not a required part of the basic financial statements. The accompanying supplemental information has been subjected to the auditing procedures applied in the audit of the basic financial statements and, in our opinion, are fairly stated in all material respects in relation to the basic financial statements taken as a whole.

*Wells & Company, PSC*

Certified Public Accountants  
Paintsville, Kentucky  
August 24, 2009

CITY OF WEST LIBERTY, KENTUCKY  
STATEMENT OF NET ASSETS  
JUNE 30, 2009

	Governmental Activities	Business-Type Activities	Total
<b>ASSETS</b>			
Cash	\$ 395,285	\$ 525,545	\$ 920,830
Certificates of deposit	160,519	221,745	382,264
Taxes receivable	15,948	-	15,948
Accounts receivable	22,930	141,823	164,753
Interest receivable	924	117	1,041
Other receivables	11,336	-	11,336
Unbilled revenues	-	65,365	65,365
Inventory	-	35,700	35,700
Prepaid and other assets	86,930	83,864	170,794
Due from water & sewer	117,033	-	117,033
Capital assets:			
Land and construction-in-progress	160,636	267,523	428,159
Other capital assets, net of accumulated depreciation	1,905,510	12,719,294	14,624,804
<b>Total Assets</b>	<b>2,877,051</b>	<b>14,060,976</b>	<b>16,938,027</b>
<b>LIABILITIES</b>			
Accounts payable	14,283	65,977	80,260
Retainage payable	-	5,988	5,988
Accrued payroll	18,579	13,377	31,956
Accrued payroll taxes	5,305	4,486	9,791
Accrued vacation	17,788	29,336	47,124
Accrued interest	7,935	21,972	29,907
Other accrued liabilities	9,779	9,341	19,120
Deferred grant revenue	-	25,808	25,808
Due to debt service fund	-	117,033	117,033
Long-term liabilities:			
Due within one year	31,099	68,948	100,047
Due in more than one year	279,925	3,291,991	3,571,916
<b>Total Liabilities</b>	<b>384,693</b>	<b>3,654,257</b>	<b>4,038,950</b>
<b>NET ASSETS</b>			
Invested in capital assets, net of related debt	1,755,122	9,625,878	11,381,000
Restricted for:			
Depreciation	-	377,689	377,689
Fire service	175,652	-	175,652
Highways and streets	39,530	-	39,530
Tourism	87,067	-	87,067
911 dispatch	25,741	-	25,741
Debt service	264,430	186,114	450,544
Unrestricted	144,816	217,038	361,854
<b>Total Net Assets</b>	<b>\$ 2,492,358</b>	<b>\$ 10,406,719</b>	<b>\$ 12,899,077</b>

See accompanying notes to basic financial statements.



CITY OF WEST LIBERTY, KENTUCKY  
 STATEMENT OF ACTIVITIES  
 FOR THE FISCAL YEAR ENDED JUNE 30, 2009

Functions/Programs	Expenses	Program Revenues			Net (Expense) Revenue and Changes in Net Assets		
		Charges for Services	Operating Grants and Contributions	Capital Grants and Contributions	Governmental Activities	Business-Type Activities	Total
Governmental activities:							
General government	\$ 523,217	\$ 211,646	\$ -	\$ -	\$ (311,571)	\$ -	\$ (311,571)
Public safety	985,393	177,214	33,131	-	(775,048)	-	(775,048)
Streets	115,908	-	102,258	-	(13,650)	-	(13,650)
Tourism and planning	184,347	-	-	-	(184,347)	-	(184,347)
Interest on long-term debt	18,696	-	-	-	(18,696)	-	(18,696)
Total governmental activities	<u>1,827,561</u>	<u>388,860</u>	<u>135,389</u>	<u>-</u>	<u>(1,303,312)</u>	<u>-</u>	<u>(1,303,312)</u>
Business-type activities:							
Water and sewer	2,337,417	1,596,078	-	53,851	-	(687,488)	(687,488)
Total business-type activities	<u>2,337,417</u>	<u>1,596,078</u>	<u>-</u>	<u>53,851</u>	<u>-</u>	<u>(687,488)</u>	<u>(687,488)</u>
<b>Total primary government</b>	<u>\$ 4,164,978</u>	<u>\$ 1,984,938</u>	<u>\$ 135,389</u>	<u>\$ 53,851</u>	<u>(1,303,312)</u>	<u>(687,488)</u>	<u>(1,990,800)</u>
<b>General revenues:</b>					186,832	-	186,832
Property taxes				21,146	-	21,146	
Fire taxes				410,456	-	410,456	
Insurance premium taxes				303,067	-	303,067	
Occupational taxes and licenses				13,183	-	13,183	
Motor vehicle taxes				153,283	-	153,283	
Restaurant taxes				16,465	-	16,465	
Other taxes				5,200	-	5,200	
Licenses and permits				184,791	-	184,791	
Intergovernmental revenue				10,719	8,924	19,643	
Interest income				22,122	-	22,122	
Rental income				1,000	-	1,000	
Gain/(Loss) on sale of capital assets				20,756	-	20,756	
Miscellaneous				<u>1,349,020</u>	<u>8,924</u>	<u>1,357,944</u>	
Total general revenues and transfers				45,708	(678,564)	(632,856)	
Change in net assets				<u>2,446,650</u>	<u>11,085,284</u>	<u>13,531,934</u>	
Net assets - beginning				<u>\$ 2,492,358</u>	<u>\$ 10,406,720</u>	<u>\$ 12,899,078</u>	
Net assets - ending							

See accompanying notes to basic financial statements.

CITY OF WEST LIBERTY, KENTUCKY  
 BALANCE SHEET  
 GOVERNMENTAL FUNDS  
 JUNE 30, 2009

	<u>General Fund</u>	<u>Tourism and Planning</u>	<u>Other Governmental Funds</u>	<u>Total Governmental Funds</u>
<b>ASSETS</b>				
Cash	\$ 81,541	\$ 86,021	\$ 227,723	\$ 395,285
Certificates of deposits	-	-	160,519	160,519
Receivables:				
Property taxes	412	-	-	412
Interest	-	-	924	924
Other	32,213	-	2,053	34,266
Due from water & sewer	-	-	117,033	117,033
Prepaid expenses	85,755	1,175	-	86,930
	<u>85,755</u>	<u>1,175</u>	<u>-</u>	<u>86,930</u>
Total Assets	<u>\$ 199,921</u>	<u>\$ 87,196</u>	<u>\$ 508,252</u>	<u>\$ 795,369</u>
<b>LIABILITIES AND FUND BALANCES</b>				
<b>Liabilities:</b>				
Accounts payable	\$ 13,308	\$ 129	\$ 846	\$ 14,283
Accrued payroll	18,579	-	-	18,579
Accrued payroll taxes	5,305	-	-	5,305
Accrued vacation	17,788	-	-	17,788
Other accrued liabilities	7,726	-	2,053	9,779
	<u>7,726</u>	<u>-</u>	<u>2,053</u>	<u>9,779</u>
Total Liabilities	<u>62,706</u>	<u>129</u>	<u>2,899</u>	<u>65,734</u>
<b>Fund Balances:</b>				
Reserved for debt service	-	-	264,430	264,430
Unreserved	137,215	87,067	240,923	465,205
	<u>137,215</u>	<u>87,067</u>	<u>240,923</u>	<u>465,205</u>
Total Fund Balances	<u>137,215</u>	<u>87,067</u>	<u>505,353</u>	<u>729,635</u>
<b>Total Liabilities and Fund Balances</b>	<u>\$ 199,921</u>	<u>\$ 87,196</u>	<u>\$ 508,252</u>	<u>\$ 795,369</u>

See accompanying notes to basic financial statements.

CITY OF WEST LIBERTY, KENTUCKY  
RECONCILIATION OF THE BALANCE SHEET OF GOVERNMENTAL  
FUNDS TO THE STATEMENT OF NET ASSETS  
JUNE 30, 2009

6

<b>Fund Balances - Total Governmental Funds</b>	<b>\$ 729,635</b>
Amounts reported for governmental activities in the statement of net assets are different because:	
Capital assets used in governmental activities are not financial resources and therefore are not reported in the funds.	
Governmental capital assets	3,675,123
Less: accumulated depreciation	(1,608,977)
Long-term liabilities are not due and payable in the current period and therefore are not reported in the funds.	(311,024)
Interest payable on long-term debt did not require current financial resources. Therefore, interest payable was not reported as a liability in Governmental Funds Balance Sheet.	(7,935)
Other long-term assets are not available to pay for current-period expenditures and therefore are deferred in the funds:	
Delinquent property taxes	<u>15,536</u>
<b>Net Assets of Governmental Activities</b>	<b><u><u>\$ 2,492,358</u></u></b>

See accompanying notes to basic financial statements.

CITY OF WEST LIBERTY, KENTUCKY  
 STATEMENT OF REVENUES, EXPENDITURES, AND  
 CHANGES IN FUND BALANCES  
 GOVERNMENTAL FUNDS  
 FOR THE FISCAL YEAR ENDED JUNE 30, 2009

	General Fund	Tourism and Planning	Other Governmental Funds	Total Governmental Funds
<b>Revenues:</b>				
Taxes:				
Property	\$ 183,174	\$ -	\$ -	\$ 183,174
Insurance premium	410,456	-	-	410,456
Occupational taxes and licenses	303,067	-	-	303,067
Motor vehicle	13,183	-	-	13,183
Telecom	6,920	-	-	6,920
Fire	-	-	21,146	21,146
Restaurant	-	153,283	-	153,283
Motel	-	9,545	-	9,545
E-911	80,322	-	-	80,322
Shelter income	-	2,240	-	2,240
Wireless collections	-	-	96,892	96,892
Administrative	169,430	-	-	169,430
Licenses and permits	5,200	-	-	5,200
Intergovernmental revenues	15,613	-	135,137	150,750
Charges for garbage services	211,646	-	-	211,646
Rental income	19,882	-	-	19,882
Fines and forfeits	2,400	-	-	2,400
Interest income	3,202	348	7,169	10,719
Contributions	1,542	-	-	1,542
Miscellaneous revenues	10,814	-	6,000	16,814
<b>Total revenues</b>	<b>1,436,851</b>	<b>165,416</b>	<b>266,344</b>	<b>1,868,611</b>
<b>Expenditures:</b>				
General government	512,247	-	-	512,247
Public safety	812,112	-	61,619	873,731
Streets	52,811	-	-	52,811
Tourism and planning	-	138,908	-	138,908
Debt service				
Principal retirement	-	-	64,566	64,566
Interest	-	-	19,248	19,248
Capital outlay	96,263	75,167	86,180	257,610
<b>Total expenditures</b>	<b>1,473,433</b>	<b>214,075</b>	<b>231,613</b>	<b>1,919,121</b>
Excess (deficiency) of revenues over expenditures	(36,582)	(48,659)	34,731	(50,510)
<b>Other financing sources (uses):</b>				
Operating transfers in	62,888	-	98,455	161,343
Operating transfers out	(50,454)	-	(110,889)	(161,343)
Proceeds from sale of assets	-	-	1,000	1,000
<b>Total other financing sources (uses)</b>	<b>12,434</b>	<b>-</b>	<b>(11,434)</b>	<b>1,000</b>
Net change in fund balances	(24,148)	(48,659)	23,297	(49,510)
Fund balances - beginning	161,363	135,726	482,056	779,145
<b>Fund balances - ending</b>	<b>\$ 137,215</b>	<b>\$ 87,067</b>	<b>\$ 505,353</b>	<b>\$ 729,635</b>

See accompanying notes to basic financial statements.

CITY OF WEST LIBERTY, KENTUCKY  
 RECONCILIATION OF THE STATEMENT OF REVENUES,  
 EXPENDITURES, AND CHANGES IN FUND BALANCES  
 OF GOVERNMENTAL FUNDS TO THE STATEMENT  
 OF ACTIVITIES  
 FOR THE YEAR ENDED JUNE 30, 2009

**Net Change in Fund Balances - Total Governmental Funds** \$ (49,510)

Amounts reported for governmental activities in the statement of activities are different because:

Governmental funds report capital outlays as expenditures. However, on the statement of activities, the cost of those assets is allocated over their estimated useful lives as depreciation expense:

Capital asset purchases capitalized	257,610
Depreciation expense	(231,168)

Revenues on the statement of activities that do not provide current financial resources are not reported as revenues in governmental funds:

Increase in property taxes	3,658
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In the statement of activities, interest is accrued on outstanding long-term debt, whereas in the governmental funds interest is not reported until due. This amount represents the net change in accrued interest payable.

552

Proceeds of long-term debt are recorded as an other financing source for governmental funds but it is not recorded in the statement of activities. Proceeds of long-term debt are liabilities.

-

Repayment of principal is an expenditure in the governmental funds, but the repayment reduces long-term liabilities on the statement of activities:

Loans payable	64,566
---------------	--------

**Change in Net Assets of Governmental Activities** \$ 45,708

CITY OF WEST LIBERTY, KENTUCKY  
 STATEMENT OF NET ASSETS  
 BUSINESS-TYPE ACTIVITY  
 JUNE 30, 2009

	<u>Water &amp; Sewer</u>
<b>ASSETS</b>	
<b>Current assets:</b>	
Cash	\$ 183,487
Accounts receivable, no allowance considered necessary	141,823
Interest receivable	117
Unbilled revenues	65,365
Inventory	35,700
Prepaid expenses	<u>70,086</u>
<b>Total current assets</b>	<u>496,578</u>
<b>Non-current assets:</b>	
<b>Restricted assets:</b>	
Cash	342,058
Certificate of deposits	<u>221,745</u>
<b>Total restricted assets</b>	<u>563,803</u>
<b>Utility Plant:</b>	
Plant in service	20,131,897
Less accumulated depreciation	<u>(7,348,689)</u>
	12,783,208
Construction work in progress	<u>203,609</u>
<b>Net utility plant</b>	<u>12,986,817</u>
<b>Other non-current assets:</b>	
Bond issuance costs, net	<u>13,778</u>
<b>Total other non-current assets</b>	<u>13,778</u>
<b>Total assets</b>	<u><u>\$ 14,060,976</u></u>

See accompanying notes to basic financial statements.

CITY OF WEST LIBERTY, KENTUCKY  
 STATEMENT OF NET ASSETS (Continued)  
 BUSINESS-TYPE ACTIVITY  
 JUNE 30, 2009

	<u>Water &amp; Sewer</u>
<b>LIABILITIES AND NET ASSETS</b>	
<b>Current liabilities:</b>	
Accounts payable - trade	\$ 65,977
Retainage payable	5,988
Accrued payroll	13,377
Accrued payroll taxes	4,486
Accrued vacation	29,336
Accrued interest payable	21,972
Other accrued liabilities	9,341
Deferred grant revenue	25,808
Due to debt service fund	117,033
Current portion of long-term liabilities	<u>68,948</u>
<b>Total current liabilities</b>	<u>362,266</u>
<b>Long-term liabilities:</b>	
Long-term debt	<u>3,360,939</u>
	3,360,939
Less current portion	<u>(68,948)</u>
<b>Total long-term liabilities</b>	<u>3,291,991</u>
<b>Total liabilities</b>	<u>3,654,257</u>
<b>Net assets:</b>	
Investments in capital assets, net of related debt	9,625,878
Restricted for:	
Debt service	186,114
Depreciation	377,689
Unrestricted	<u>217,038</u>
<b>Total net assets</b>	<u>10,406,719</u>
<b>Total liabilities and net assets</b>	<u>\$ 14,060,976</u>

See accompanying notes to basic financial statements.

CITY OF WEST LIBERTY, KENTUCKY  
 STATEMENT OF REVENUES, EXPENSES AND CHANGES IN FUND NET ASSETS  
 BUSINESS-TYPE ACTIVITY  
 YEAR ENDED JUNE 30, 2009

	<u>Water &amp; Sewer</u>
<b>Operating revenues:</b>	
Sewer revenues	\$ 682,554
Water revenues	889,296
Other operating revenues	<u>24,228</u>
<b>Total operating revenues</b>	<u>1,596,078</u>
<b>Operating expenses:</b>	
Sewer	1,023,689
Water	<u>1,179,785</u>
<b>Total operating expenses</b>	<u>2,203,474</u>
<b>Utility operating income (loss)</b>	<u>(607,396)</u>
<b>Non-operating revenues (expenses):</b>	
Interest income	8,924
Interest expense	(133,510)
Amortization of bond issue costs	<u>(433)</u>
<b>Total non-operating revenues (expenses)</b>	<u>(125,019)</u>
<b>Net income (loss) before contributions from (to)</b>	(732,415)
Contributions in aid of construction	<u>53,851</u>
Change in net assets	(678,564)
Net assets, beginning of year	<u>11,085,284</u>
<b>Net assets, end of year</b>	<u><u>\$ 10,406,720</u></u>

See accompanying notes to basic financial statements.



CITY OF WEST LIBERTY, KENTUCKY  
 STATEMENT OF CASH FLOWS  
 BUSINESS-TYPE ACTIVITY  
 YEAR ENDED JUNE 30, 2009

Water & Sewer

Cash flows from operating activities:

Cash inflows:

Payments received from customers

\$ 1,593,557

Total cash provided

1,593,557

Cash outflows:

Payments for salaries and benefits

669,903

Payments to suppliers for goods and services

731,034

Total cash used

1,400,937

Net cash provided (used) by operating activities

192,620

Cash flows from capital and related financing activities:

Purchases of equipment

(68,495)

Proceeds from loan

-

Contributions-in-aid of construction

150,175

Principal payments on long-term debt

(67,247)

Interest paid on long-term debt

(133,874)

Net cash provided (used) by capital and related financing activities

(119,441)

Cash flows from investing activities:

Interest received

9,116

Net cash provided (used) by investing activities

9,116

Net cash inflow (outflow) from all activities

82,295

Cash and cash equivalents at beginning of period

664,995

Cash and cash equivalents at end of period

\$ 747,290

CITY OF WEST LIBERTY, KENTUCKY  
 STATEMENT OF CASH FLOWS (Continued)  
 BUSINESS-TYPE ACTIVITY  
 YEAR ENDED JUNE 30, 2009

	<u>Water &amp; Sewer</u>
<b>Reconciliation of utility operating income to net cash provided by operating activities:</b>	
Utility operating income	\$ (607,396)
Depreciation	601,257
Bad debt expense	6,219
(Increase) decrease in:	
Accounts receivable	(6,404)
Unbilled revenue	(2,336)
Inventory	(12,790)
Prepaid expenses and other assets	62,913
Increase (decrease) in:	
Accounts payable	33,441
Accrued liabilities and other liabilities	117,716
	<u>117,716</u>
<b>Net cash provided (used) by operating activities</b>	<u>\$ 192,620</u>
<b>Schedule of cash and cash equivalents:</b>	
<b>Beginning of period:</b>	
Unrestricted cash	\$ 187,583
Restricted cash	477,412
	<u>664,995</u>
<b>End of period:</b>	
Unrestricted cash	\$ 183,487
Restricted cash	563,803
	<u>747,290</u>

See accompanying notes to basic financial statements.



City of West Liberty 2010/2011 Budget						
			Gen & Spec Rev Funds	Water	Sewer	Garbage
<b>Estimated Revenues</b>						
Property Tax		\$	240,000.00			
Insurance Premium Tax		\$	348,000.00			
Rest Tax & Rentals		\$	148,200.00			
CMRS Funds		\$	96,100.00			
E-911 Charge		\$	72,800.00			
Law Enf Fees		\$	15,000.00			
Permits License Fees		\$	12,000.00			
Rent Inc		\$	18,000.00			
Municipal Aid Inc		\$	78,200.00			
Telecommunication Tax		\$	9,000.00			
KLEFPF		\$	26,000.00			
Occ Tax Revenue		\$	310,000.00			
Garbage Collections						\$ 230,000.00
Charges for Service				\$ 986,000.00	\$ 751,700.00	
Administrative Income		\$	220,000.00			
Misc Inc				\$ 2,500.00	\$ 4,000.00	
Special Appropriations		\$	92,000.00		\$ 600,000.00	
Debt Reserve		\$	175,000.00	\$ 80,000.00	\$ 65,000.00	
Franchise Fees		\$	13,150.00			
Balance Forward		\$	125,000.00	\$ 25,000.00	\$ 25,000.00	
		\$	1,998,450.00	\$ 1,093,500.00	\$ 1,445,700.00	\$ 230,000.00
<b>Appropriations</b>						
Adminstration		\$	511,700.00			
Police		\$	571,000.00			
Dispatch		\$	396,000.00			
Fire		\$	50,250.00			
Municipal Road Aid		\$	78,200.00			
Streets		\$	50,000.00			
Tourism		\$	153,200.00			
CMRS		\$	96,100.00			
JAG Grant		\$	92,000.00			
		\$	1,998,450.00			
Water		\$	1,093,500.00			
Sewer		\$	1,445,700.00			
<b>Water &amp; Sewer Totals</b>		\$	2,539,200.00			
<b>COMBINED FUNDS BUDGET PROJECTION</b>				\$ 4,537,650.00		



**City of West Liberty**  
**565 Main Street**  
**West Liberty, KY 41472**  
**Phone 606-743-3330**  
**Fax 606-743-2202**  
**Wliberty@mrtc.com**

**Emergency Council Meeting**  
**Thursday July 15, 2010 4:15 PM**

**Agenda**

**I. Elam Utility Gas Shutoff**

**Council Members:**

**Phyllis Keeton- Present**

**John May- Present**

**Belinda Jordan Present**

**Dwayne Nickell- Absent**

**Mark Walter- Present**

**Alton Pelfrey- Present**

**Others; Sharon Lykins, Assistant Clerk, Joleen Frederick, City Attorney and Sally Barker, City Clerk**

**Call to Order-** In the absence of Mayor Jim Rupe, Councilmember John May called the meeting to order and stated that an emergency with the gas service to the City of West Liberty still exists and the City is in danger of being disconnected by Columbia Gas and the City must act quickly to avoid a crisis.

City Attorney Joleen Frederick stated the Stock Purchase Agreement that had been approved for the purchase of the Elam Utility Company at the July 13 meeting was not in the City's best interest. Ms Frederick presented them with an Asset Purchase Agreement. Ms Frederick explained that buying the assets and settling the debt of the assets would be in the City's best interest. Ms Frederick pointed out that the City need only acquire the complete assets of Elam Utility and take over the service to the system; 410 customers in West liberty and 50 customers in Daysboro.

Mark Walter made a motion to approve the Asset Purchase agreement as presented, Belinda Jordan seconded the motion. Asset Purchase agreement approved unanimously.

Ms. Frederick also stated that the City may need to enter into a Management Agreement to take immediate control of the system to help avoid the disconnect. The management agreement Ms. Frederick explained would put the system under control of the City until the transfer of the assets could be completed.

Alton Pelfrey made a motion to approve the Management Agreement, Belinda Jordan seconded the motion. Management Agreement approved unanimously.

Mark Walter made a motion to adjourn the meeting; Alton Pelfrey seconded the motion, Motion approved unanimously meeting adjourned at 5:15 pm.

Attest:

\_\_\_\_\_  
Sally Barker, City Clerk

\_\_\_\_\_  
Jim Rupe, Mayor





**ASSET PURCHASE AGREEMENT**

**BETWEEN**

**THE CITY OF WEST LIBERTY**

**AND**

**ELAM UTILITY COMPANY, INC.**

THIS ASSET PURCHASE AGREEMENT ("**Agreement**") is made and entered into this 16<sup>th</sup> day of July, 2010, by and between **The CITY OF WEST LIBERTY** ("**Buyer**") by and through its Mayor, James O. Rupe, 555 Main Street, West Liberty, Kentucky 41472 and **ELAM UTILITY COMPANY, INC.**, a for-profit corporation duly organized in the Commonwealth of Kentucky, organization number # 0015492 located in West Liberty, Kentucky at 459 Main Street, West Liberty, Kentucky 41472 ("**Seller**").

**WITNESSETH:**

WHEREAS Seller operates as a regulated public utility in the business of supplying natural gas to approximately 460 residential and commercial customers in Morgan and Wolfe Counties, Kentucky, and environs (collectively, the "Customers"); and

WHEREAS the parties desire that Seller transfer, convey and assign to Buyer substantially all of the assets, properties, and rights of Seller as a going concern; and that Buyer purchase and acquire the same, subject to the assumption by Buyer of certain liabilities and obligations of Seller, upon the terms set forth below;

Seen and agreed for Buyer:

JOR

Page 1 of 8

Seen and agreed for Seller:

JWS

NOW, THEREFORE, in consideration of the premises and the mutual representations, warranties, covenants and agreements set forth below, the parties agree as follows:

Seen and agreed for Buyer:

JGR

Page 2 of 8

Seen and agreed for Seller:

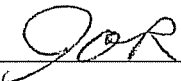
JFA

**Article 1: Purchased Assets**

On the terms and subject to the conditions of this Agreement, at the Closing (as defined in Article 4 hereof), Seller shall transfer, convey and assign to Buyer, and Buyer shall purchase and acquire from Seller, **all** of the assets, properties and rights of Seller, wherever located, real, personal and mixed, tangible and intangible, as the same shall exist immediately prior to the Closing (collectively, "Purchased Assets"). The Purchased Assets include, but are not limited to:

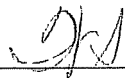
1. Seller's gas line infrastructure serving the citizens of West Liberty and a gas pipeline in Wolfe County and described in a deed filed for record in the Morgan County Court Clerk's Office in Deed Book 181, page 313;
2. Utility truck with all tools and equipment;
3. All computers, computer software, customer data and end user agreements;
4. All employee records, agreements and contracts;
5. Cash, bank accounts, and accounts receivable;
6. All inventory including, but not limited to, meters, plant, etc.;
7. All vehicles, equipment, and tools in possession of the company or its employees and or stockholder;
8. Any and all contracts, licenses, certifications and or government authorities; and
9. Any and all deeds of real property, deeds of easements, maps and documents or proof's of ownership of service lines, bill of sales, and tax records of the company.

Seen and agreed for Buyer:

  
\_\_\_\_\_

Page 3 of 8

Seen and agreed for Seller:

  
\_\_\_\_\_



**Article 2: Assumption of Certain Liabilities**

At the Closing, Buyer will assume the following liabilities and obligations, **and only the following liabilities and obligations**, of Seller:

1. Seller's outstanding obligation(s) to Columbia Gas Transmission, LLC, and Columbia Gulf Transmission Company, including the negative gas imbalance on GTS contract 37816 of 113,465 dekatherms, as well as unpaid invoices owed to Columbia totaling \$16,851.76;
2. Seller's debt to the Commercial Bank in West Liberty, Kentucky, in an approximate amount of \$30,000.00; and
3. Seller's mortgage debt of approximately \$180,000 to Community Trust Bank **if and only if** the Commission approves Buyer's acquisition of the portion of Seller's natural gas distribution system located in Wolfe County, Kentucky.

For convenience of reference, the liabilities and obligations being assumed by Buyer as stated above are herein collectively called the "Assumed Obligations."

**Article 3: Purchase Price**

The sole and mutually satisfactory consideration and purchase price for Buyer to obtain the Purchased Assets (Article 1) from Seller is Buyer's assumption of the Assumed Obligations (Article 2).

**Article 4: Closing**

The Buyer and Seller acknowledge that this agreement cannot become effective, and the transaction(s) contemplated herein cannot close, unless and until the Commission approves the transfer of ownership and control of Seller's utility assets to Buyer under KRS § 278.020(5) and (6).

Seen and agreed for Buyer:

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Page 5 of 8

Seen and agreed for Seller:

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Because time is of the essence, Buyer and Seller will close the transaction(s) contemplated in this Agreement no later than the business day following the date on which the Commission issues a final order approving the transfer of ownership and control of Seller's utility assets to Buyer under KRS § 278.020(5) and (6).

On the date of closing, Seller shall deliver to Buyer all necessary deeds, titles, warranties, bills of sale, keys, passbooks, and any and all other proof and indicia of ownership necessary and proper to effect the transfer of ownership and control of the Purchased Assets from Seller to Buyer.

**Article 5: Authority to Enter into Agreement**

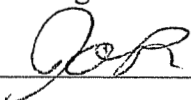
Buyer represents and warrants that it is entering into this Agreement having followed the appropriate municipal approval procedures.

Seller represents and warrants that it has the full lawful authority to enter into this Agreement, including having executed or obtained the necessary evidences of corporate action to obtain authority to enter into this Agreement.

Seller further represents and warrants that the execution and delivery of the assets owned by Seller in compliance with this Agreement and the consummation by Seller of the transactions contemplated hereby will not conflict with or constitute a violation of any provision of its articles of incorporation or bylaws or conflict with or constitute a violation breach, or default under any material contract, trust agreement, mortgage, indenture, or other agreement or instrument to which the corporation is a party or by which any of them is bound or to which Seller or any of its properties is subject.

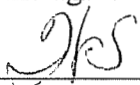
**Article 6: Other Matters**

Seen and agreed for Buyer:

  
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Page 6 of 8

Seen and agreed for Seller:

  
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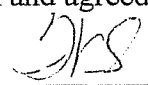
1. Commission Approval Required. This Agreement is contingent upon approval by the Commission, and shall not become effective until the Commission enters an order approving it. Buyer and Seller covenant to support an application to the Commission for approval of this Agreement, and furthermore agree to participate fully and cooperatively in any proceeding(s) before the Commission to obtain approval for this Agreement.
2. Effect of Commission-Required Alterations to Agreement. If the Commission requires changes or alterations to this Agreement to obtain approval for it, and such changes or alterations cannot be made on terms mutually acceptable to Buyer and Seller, this Agreement shall be null, void, and of no effect.
3. Effect of Termination of Gas Service by Gas Supplier. If any of Seller's gas suppliers (e.g., Columbia Gas) terminates service to Elam prior to the Commission's approval of this Agreement, this Agreement shall be null, void, and of no effect.
4. Necessity of Columbia Gas's Acceptance of Terms of Repayment or Replenishment to Avoid Gas Service Termination. If Columbia Gas does not accept the terms of this agreement and allow Buyer a reasonable period (not to exceed 14 calendar days following the date on which the Commission issues a final order approving the transaction(s) contemplated in this Agreement) to satisfy Seller's outstanding obligation to Columbia Gas (either by payment to Columbia Gas or curing the negative gas

Seen and agreed for Buyer:

  
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Page 7 of 8

Seen and agreed for Seller:


  
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balance by replenishment), and averting the planned July 26, 2010 cutoff of gas to Seller and to the citizens of West Liberty, this Agreement shall be null, void, and of no effect.

5. Entire Agreement. This agreement contains the entire agreement between the parties hereto and no modification or amendment shall be binding upon any party unless made in writing and signed by each of the parties hereto.
6. Governing Law. This agreement and the rights and obligations of the parties hereto shall be construed in accordance with the laws of the Commonwealth of Kentucky.

**IN TESTIMONY WHEREOF**, witness the signatures of THE CORPORATION, ELAM UTILTIY COMPANY, by and through its President, Wilma Ison Sorrell and PURCHASER , City of West Liberty, by and through the Mayor, James O. Rupe, as of the date first above written.

THE CORPORATION  
ELAM UTILTIY COMPANY:

  
By: WILMA B. ISON SORRELL,  
PRESIDENT

PURCHASER:  
CITY OF WEST LIBERTY

  
JAMES O. RUPE, MAYOR



**RESOLUTION OF DIRECTIORS AND SHAREHOLDERS OF  
ELAM UTILTIY COMPANY  
AUTHORIZING SALE OF ALL ASSETS**

**DIRECTORS:**

RESOLVED, that it be and hereby is recommended to the sole shareholder, WILMA ISON SORRELL, of the corporation that the corporation sell all of its assets to THE CITY OF WEST LIBERTY on the terms and conditions and for the conditions and for the consideration as set forth in the form of asset purchase agreement appended hereto as exhibit A;

RESOLVED, that by applying her signature hereto, the sole shareholder shall take any and all actions, including the execution of and delivery of the asset purchase agreement, necessary or convenient to effect such sale of assets in the name of and on behalf of the corporation.

**SHAREHOLDER:**

RESOLVED, that the sale of all assets pursuant to the terms of and conditions set forth in the asset purchase agreement as prepared and presented to this meeting by, and hereby is adopted and approved.



BY: WILMA ISON SORRELL, PRSIDENT  
ELAM UTILITY COMPANY  
SOLE SHAREHOLDER/PRESIDENT





# Commercial Bank

P. O. Box 635

West Liberty, Kentucky 41472

(606) 743-3195

Member FDIC

July 17, 2010

**HAND DELIVERY**

City of West Liberty, Kentucky  
565 Main Street  
West Liberty, Kentucky 41472  
Attn: Mayor Jim Rupe

Re: *Loan from Commercial Bank (West Liberty) to the City of West Liberty, Kentucky*

Dear Mayor Rupe:

Commercial Bank (West Liberty) ("Lender") is in a position to make a loan to the City of West Liberty, Kentucky (the "City") in an amount up to \$700,000.00 pursuant to terms and conditions to be agreed upon by the parties (the "Loan").

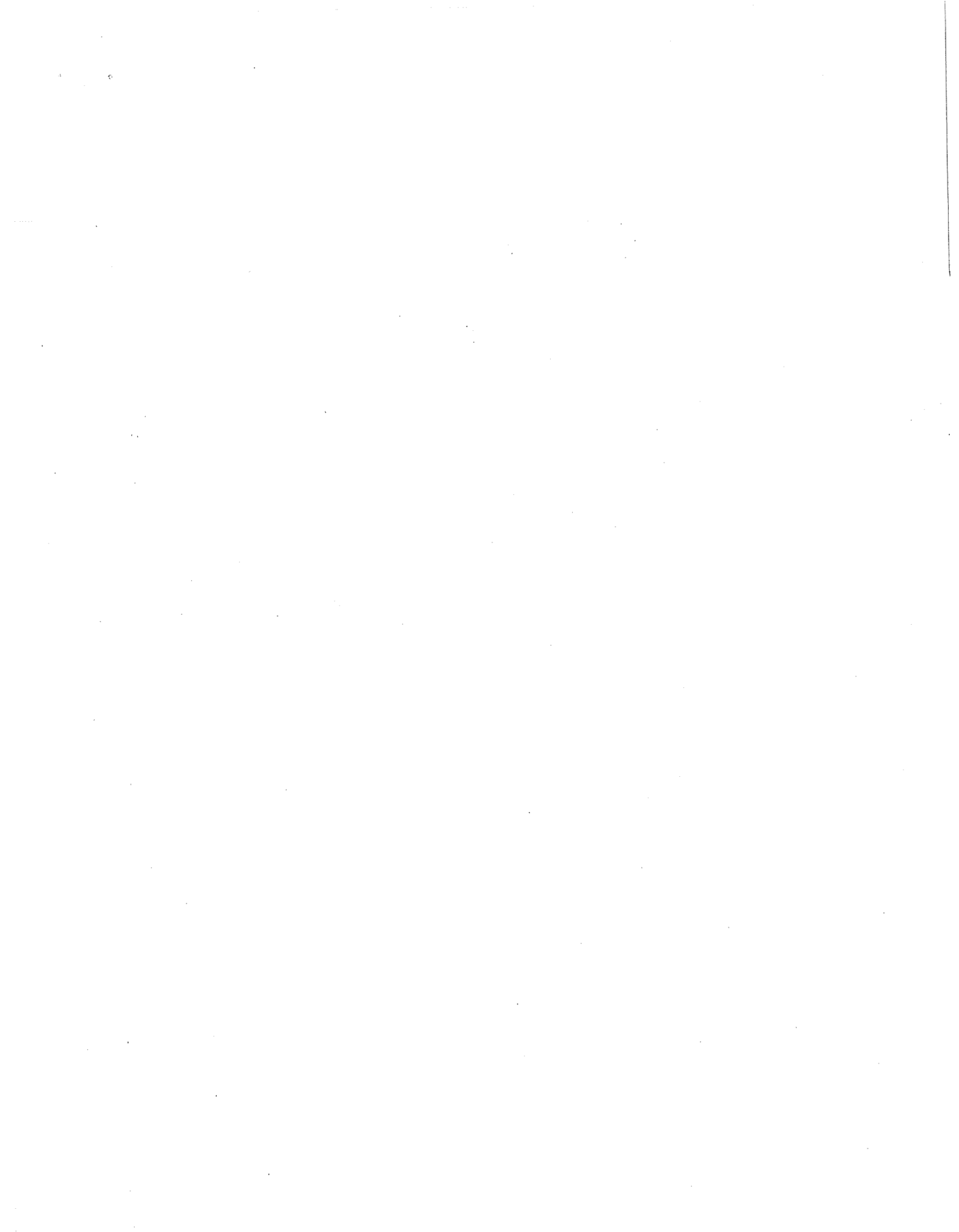
The final terms of the Loan is subject to approval of Lender's Board of Directors, completion of all necessary due diligence normally performed by the Lender, including without limitation making sure that the City complies with any and all applicable laws, and the execution of any and all documents required by the Lender satisfactory to Lender and its counsel.

Thank you for giving Lender the opportunity to provide financing to the City. We are excited about the possibility of assisting in the City's efforts to sustain and improve the availability of utilities to the community.

Sincerely,

Hank Allen  
CEO

HAL:rlp





Services



Forms



Calendar



Press

[Kentucky.gov](#) > [News Center](#) > [Division of Water](#)

Agencies

## Division of Water

### Water Treatment Plants Receive State Recognition

**Press Release Date:** Tuesday, April 28, 2009

**Contact Information:** Allison Fleck, 502-564-3410

Frankfort, KY -- Thirty-one water treatment plants in Kentucky have received awards from the Energy and Environment Cabinet in recognition of their demonstrated success in producing drinking water that consistently meets or exceeds state water quality standards.

The 31 were among 155 public and private water treatment plants in the state that participated in the U.S. Environmental Protection Agency's Area-Wide Optimization Program (AWOP), which challenges plants to reduce turbidity levels below those required by state and federal regulations. Turbidity, or cloudiness, of water can be caused by sand and dirt, as well as bacteria and viruses. Particle removal is critical for producing water that is free from dirt and microbes that can cause waterborne diseases.

Dr. Len Peters, secretary of the Energy and Environment Cabinet, praised all the water plants for their achievements.

"Together, these 31 systems serve more than a million Kentuckians who can be assured that their water treatment systems are working hard to produce safe drinking water from Kentucky's lakes, rivers and reservoirs," said Dr. Peters. "I fully expect to present many more awards next year as water systems continue to

make technical, managerial and financial improvements in the business of producing clean, safe water for the citizens of the commonwealth.”

Two of the water systems received an AWOP Champion Award. This award takes into account the number of years the system has been optimized as well as the dedication of the operating staff. For 2008, Hardin County Water District #2 won in the category for large population served (more than 10,000 customers) and Jackson Municipal Water Works for small population served (fewer than 10,000 customers).

Five plants – Benham Water Plant, Hardin County Water District #2, McCreary County Water District/Cumberland River Water Treatment Plant, Rattlesnake Ridge Water District in Grayson and Wood Creek Water District in London -- also received special recognition for achieving the optimized water quality goals 100 percent of the time during 2008.

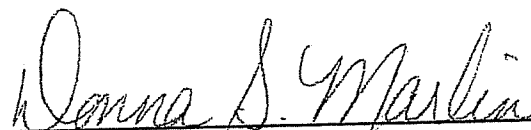
Water systems recognized for meeting those goals 95 percent of the time during 2008 include Ashland Water Works, Barbourville Water and Sewer, Booneville, Burnside Water Company, Cave Run Regional Water Commission, Glasgow Water Company/Barren River Water Treatment Plant, Green River Valley Water District, Greensburg Water Works, Greenup Water System, Hardin County Water District #1, Irvine and Jackson Municipal Water Works, Kentucky-American Water/Richmond Road in Lexington, Lawrenceburg Water and Sewer Department, Leitchfield Water Works, Logan-Todd Regional Water Commission, London Utilities Commission, Martin County Water District, Morehead Utility Plant Board, Northern Kentucky Water District/Memorial Parkway Water Treatment Plant, Northpoint Training Center in Danville, Paducah Water Works, Pineville Water System, Richmond Utilities, West Liberty Water Company and Wilmore Water Works.

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET  
DEPARTMENT FOR ENVIRONMENTAL PROTECTION  
Division of Water

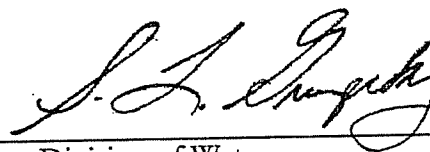
Recognizes

*West Liberty*

*For meeting the Area-Wide Optimization Program goals  
for both settled and filtered water in 2007 and being  
considered a "totally optimized plant" for  
turbidity/microbial removal*

  
\_\_\_\_\_  
Manager, Drinking Water Branch




  
\_\_\_\_\_  
Asst Director, Division of Water

ENVIRONMENTAL AND PUBLIC PROTECTION CABINET  
DEPARTMENT FOR ENVIRONMENTAL PROTECTION  
Division of Water

Recognizes

*West Liberty*

*For meeting the Area-Wide Optimization Program goals  
for both settled and filtered water in 2006 and being  
considered a "totally optimized plant" for turbidity*

  
*Donna S. Marlin*  
\_\_\_\_\_  
Manager, Drinking Water Branch

*David W. Torgon*  
\_\_\_\_\_  
Director, Division of Water





**MANAGEMENT AGREEMENT**

This Management Agreement ("Agreement") is entered into this 19<sup>th</sup> day of July, 2010, by and between (i) the City of West Liberty (the "City"), a Kentucky city with a principal office at 565 Main Street, West Liberty, Kentucky 41472; and (ii) Elam Utility Company, Inc. ("Elam"), a Kentucky corporation with a principal office at 459 Main Street, West Liberty, Kentucky 41472.

**RECITALS**

WHEREAS Elam operates as a regulated public utility in the business of supplying natural gas (the "Business") to approximately 460 residential and commercial customers in Morgan and Wolfe Counties, Kentucky, and environs (collectively, the "Customers");

WHEREAS, under its current management, Elam has accrued significant debts in excess of its assets and is not paying the bills of the Business as they come due;

WHEREAS the Kentucky Public Service Commission ("Commission") has initiated multiple proceedings concerning Elam's financial condition and its ability to continue providing service under its current management;

WHEREAS two entities involved in supplying natural gas to Elam (Columbia Gas Transmission, LLC, and Columbia Gulf Transmission Company, collectively the "Columbia Entities") have stated they will terminate service to Elam and its Customers on July 26, 2010, unless they receive assurances of payment on nearly \$700,000 of outstanding debt to it;

WHEREAS approximately 410 of Elam's approximately 460 customers reside in the City;

Seen and agreed for City:

JOR

Page 1 of 8

Seen and agreed for Elam:

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WHEREAS, there is an immediate need for continued operation of Elam's facilities to ensure continued natural gas service to the Customers and to prevent irreparable harm to the public interest;

WHEREAS the City owns and operates an award-winning water utility, and therefore is capable of managing all aspects of a natural gas distribution business in the City of West Liberty, Morgan County, and Wolfe County as a regulated utility, and currently has liability insurance coverage;

WHEREAS it is the City's desire and intent to acquire all of Elam's assets, and it is the City's intent to seek Commission approval for the same in the near future;

WHEREAS Elam desires, subject to Commission approval, to engage the City to exercise prudent management of Elam's Business as an independent contractor of Elam, and the City desires to do so upon the terms and conditions hereinafter set forth, if and until a sale of Elam's capital stock or assets occurs (the "Sale") and is approved by the Commission; and

WHEREAS this Agreement shall become effective only upon its approval by the Commission, with the date of said approval being the "Effective Date."

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and incorporating all of the above recitals, the City and Elam agree as follows:

1. Elam agrees to retain the City as an independent contractor to manage the Business for one year commencing upon the Effective Date of this Agreement (the "Term"), unless this Agreement is earlier terminated as herein provided.

(THIS SPACE INTENTIONALLY LEFT BLANK)

Seen and agreed for City:

  
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Page 2 of 8

Seen and agreed for Elam:

  
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2. The relationship between the City and Elam is that of independent contractor under this Agreement. No other relationship is intended by this Agreement. Elam hereby engages the City to manage comprehensively and lawfully the Business and to maintain Elam's natural gas distribution system solely for the benefit of the Customers, using all of Elam's properties, equipment, facilities, meters, and services.
3. The City shall employ, furnish, and supervise its own personnel necessary to manage the Business solely for the benefit of providing gas service to the Customers.
4. The City shall oversee Elam's employees and direct them to: provide all billings of Customers; make emergency repairs to Elam's system; conduct appropriate bookkeeping; pay all vendors, including Elam's gas supplier(s), in a timely manner; prepare necessary financial reports; and comply with all regulations applicable to the Business. The City further agrees during the Term to provide liability insurance for the Business in limits acceptable to the Commission.
5. The Business shall be operated initially on the rate schedules and tariffs currently in effect on the Effective Date of this Agreement, and thereafter at revised rates and tariffs as may be approved by the Commission. If the City determines it is necessary to seek increased rates for the financial health of the Business, it has the authority to do so.
6. All accounts and operations of Elam shall be maintained separately from those of the City, without any commingling of funds.

Seen and agreed for City:

JOR

Page 3 of 8

Seen and agreed for Elam:

JRS



11. The City may provide additional funds to carry out necessary operations of the Business in the event the receipts and collections from providing gas service to the Customers are not sufficient to cover the Business's costs. In particular, the City shall guarantee payment to Elam's gas suppliers, including the Columbia Entities, for gas supplied on and after the Effective Date through the end of the Term (unless the Agreement is earlier terminated according to the provisions for termination contained herein). Elam shall be obligated to repay any such funds provided by the City on commercially reasonable terms after the Term expires.
12. The City may terminate this Agreement without cause upon thirty (30) days' prior written notice to Elam and the Commission. If the Commission approves the transfer of Elam's capital stock or more than half of Elam's assets to the City or another party, this Agreement shall become void and the Term shall end upon the closing of any such Commission-approved transfer of Elam's stock or assets.
13. It is understood and agreed that, should any portion of any clause or paragraph of this Agreement be deemed too broad to permit enforcement to its full extent, then such restriction shall be enforced to the maximum extent permitted by law, and the parties consent and agree that such scope may be modified accordingly in any proceeding brought to enforce such restriction. Further, it is agreed that, should any provision in this Agreement be entirely unenforceable, the remaining provisions of the Agreement shall not be affected thereby.
14. This Agreement shall be governed by, and construed under and in accordance with, the laws of the Commonwealth of Kentucky, without regard to its conflict of laws rules.

Seen and agreed for City:

JOR

Page 5 of 8

Seen and agreed for Elam:

JKS

15. This Agreement shall binding upon, and inure to the benefit of, the parties hereto, and there shall be no assignment of same.

16. This Agreement contains all the terms, conditions, and promises of the parties. No modification or waiver of this Agreement, or of any provision herein, shall be valid or binding, unless executed in writing by the parties hereto. No waiver by any party or any breach of any term or provision of this Agreement shall be construed as a waiver of any later breach of the same or of any other term or provision.

17. The City and its officers, agents, representatives, employees, and directors, shall not be liable for any actions, debts, contracts, or other activities of Elam beyond the extent covered by the liability and other insurance coverage set forth herein. It is expressly understood and agreed that Elam shall hold the City harmless for any losses sustained by the City on account of any suit, judgment, execution, claim, or demand whatsoever resulting from any negligence or willful misconduct on the part of Elam under the terms of this Agreement. By entering into this Agreement, the City does not agree to assume responsibility for any acts, liabilities, or debts of Elam, regardless of when any claims for such acts, liabilities, or debts arise (or arose).


18. The City shall not be liable to Elam or the Customers for any failure, delay, or interruption of service, or for any failure in the performance of any duties and obligations under this Agreement due to strikes, Acts of God, government restriction or regulation, enemy action, civil commotion, unavoidable casualty, or similar acts beyond the direct control of the City.

Seen and agreed for City:

Page 6 of 8

Seen and agreed for Elam:





19. In the event any party defaults or violates any provision of this Agreement, the complaining party shall notify the other party in writing of such breach or default, giving the other party five days to comply fully with the terms of the Agreement and remedy such breach or default. Failure to rectify any such breach or default within the five-day cure period shall be actionable in any court with jurisdiction. Any notice shall be given in person or sent by certified or registered mail addressed to the party notified from the party giving such notice. Any notice sent by mail shall be considered given two days after the postmark date when addressed as follows:

**City of West Liberty**

Sally Barker  
 City Administrator  
 565 Main Street  
 West Liberty, Kentucky 41472

**Elam Utility Company, Inc.**

Wilma B. Sorrell  
 President  
 459 Main Street  
 West Liberty, Kentucky 41472

20. This Agreement is contingent upon approval by the Commission, and shall not become effective until the Commission enters an order approving it. The City and Elam covenant to support an application to the Commission for approval of this Agreement, and furthermore agree to participate fully and cooperatively in any proceeding(s) before the Commission to obtain approval for this Agreement.

Seen and agreed for City:

Page 7 of 8

Seen and agreed for Elam:

JOR

W.S.



- 21. If the Commission requires changes or alterations to this Agreement to obtain approval for it, and such changes or alterations cannot be made on terms mutually acceptable to the City and Elam, this Agreement shall be null, void, and of no effect.
- 22. If any of Elam's gas suppliers (e.g., the Columbia Entities) terminates service to Elam prior to the Commission's approval of this Agreement, this Agreement shall be null, void, and of no effect.
- 23. If any of Elam's gas suppliers (e.g., the Columbia Entities) terminates service to Elam subsequent to the Commission's approval of this Agreement, this Agreement shall terminate immediately, subject to the Commission's approval of such termination.

CITY OF WEST LIBERTY

ELAM UTILITY COMPANY, INC.

James O. Rupe

Wilma Sorrell

Name (print): James O. Rupe

Name (print): Wilma Sorrell

Title: Mayor

Title: President

Date: 7-19-2010

Date: 7-19-10