

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

Bullitt Utilities, Inc. ("Bullitt Utilities") is a Kentucky corporation that owns and operates sewage collection and transmission facilities that serve approximately 689 residential customers in Hunters Hollow Subdivision in Bullitt County, Kentucky.¹ Bullitt Utilities is a utility whose rates and service are subject to the Commission's jurisdiction.² On August 21, 2015, Bullitt Utilities, Inc., by a three-page letter from its counsel, Robert C. Moore, to the Commission's Executive Director, provided notice that stated, "Bullitt Utilities is surrendering this [the property of Bullitt Utilities] property to the Commission effective September 1, 2015." On August 24, 2015, the Commission entered an Order ("August 24 Order") that, among other things, denied Bullitt Utilities' request to abandon and opened this investigation into the request to abandon.³

¹ *Annual Report of Bullitt Utilities, Inc. for the Calendar Year Ending December 31, 2012*, at 1 and 27.

² See KRS 278.010(3)(f); See also Case No. 2014-00163, *Investigation of Existing and Future Service of Bullitt Utilities, Inc.* (Ky. PSC May 22, 2014) at 1.

³ In denying Bullitt Utilities' request made through its August 21, 2015 letter, the Commission found that no provision of KRS Chapter 278 authorizes the Commission to accept, control, operate, or manage a utility or its assets and that Bullitt Utilities, therefore, cannot abandon its property interests and rights to the Commission. The Commission also found that Bullitt Utilities is required to obtain the prior approval of the Commission in order to abandon and that prior approval had not been obtained. For each reason, the request to abandon was denied. August 24 Order at 5, ordering paragraphs 2 and 3.

Bullitt Utilities is a party to two other cases currently pending before the Commission. By an Order entered on May 22, 2014, the Commission opened a prior investigation into the issues surrounding Bullitt Utilities' provision of wastewater treatment service.⁴ On July 17, 2014, Bullitt Utilities filed a Petition for Certificate of Convenience and Necessity and for Surcharge.⁵ Both of those cases resulted from a catastrophic failure of the steel aeration tank at Bullitt Utilities' Hunters Hollow wastewater treatment plant ("WWTP") on March 29, 2014.⁶

In opening the instant investigation, we found that the Kentucky Attorney General ("AG"), who has a statutory right to appear before the Commission to represent and be heard on behalf of the consumers' interest, should be made a party.⁷ We found that Bullitt County Sanitation District ("BCSD"), which has a written contract with Bullitt Utilities for the treatment of wastewater flow from Bullitt Utilities' Hunters Hollow collection system, and Bullitt County, Kentucky, should each also be made a party to this action.⁸ We also found that a hearing on this matter should be held without delay, and our August 24 Order scheduled a hearing for August 27, 2015.

⁴ Case No. 2014-00163, *An Investigation of Existing and Future Service of Bullitt Utilities, Inc.*, (Ky. PSC May 22, 2014).

⁵ Case No. 2014-00255, *Application of Bullitt Utilities, Inc. for a Certificate of Convenience and Necessity, and Surcharge for Same* (submitted July 17, 2014). Bullitt Utilities' application was rejected due to deficiencies. Bullitt Utilities subsequently amended its application and did not meet the minimum filing requirements for its application for a surcharge until Feb. 24, 2015. Additionally, Bullitt Utilities has not petitioned the Commission, under KRS 278.190(2), for an Order permitting all or a portion of the surcharge rate to become effective during the Commission's consideration of Bullitt Utilities' application in Case No. 2014-00255 for approval of a surcharge.

⁶ See Case No. 2014-00255, *Bullitt Utilities, Inc.* (Ky. PSC July 21, 2014), Order at Appendix, Exhibit 4 – Kentucky Energy and Environment Cabinet, Department for Environmental Protection, Division of Water, Wastewater Inspection Report, dated Apr. 2, 2014.

⁷ August 24 Order at 4. The AG is also a party to Case Numbers 2014-00163 and 2014-00255.

⁸ *Id.*

An evidentiary hearing was held on August 27, 2015. Bullitt Utilities, the AG, Bullitt County, and BCSD appeared at the hearing.⁹ Three witnesses testified. Christopher G. Cogan, who is serving as Attorney-In-Fact for his father, Carroll F. Cogan, the sole shareholder of Bullitt Utilities,¹⁰ testified for Bullitt Utilities. Roger Recktenwald, an employee of the Kentucky Association of Counties (“KACO”), testified for the AG.¹¹ Jerry Kennedy, District Manager of BCSD, was called to testify by Commission Staff.¹² An opportunity was also provided for public comments which were entered into the record.

DISCUSSION

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.

Therefore, KRS 278.020(5) requires that a person obtain prior approval in order to abandon ownership of, or control, or the right to control of a utility. While KRS 278.020(5) requires prior approval to abandon a utility, it does not set forth the criteria to

⁹ Bullitt County Attorney John Wooldridge appeared on behalf of Bullitt County. Video Recording of the August 27, 2015 Hearing (“August 27, 2015 VR”) at 10:00:37–10:00:58. Mr. Wooldridge stated that he represented Bullitt County; however, he noted that BCSD was without legal counsel and that he would stand in for BCSD during the hearing for any legal matters that BCSD might incur.

¹⁰ On August 27, 2015, Bullitt Utilities filed a motion that requested permission for Christopher G. Cogan to attend the hearing telephonically. There was no objection to the motion, and the Commission sustained the motion from the bench. August 27, 2015 VR at 10:01:42 – 10:02:02.

¹¹ August 27, 2015 VR at 10:55:35–11:25:10.

¹² *Id.* at 11:53:40–11:53:45.

be used by the Commission in determining whether to approve a request to abandonment.

KRS 278.021(2), however, provides:

For purposes of this section, a utility shall be considered abandoned if it:

- (a) Disclaims, renounces, relinquishes, or surrenders all property interests or all rights to utility property, real or personal, necessary to provide service;
- (b) Notifies the commission of its intent to abandon the operation of the facilities used to provide service;
- (c) Fails to comply with an order of the commission in which the commission determined that the utility is not rendering adequate service, specified the actions necessary for the utility to render adequate service, and fixed a reasonable time for the utility to perform such actions, and the failure of the utility to comply with the order presents a serious and imminent threat to the health or safety of a significant portion of its customers; or
- (d) Fails to meet its financial obligations to its suppliers and is unable or unwilling to take necessary actions to correct the failure after receiving reasonable notice from the commission, and the failure poses an imminent threat to the continued availability of gas, water, electric, or sewer utility service to its customers.

The Commission finds that KRS 278.021(2) contains the criteria the Commission is required to apply in order to determine whether a utility is abandoned. If the Commission finds that one or more of the four criteria identified in KRS 278.021(2) is met, then the Commission has no discretion and is required, pursuant to the term "shall" in the statute, to consider the utility abandoned.

During the August 27, 2015 hearing, Christopher G. Cogan testified that he represented Carroll F. Cogan through a Power of Attorney,¹³ that Carroll S. Cogan is the sole shareholder of Bullitt Utilities, and that the Power of Attorney authorized him to act on behalf Bullitt Utilities.¹⁴ The Commission finds that Christopher G. Cogan is authorized to act on behalf of Bullitt Utilities' sole shareholder, Carroll F. Cogan.

Christopher G. Cogan testified that: 1) he authorized Counsel for Bullitt Utilities to send the August 21, 2015 notice regarding abandonment to the Commission's Executive Director;¹⁵ 2) Bullitt Utilities unconditionally disclaims, renounces, relinquishes, or surrenders all property interests or all rights to utility property, real or personal, necessary to provide service;¹⁶ and 3) Bullitt Utilities authorized sending to the Commission the August 21, 2015 notice of intent to abandon the operation of the facilities used to provide service.¹⁷

The Commission finds that Bullitt Utilities has carried its burden and met the requirements of KRS 278.021(2)(a) and (b); therefore, the Commission is required to make a finding of abandonment. However, the Commission must also be guided by the clear directives of the Kentucky General Assembly through their enactment of KRS 278.030(2), which requires every utility to "furnish adequate, efficient and reasonable service," and KRS 278.020(5), which prohibits the abandonment of a utility "without prior

¹³ *Id.* at 10:17:15 *et seq.*, and 10:25:05 *et seq.*

¹⁴ *Id.* at 10:26:15–10:26:31, and 10:26:50–10:27:00. Bullitt Utilities supplied a copy of the Durable Power of Attorney through a filing into the record of this case on Aug. 28, 2015.

¹⁵ *Id.* at 10:28:15–10:28:25, and 10:33:45–10:33:57.

¹⁶ *Id.* at 10:33:58–10:34:22.

¹⁷ *Id.* at 10:34:23–10:34:50.

approval by the commission.” Bullitt Utilities is currently providing wastewater service and any interruption of that service would likely result in a directive from the Bullitt County Health Department that the residences being served are uninhabitable and that they remain so until such time as wastewater service is resumed. Thus, to ensure the continuity of wastewater service and avoid a potential evacuation of 689 residences, the Commission finds that Bullitt Utilities is obligated to continue operating the Hunters Hollow collection system and related facilities for 30 days or until the Franklin Circuit Court enters an Order attaching Bullitt Utilities’ assets and placing them under the sole control and responsibility of a receiver, whichever occurs earlier.

The Commission recognizes the unique circumstances presented by this case and the burden that we now place on Bullitt Utilities to temporarily continue providing wastewater service until the Franklin Circuit Court appoints a receiver for the utility’s assets. The Commission will move as quickly as possible in filing the requisite action for appointment of a receiver, and we will seek a hearing on that action within ten days. For these reasons, the Commission finds that the request of Bullitt Utilities to abandon should be granted to be effective upon the Franklin Circuit Court’s entering of an Order attaching the assets of Bullitt Utilities and placing those assets under the sole control of a receiver, or September 30, 2015, whichever occurs earlier.

Pursuant to KRS 278.021(1), the Commission may bring an action in the Franklin Circuit Court for an Order attaching the assets of a utility and placing those assets under the sole control and responsibility of a receiver. However, KRS 278.021(1) provides that the Commission may not bring such an action until, after notice and a

hearing, it enters an Order in which it finds a utility abandoned.¹⁸ The Commission finds that the scope of the August 27, 2015 hearing was for the purpose of investigating Bullitt Utilities' request to abandon its property, and notice of the hearing was provided to the parties.¹⁹ We find that the August 27, 2015 hearing satisfied the notice and hearing requirements of KRS 278.021(1).

IT IS THEREFORE ORDERED that:

1. Bullitt Utilities is authorized by the earlier of September 30, 2015, or the entry of an Order by the Franklin Circuit Court attaching Bullitt Utilities' assets and placing them under the sole control and responsibility of a receiver, to abandon all property interests or all rights to utility property, real or personal, necessary to provide service.

2. Bullitt Utilities shall continue operating the Hunters Hollow collection system and related facilities until the Franklin Circuit Court enters an Order attaching the assets of Bullitt Utilities and placing those assets under the sole control and responsibility of a receiver or September 30, 2015, whichever occurs earlier.

3. The request of Bullitt Utilities to abandon is granted, to be effective upon the Franklin Circuit Court's entering of an Order attaching the assets of Bullitt Utilities

¹⁸ The Commission notes that KRS 278.021(8)(a) provides that, notwithstanding KRS 278.021(1), the Commission may petition the Franklin Circuit Court to appoint a temporary receiver. However, KRS 278.021(8)(a)(3) requires that a petition for appointment of a temporary receiver requires a showing by a preponderance of the evidence that "the delay required for the commission to conduct a hearing would place the public health, safety, or continued utility service at unnecessary risk." The August 24 Order (at 5) denied Bullitt Utilities' request to abandon and ordered Bullitt Utilities to continue to operate its facilities until otherwise authorized by an Order of the Commission. The Commission, through the same Order, scheduled a hearing to be held on August 27, 2015. Present circumstances do not support a petition to the Franklin Circuit Court through KRS 278.021(8)(a).

¹⁹ August 24 Order at 4-6.

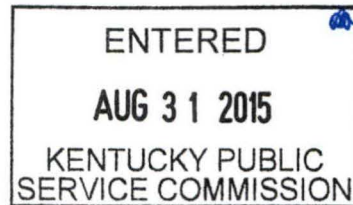
and placing those assets under the sole control of a receiver or September 30, 2015, whichever occurs earlier.

4. Bullitt Utilities shall safeguard all books, records, reports, plans, studies, files, and other documents that relate to the location of facilities, condition of the utility or the provision of service until all such items can be delivered to a receiver appointed by the Franklin Circuit Court or until otherwise instructed by the Franklin Circuit Court.


5. No later than December 1, 2015, Bullitt Utilities shall submit its Gross Report and an Annual Report for the period spanning January 1, 2015, through the date of the abandonment.

6. A copy of this Order shall be served on the Kentucky Division of Water, the Bullitt County Health Department, the Mayor of Hunters Hollow, the Mayor of Hillview, and the Bullitt County Judge/Executive.

By the Commission



ATTEST:



Executive Director

*John B Baughman
Hazelrigg & Cox, LLP
415 West Main Street
P.O. Box 676
Frankfort, KENTUCKY 40602

*John Woolridge
Bullitt Utilities, Inc. Bullitt Hills Sewer Plant
1706 Bardstown Road
Louisville, KY 40205

*Bullitt Utilities, Inc. dba Hunters Hollow Sewer
1706 Bardstown Road
Louisville, KY 40205

*Carroll F Cogan
President
Bullitt Utilities, Inc. dba Hunters Hollow Sewer
P. O. Box 91588
Louisville, KY 40291

*Gregory T Dutton
Assistant Attorney General
Office of the Attorney General Utility & Rate
1024 Capital Center Drive
Suite 200
Frankfort, KENTUCKY 40601-8204

*Jerry Kennedy
Operations Manager
Bullitt County Sanitation District
P. O. Box 818
Hillview, KY 40129

*Honorable Robert C Moore
Attorney At Law
Hazelrigg & Cox, LLP
415 West Main Street
P.O. Box 676
Frankfort, KENTUCKY 40602

*Brenda West
Bullitt Utilities, Inc. dba Hunters Hollow Sewer
P. O. Box 91588
Louisville, KY 40291