

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

BULLITT UTILITIES, INC.'S NOTICE OF)	
SURRENDER AND ABANDONMENT OF)	CASE NO.
UTILITY PROPERTY)	2015-00290

ORDER

On August 21, 2015, Bullitt Utilities, Inc. ("Bullitt Utilities"), by a three-page letter from its counsel, Robert C. Moore ("Counsel"), to the Commission's Executive Director, provided notice stating that "Bullitt Utilities is surrendering this [the property of Bullitt Utilities] property to the Commission effective September 1, 2015."¹ For the reasons explained in this Order, the Commission will treat the August 21, 2015 letter as an application for approval to abandon pursuant to KRS 278.020(5).

Bullitt Utilities is a party to two cases pending before the Commission. By an Order entered on May 22, 2014, the Commission opened an investigation into the issues surrounding Bullitt Utilities' provision of wastewater treatment service.² On July 17, 2014, Bullitt Utilities filed a Petition for Certificate of Convenience and Necessity and

¹ The document filed by Counsel for Bullitt Utilities does not comply with 807 KAR 5:001, Section 7, or 807 KAR 5:001, Section 14. Additionally, while the letter stated that Counsel had enclosed a Notice of Entry of Appearance, the pleading was not submitted with the letter. However, given the delay that would likely result from rejecting the nonconforming pleading and the unnecessary risk to the public health, safety, or continued utility service from such a delay, the Commission, on its own motion, will grant deviations from 807 KAR 5:001, Section 7(1), 7(2)(a), 14(1), 14(2).

² Case No. 2014-00163, *An Investigation of Existing and Future Service of Bullitt Utilities, Inc.*, (Ky. PSC May 22, 2014).

for Surcharge.³ Both of the cases concern a catastrophic failure of the steel aeration tank at Bullitt Utilities' Hunters Hollow wastewater treatment plant ("WWTP") on March 29, 2014.⁴

KRS 278.020(5) provides:

No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.

The Commission finds that KRS 278.020(5) requires Bullitt Utilities to obtain prior approval in order to abandon ownership of, or control, or the right to control Bullitt Utilities. The Commission finds that Bullitt Utilities had not obtained prior approval to abandon effective September 1, 2015, and that its request to abandon on September 1, 2015, should be denied. The Commission finds that Bullitt Utilities may not abandon its utility unless and until it obtains the prior approval of the Commission.

KRS 278.040 provides:

(1) The Public Service Commission shall regulate utilities and enforce the provisions of this chapter. The commission shall be a body corporate, with power to sue and be sued in its corporate name. The commission may adopt a seal bearing the name "Public Service Commission of Kentucky," which seal shall be affixed to all writs and official documents, and to such other instruments as the commission directs, and all courts shall take judicial note of the seal.

³ Case No. 2014-00255, *Application of Bullitt Utilities, Inc., for a Certificate of Convenience and Necessity, and Surcharge for Same* (Ky. PSC filed July 17, 2014). Bullitt Utilities did not meet the minimum filing requirements for its application until February 24, 2015.

⁴ *Id.* Order (Ky. PSC July 21, 2014) at Appendix, Exhibit 4 (Kentucky Energy and Environment Cabinet, Department for Environmental Protection, Division of Water, Wastewater Inspection Report, dated April 2, 2014).

(2) The jurisdiction of the commission shall extend to all utilities in this state. The commission shall have exclusive jurisdiction over the regulation of rates and service of utilities, but with that exception nothing in this chapter is intended to limit or restrict the police jurisdiction, contract rights or powers of cities or political subdivisions.

(3) The commission may adopt, in keeping with KRS Chapter 13A, reasonable regulations to implement the provisions of KRS Chapter 278 and investigate the methods and practices of utilities to require them to conform to the laws of this state, and to all reasonable rules, regulations and orders of the commission not contrary to law.

KRS 278.021(1) provides:

If the commission, after notice and hearing, enters an order in which it finds that a utility is abandoned, the commission may bring an action in the Franklin Circuit Court for an order attaching the assets of the utility and placing those assets under the sole control and responsibility of a receiver.

The Commission finds that its jurisdiction extends to the rates and service of utilities. The Commission further finds that when a utility files a notice of abandonment pursuant to KRS 278.021(1), the Commission, after notice and hearing, may bring an action in the Franklin Circuit Court for the appointment of a receiver of a utility that is abandoned. We find that neither KRS 278.040, KRS 278.021, nor any other provision of KRS Chapter 278 provide authority for the Commission to accept, control, operate, or manage a utility or its assets; therefore, we find that Bullitt Utilities may not abandon its property interest and rights in and to the property owned by Bullitt Utilities to the Commission.

The Commission finds that a hearing on this matter should be held without delay; therefore, we find that a hearing should be held on August 27, 2015, at the Commission's Offices at 10:00 a.m. Eastern Daylight Time. The Commission finds that

the Kentucky Attorney General, who has a statutory right to appear before the Commission to represent and be heard on behalf of the consumers' interest⁵ should be made a party to this case. The Commission further finds that the Bullitt County Sanitation District ("BCSD") has a written contract with Bullitt Utilities regarding the treatment of wastewater flow from Bullitt Utilities' Hunters Hollow collection system⁶ and that Bullitt County, Kentucky and BCSD should be made parties to this action.

The Commission finds that Bullitt Utilities stated in its August 21, 2015 letter that its monthly expenses significantly exceed its monthly revenue and that it is no longer able to obtain financing from any sources in order to pay the costs of operating and maintaining the Hunters Hollow collection system.⁷ The three consulting engineering reports attached to the August 21, 2015 letter concern the cause of the failure of the wastewater treatment plant and are not relevant to the issues of Bullitt Utilities' intent to abandon, the orderly transition of utility service to new management, or the continuation of service to customers. For these reasons the three consulting engineering reports will not be considered as part of the record in this case unless and until their relevancy is demonstrated and the Commission authorizes their inclusion in the record.

IT IS THEREFORE ORDERED that:

1. This case is opened to investigate Bullitt Utilities' request to abandon its property.

⁵ KRS 367.150(8)(a).

⁶ Letter from Robert C. Moore, Counsel, Bullitt Utilities, to Jeff Derouen, Executive Director, Public Service Commission (filed Aug. 21, 2015) at 1.

⁷ *Id.* at 2.

2. Bullitt Utilities' request to surrender and abandon all of its property interest and rights in and to the property owned by Bullitt Utilities to the Commission is denied, and Bullitt Utilities shall continue to operate its facilities until otherwise authorized by an Order of the Commission.

3. Bullitt Utilities' request to surrender and abandon all of its property interests and rights in and to the property owned by Bullitt Utilities effective September 1, 2015, is denied.

4. A formal hearing in this matter shall be held on Thursday, August 27, 2015, at 10:00 a.m. Eastern Daylight Time, in the Commission's offices at 211 Sower Boulevard, Frankfort, Kentucky.

5. Bullitt Utilities shall appear at the formal hearing scheduled on Thursday, August 27, 2015.

6. Bullitt Utilities shall file with the Commission at or before the August 27, 2015 Hearing a statement verified or under oath by a director, officer, or agent of Bullitt Utilities authorized to act on behalf of Bullitt Utilities, that states whether Bullitt Utilities disclaims, renounces, relinquishes, or surrenders all property interests or all rights to utility property, real or personal, necessary to provide service.

7. If Bullitt Utilities seeks to disclaim, renounce, relinquish, or surrender all property interests or all rights to the utility property, real or personal, necessary to provide service, Bullitt Utilities shall include in the filing required by ordering paragraph 6, a statement verified or under oath containing an identification of the source of authority for the director, officer, agent of Bullitt Utilities to exercise the power on behalf of Bullitt Utilities.

8. If Bullitt Utilities seeks to disclaim, renounce, relinquish, or surrender all property interests or all rights to the utility property, real or personal, necessary to provide service, Bullitt Utilities shall include in the filing required by ordering paragraph 6, a statement verified or under oath, the corporate resolution or other evidence of Bullitt Utilities that Bullitt Utilities' authorized the filing of the application to the Commission to disclaim, renounce, relinquish, or surrender all property interests or all rights to the utility property, real or personal, necessary to provide service and that the director, officer, or agent of Bullitt Utilities is authorized to act on behalf of Bullitt Utilities.

9. If Bullitt Utilities does not seek to disclaim, renounce, relinquish, or surrender all property interests or all rights to the utility property, real or personal, necessary to provide service, or that the director, officer or agent of Bullitt Utilities lacks the power to act, then Bullitt Utilities shall include in the filing required by ordering paragraph 6, a statement verified or under oath, identifying any lack intent to abandon or any absence of authority to seek abandonment on behalf of Bullitt Utilities.


10. The Kentucky Office of the Attorney General, Bullitt County, Kentucky, and the BCSD are each made a party in this matter.

11. The Commission, on its on motion, permits Bullitt Utilities' pleading filed on August 21, 2015, to deviate from the filing requirements of 807 KAR 5:001, Sections 7(1), 7(2)(a), 14(1), and 14(2).


12. A copy of this Order shall be served to the Kentucky Division of Water and the cities of Hillview and Hunters Hollow.

13. Counsel for Bullitt Utilities shall file before the August 27, 2015 Hearing his Notice of Entry of Appearance as referenced in his August 21, 2015 letter.

By the Commission

ENTERED 
AUG 24 2015
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST



Executive Director

Case No. 2015-00290

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