

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., 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 property [the property of Bullitt Utilities] to the Commission effective September 1, 2015." On August 24, 2015, the Commission entered an Order that, among other things, denied Bullitt Utilities' request to abandon and opened this investigation into the request to abandon. In our August 24, 2015 Order, we also found that a hearing on this matter should be held without delay, and the Order scheduled a hearing for August 27, 2015.

An evidentiary hearing was held on August 27, 2015, and Christopher G. Cogan testified for Bullitt Utilities.<sup>1</sup> Christopher G. Cogan stated that he was serving as Attorney-In-Fact for his father, Carroll F. Cogan, the sole shareholder of Bullitt Utilities, and he further stated that the Power of Attorney authorized him to act on behalf of Bullitt

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<sup>1</sup> Roger Recktenwald, an employee of the Kentucky Association of Counties, testified for the Kentucky Attorney General, and Jerry Kennedy, District Manager of Bullitt County Sanitation District ("BCSD"), was called to testify by Commission Staff.

Utilities.<sup>2</sup> We found that Christopher G. Cogan was authorized to act on behalf of Bullitt Utilities' sole shareholder, Carroll F. Cogan.<sup>3</sup>

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;<sup>4</sup> 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;<sup>5</sup> 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.<sup>6</sup>

The Commission, by Order entered August 31, 2015, found that Bullitt Utilities had carried its burden and met the requirements of KRS 278.021(2)(a) and (b), and the Commission made a finding of abandonment.<sup>7</sup> To ensure the continuity of wastewater service and avoid a potential evacuation of 689 residences, the Commission also found that Bullitt Utilities was obligated to continue operating the Hunters Hollow collection system and related facilities for 30 days or until the Franklin Circuit Court entered an

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<sup>2</sup> Video Recording of August 27, 2015 Hearing ("VR of Aug. 27, 2015 Hearing") 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.

<sup>3</sup> Order (Ky. PSC Aug. 31, 2015) at 5.

<sup>4</sup> VR of Aug. 27, 2015 Hearing at 10:28:15–10:28:25 and 10:33:45–10:33:57.

<sup>5</sup> *Id.* at 10:33:58–10:34:22.

<sup>6</sup> *Id.* at 10:34:23–10:34:50.

<sup>7</sup> Order (Ky. PSC Aug. 31, 2015) at 5.

order attaching Bullitt Utilities' assets and placing them under the sole control and responsibility of a receiver, whichever occurred earlier.<sup>8</sup>

On September 1, 2015, the Commission, pursuant to KRS 278.021, filed a Complaint in the Franklin Circuit Court seeking an order attaching the assets of Bullitt Utilities and placing those assets under the sole control and responsibility of BCSD as receiver.<sup>9</sup> On September 16, 2015, BCSD adopted a Resolution through which it agreed to accept appointment by the Franklin Circuit Court to act as Receiver for Bullitt Utilities.<sup>10</sup>

On September 23, 2015, the Franklin Circuit Court entered an order attaching the assets of Bullitt Utilities, appointing BCSD as receiver for the assets of Bullitt Utilities, and placing those assets under the sole control and responsibility of BCSD.<sup>11</sup> The Franklin Circuit Court authorized BCSD to take charge, preserve, operate, control, manage, maintain, and care for the Bullitt Utilities sewage collection and treatment facilities.<sup>12</sup> BCSD is also authorized to, among other things, collect all receivables and profits, and to exercise generally the powers conferred by the Franklin Circuit Court and

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<sup>8</sup> *Id.* at 6–8.

<sup>9</sup> *Public Service Commission of Kentucky v. Bullitt Utilities, Inc.; Commonwealth of Kentucky, Acting through and by the Energy and Environment Cabinet; and Bullitt County Sanitation District*, Franklin Circuit Court, Civil Action No. 15-CI-946 (filed Sept. 1, 2015).

<sup>10</sup> A copy of the September 16, 2015 BCSD Resolution is attached hereto as Appendix A.

<sup>11</sup> A copy of the September 23, 2015 Franklin Circuit Court Order is attached hereto as Appendix B.

<sup>12</sup> The September 23, 2015 Franklin Circuit Court Order.

such other powers as are usual and incidental to the management of a public utility providing sewage collection and treatment service to the public.<sup>13</sup>

The Commission's August 31, 2015 Order required Bullitt Utilities to continue to operate the Hunters Hollow collection system and related facilities until the Franklin Circuit Court entered 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 occurred earlier. On September 23, 2015, the Franklin Circuit Court entered an order attaching the assets of Bullitt Utilities and appointed BCSD as receiver for those assets. The Commission finds that the abandonment by Bullitt Utilities was effective upon the Franklin Circuit Court's entering the September 23, 2015 Order.

We note that although we find that Bullitt Utilities' abandonment was effective on September 23, 2015, Bullitt Utilities remains under an obligation to safeguard all books, records, reports, plans, studies, files and other documents that relate to the location of facilities, condition of the utility or provision of service until all such items can be delivered to BCSD as the receiver appointed by the Franklin Circuit Court or until otherwise instructed by the Franklin Circuit Court.<sup>14</sup> Further, no later than December 1, 2015, Bullitt Utilities shall submit its Gross Revenue Report and an Annual Report for the period spanning January 1, 2015, through September 23, 2015.

We note that Bullitt Utilities is currently a party to two other cases pending before the Commission. By an Order entered on May 22, 2014, the Commission opened a

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<sup>13</sup> *Id.*

<sup>14</sup> Order (Ky. PSC Sept. 1, 2015) at 8.

prior investigation into the issues surrounding Bullitt Utilities' provision of wastewater treatment service.<sup>15</sup> On July 17, 2014, Bullitt Utilities filed a Petition for Certificate of Convenience and Necessity and for Surcharge.<sup>16</sup> We note that Bullitt Utilities has unconditionally disclaimed, renounced, and surrendered all property interest and all right to utility property, real or personal, necessary to provide service.<sup>17</sup> Further, the Franklin Circuit Court's September 23, 2015 Order vests BCSD, as receiver, with the sole control and responsibility for the assets of Bullitt Utilities that have been abandoned.<sup>18</sup>

The Commission finds that Bullitt Utilities, having abandoned its operations, should be dismissed as a party from Case No. 2014-00163 and Case No. 2014-00255, and Orders are being entered today in each of those other cases dismissing Bullitt Utilities as a party and substituting BCSD, as receiver of Hunters Hollow collection system and all related assets and property interests, in place of Bullitt Utilities. If Bullitt Utilities seeks to further participate in either case, it is required, per 807 KAR 5:001, Section 4(11)(a), to file a motion requesting leave to intervene in the proceeding. The motion shall state its "interest in the case and how intervention is likely to present issues

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<sup>15</sup> Case No. 2014-00163, *An Investigation of Existing and Future Service of Bullitt Utilities, Inc.* (Ky. PSC May 22, 2014).

<sup>16</sup> Case No. 2014-00255, *Application of Bullitt Utilities, Inc., for a Certificate of Convenience and Necessity, and Surcharge for Same* (tendered July 17, 2014).

<sup>17</sup> Order (Ky. PSC Aug. 31, 2015) at 5.

<sup>18</sup> *Public Service Commission v. Bullitt Utilities, et al.*, Franklin Circuit Court, Civil Action No. 15-CI-946, Order (Sept. 23, 2015) at 1.

or develop facts that will assist the commission in fully considering the matter without unduly complicating or disrupting the proceeding.”<sup>19</sup>

IT IS THEREFORE ORDERED that:

1. The September 16, 2015 Resolution of the Bullitt County Sanitation District, attached as Appendix A to this Order, is filed into the record in this case.

2. The September 23, 2015 Order of the Franklin Circuit Court in Civil Action No. 2015-CI-946, attached as Appendix B to this Order, is filed into the record in this case.

3. Bullitt Utilities’ abandonment was effective as of entry of Franklin Circuit Court’s September 23, 2014 Order in Civil Action No. 2015-CI-946.

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 BCSD as 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 Revenue Report and an Annual Report for the period spanning January 1, 2015, through September 23, 2015.

6. This case is closed and removed from the Commission’s docket.

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<sup>19</sup> 807 KAR 5:001, Section 11(a).

By the Commission

ENTERED <sup>ab</sup>  
OCT 16 2015  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
\_\_\_\_\_  
Executive Director

Case No. 2015-00290

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2015-00290 DATED **OCT 16 2015**



**BULLITT COUNTY SANITATION DISTRICT**  
**CORPORATE RESOLUTION** 2015-3

RECEIVED  
SEP 17 2015  
JN

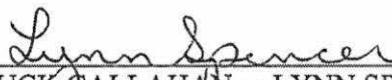
TO WHOM IT MAY CONCERN:

The undersigned certifies that CHUCK CALLAHAN and LYNN SPENCER are duly appointed Board Members of the Bullitt County Sanitation District, a Kentucky District, and that a Special Meeting of the Sanitation District Board of Directors was duly called and was held on the 16 day of September, 2015, at which time all of the Directors of the District were in attendance, and the following Resolution was adopted:

BE IT RESOLVED, and voted upon passing unanimously, that the Bullitt County Sanitation District agrees to and will hereby act as Receiver for Bullitt Utilities, Inc. by Order of the Franklin Circuit Court, Case No. 15-CI-946.

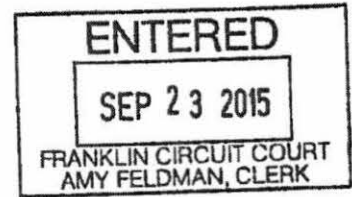
IT IS FURTHER RESOLVED that CHUCK CALLAHAN or LYNN SPENCER, as Directors, are hereby authorized to sign and execute any and all agreements or documents necessary or required to have Bullitt County Sanitation District appointed as Receiver for Bullitt Utilities, Inc., pursuant to the Order of the Franklin Circuit Court, Case No. 15-CI-946. This Resolution to be adopted and effective as of the 16 day of September, 2015, and to continue in full force and effect until revoked by further action or resolution by the Board of Directors of this District.

The undersigned further certifies the foregoing is a true and correct copy of the Resolution so adopted, that such Resolution remains in full force and effect and unrevoked as of this date, and that such Resolution is not in conflict with any charter or by-law of this District.

  
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CHUCK CALLAHAN or LYNN SPENCER, Director  
9/16/2015

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2015-00290 DATED **OCT 16 2015**



COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION II  
CIVIL ACTION NO. 15-CI-946

PUBLIC SERVICE COMMISSION OF KENTUCKY

PLAINTIFF

v.

BULLITT UTILITIES, INC.;  
COMMONWEALTH OF KENTUCKY, ACTING THROUGH AND BY  
THE ENERGY AND ENVIRONMENT CABINET; and  
BULLITT COUNTY SANITATION DISTRICT

DEFENDANTS

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**ORDER**

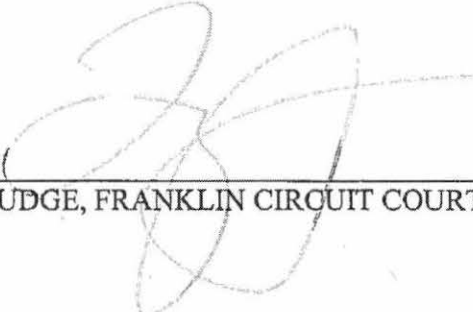
This matter having come before the Court of the motion of Plaintiff, Public Service Commission of Kentucky (hereinafter, "Commission") for the attachment of assets of Defendant, Bullitt Utilities, Inc. (hereinafter, "Bullitt Utilities") and the appointment of the Bullitt County Sanitation District (hereinafter, "BCSD") as receiver with sole control and responsibility for those assets and the Court being otherwise sufficiently advised, IT IS HEREBY ORDERED AND ADJUDGED:

1. The Commission's Motion for the Attachment of Assets and Appointment of Receiver is granted.
2. BCSD is appointed receiver to take charge, preserve, operate, control, manage, maintain and care for Bullitt Utilities' sewage collection and treatment facilities; to collect all receivables and profits, and to exercise generally the powers conferred by this Court and such other powers as are usual and incidental to the management of a public utility providing sewage collection and treatment service to the public.

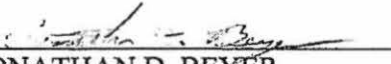
3. On the date entered below BCSD shall take possession and control of Bullitt Utilities' attached assets.

4. BCSD is authorized and directed to collect the rates and charges for Bullitt Utilities as established and as changed from time to time by the Public Service Commission; all receivables and profits; to deposit all funds coming to BCSD as receiver in a separate bank account; to employ or contract with responsible personnel; to manage and maintain the property; to contract and pay for routine items of security, maintenance, and repair; to pay to insure the attached assets if they are not adequately insured; to make repairs of an emergency nature; to cause necessary improvements to be made to the assets as the Court authorizes; to pay reasonable and necessary expenses already or hereafter incurred; to pay taxes incurred on the assets; to pay all other expenses necessary to preserve and operate the assets to negotiate and contract with local, state and federal governmental entities for funds to restore Bullitt Utilities' sewer collection and treatment facilities; and to maintain an accurate accounting of all receivables and profits collected and expenses incurred.

The 23 day of September, 2015.

  
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JUDGE, FRANKLIN CIRCUIT COURT

Tendered by:

  
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