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April 17, 2015

Holland N. McTyeire V, Esq.
Bingham Greenebaum Doll LLP
3500 National City Tower
101 South Fifth Street
Louisville, KY 40202

Via electronic mail and U.S. Mail

Re: Case No. 2014-00255, Application of Bullitt Utilities, Inc. for a Certificate of Convenience and Necessity and Surcharge for Same

Dear Mr. McTyeire:

Enclosed is a copy of the April 16, 2015 Order denying the March 18, 2015 motion to intervene, filed on behalf of Veolia Water Technologies, Inc. The Order was issued yesterday, but you were not included in the electronic service list.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeff Derouen".

Jeff Derouen
Executive Director

ALR/ph

Attachment

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BULLITT UTILITIES, INC. FOR)
A CERTIFICATE OF CONVENIENCE AND) CASE NO.
NECESSITY AND SURCHARGE FOR SAME) 2014-00255

ORDER

On March 18, 2015, Veolia Water Technologies, Inc. (formerly Veolia Water Solutions & Technologies North America, Inc.) ("Veolia") filed a motion for full intervention ("Motion") in this case. The Attorney General of the Commonwealth of Kentucky ("AG"), whose motion to intervene was granted on March 6, 2015, filed a response ("Response") on March 25, 2015, in opposition to Veolia's Motion. On March 31, 2015, Veolia filed a reply ("Reply") to the AG's Response. Veolia contends that its participation in this case is necessary to protect its interest.

Bullitt Utilities provides sewer service to approximately 696 residential and commercial customers residing in Bullitt County, Kentucky, for a monthly payment of \$26.83.¹ On March 29, 2014, Bullitt Utilities' 250,000-gallon-per-day ("GPD") wastewater treatment plant located in the Hunters Hollow subdivision failed when the steel wall of the aeration basin ruptured, spilling untreated wastewater on to the surrounding ground.

Bullitt Utilities has incurred expenses as a result of the failure of the wastewater treatment plant. The sewer utility is seeking a monthly surcharge of \$32.19 for seven

¹ Amended Application at 1.

years to recoup expenses.² The utility originally tendered an application for a surcharge on July 17, 2014. After Bullitt Utilities corrected deficiencies, the Commission accepted the application for filing on February 24, 2015.

Bullitt Utilities initially contracted with Pecco, Inc. ("Pecco") to provide a temporary wastewater treatment plant capable of treating 200,000 GPD of wastewater. The Pecco 200,000-GPD temporary wastewater treatment plant was sufficient to treat the wastewater generated by Bullitt Utilities' customers during dry weather. Due to inflow and infiltration issues, the Pecco temporary wastewater treatment plant had insufficient capacity to treat the wastewater during wet weather. During wet weather, due to insufficient capacity, wastewater bypassed the Pecco temporary wastewater treatment plant.³

On June 1, 2014, Bullitt Utilities contracted with Veolia for a temporary wastewater treatment plant capable of treating the wastewater from Hunters Hollow subdivision during both wet and dry weather.⁴ The Veolia temporary wastewater treatment plant had the capacity to treat in excess of 2 million GPD of wastewater.⁵ Equipment provided by Pecco is used in conjunction with the Veolia temporary wastewater treatment plant.⁶ According to Veolia's Motion, Bullitt Utilities owes Veolia

² Amended Application at 11.

³ *Id.* at 3.

⁴ *Id.*

⁵ Response to Commission Staff's First Information Request to Bullitt Utilities, Item 3.

⁶ Amended Application at 4.

about \$1.4 million as of March 18, 2015, and the amount owed increases by approximately \$6,000 per day.⁷

The only person with a statutory right to intervene is the AG. KRS 367.150(8)(b) authorizes the AG to participate "on behalf of consumers' interests." Intervention by all others is permissive and is within the sound discretion of the Commission.⁸

In exercising our discretion to determine permissive intervention, there are both statutory and regulatory limitations on the Commission. The statutory limitation, KRS 278.040(2), requires that "the person seeking intervention must have an interest in the 'rates' or 'service' of a utility, since those are the only two subjects under the jurisdiction of the PSC."⁹ The regulatory limitation is set forth in 807 KAR 5:001, Section 4(11). That regulation requires a person seeking intervention to file a written motion which "shall state his or her interest in the case."¹⁰ That regulation further provides that:

The commission shall grant a person leave to intervene if the commission finds that he or she has made a timely motion for intervention and that he or she has a special interest in the case that is not otherwise adequately represented or that his or her intervention is likely to present issues or to develop facts that assist the commission in fully considering the matter without unduly complicating or disrupting the proceedings.¹¹

⁷ Motion at 1.

⁸ *Inter-County Rural Electric Cooperative Corporation v. Public Service Commission of Kentucky*, 407 S.W.2d 127, 130 (Ky. 1966).

⁹ *EnviroPower, LLC v. Public Service Comm'n*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. App. 2007).

¹⁰ 807 KAR 5:001, Section 4(11)(a)(1).

¹¹ 807 KAR 5:001, Section 4(11)(b).

It is under these statutory and regulatory criteria that the Commission reviews a motion for permissive intervention.

Veolia, in its Motion, alleges that Bullitt Utilities is seeking a surcharge primarily to pay amounts due Veolia. Veolia asserts that it is the most qualified entity to explain the cost of the services that it has provided and that the services were necessary to protect the environment as well as the health, safety, and general welfare of Bullitt Utilities' customers.¹² Veolia states that its participation in this case will not prejudice the rights of any party. Veolia agrees to abide by the procedural schedule established by the Commission in its March 6, 2015 Order.

In his Response, the AG asserts Veolia's motion should be denied as untimely, as Veolia filed its motion after the March 13, 2015 deadline to intervene set forth in the Appendix of the Commission's March 6, 2015 Order. The AG further asserts that Bullitt Utilities filed its application for authorization to recover its cost through a surcharge, but that Veolia seeks intervention based on monies owed by Bullitt Utilities to Veolia, not whether a surcharge should be authorized. The AG asserts that information indicating that Veolia is a creditor of the utility and that monies owed by Bullitt Utilities to Veolia are known. The AG, relying upon the Commission's October 30, 2009 Order in Case No. 2009-00198,¹³ states that Veolia is not a customer and does not have a direct interest in the rates paid by Bullitt Utilities' customers.

¹² Motion at 1-2.

¹³ Joint Order in Case No. 2009-00197, *Application of Kentucky Utilities Company for a Certificate of Public Convenience and Necessity and Approval of Its 2009 Compliance Plan for Recovery by Environmental Surcharge*, and Case No. 2009-00198, *Application of Louisville Gas and Electric Company for a Certificate of Public Convenience and Necessity and Approval of Its 2009 Compliance Plan for Recovery by Environmental Surcharge* (Ky. PSC Oct. 30, 2009).

Veolia, in its Reply, states that it did not learn of the March 13, 2015 deadline to intervene until March 17, 2015, and filed its motion to intervene the following day. Veolia asserts that the Commission has broad discretion in determining the factors considered, including costs and obligations of a utility, in a ratemaking proceeding.¹⁴ Veolia further asserts that the amount Bullitt Utilities owes to Veolia should be considered in determining whether the surcharge is reasonable and cost-effective.¹⁵ Veolia cites to an October 30, 2009 Order issued in Case Nos. 2009-00197 & 2009-00198¹⁶ and states that it “possesses an expertise that is not otherwise represented in this case.”¹⁷

In the October 30, 2009 Order in Case Nos. 2009-00197 and 2009-00198, the Commission refused to allow a movant to intervene in the Louisville Gas and Electric case because the movant was not a customer of the applicant.

Since they are not customers of LG&E, they have no interest in the rates or service provided by LG&E and, therefore, they do not satisfy the statutory criteria that must be met to justify being granted intervenor status in an LG&E proceeding.¹⁸

Based on a review of the pleadings at issue and being otherwise sufficiently advised, the Commission finds that Veolia is a creditor of Bullitt Utilities, not a customer. Veolia pays no rates to Bullitt Utilities and Veolia receives no service from Bullitt

¹⁴ Reply at 1-2.

¹⁵ *Id.* at 2.

¹⁶ Joint Order in Case No. 2009-00197, *Kentucky Utilities Company*, and Case No. 2009-00198, *Louisville Gas and Electric Company* (Ky. PSC Oct. 30, 2009).

¹⁷ Reply at 2.

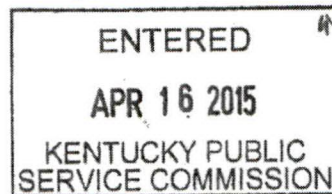
¹⁸ Joint Order in Case No. 2009-00197, *Kentucky Utilities Company*, and Case No. 2009-00198, *Louisville Gas and Electric Company* (Ky. PSC Oct. 30, 2009) at 5.

Utilities. For these reasons, Veolia does not meet the statutory criteria that must be met to justify being granted intervenor status in this case.

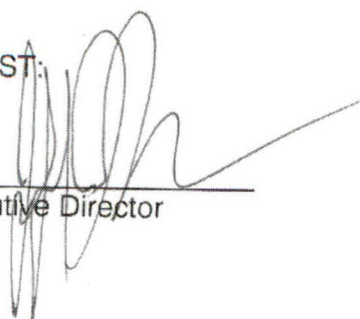
Having considered the motion, the Commission finds that Veolia's Motion should be denied. Veolia will have opportunity to participate in this proceeding even though it is not granted intervenor status. Veolia may submit comments that will be entered in the record of this case and considered by the Commission. The Commission encourages Veolia to include with its comments the amount Veolia claims is owed as of the date of filing and documentation supporting the amount. Veolia may follow the status of the case and filings by monitoring the case's electronic file located at https://psc.ky.gov/PSC_WebNet/ViewCaseFilings.aspx?Case=2014-00255.

IT IS THEREFORE ORDERED that Veolia's Motion is denied.

By the Commission



ATTEST:



Executive Director

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