

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION FOR TRANSFER OF SEWER)	
SYSTEM BY B.L.S.T., INC. TO BRIGHTLEAF)	CASE NO.
ESTATES SUBDIVISION SEWAGE TREATMENT)	91-442
COOPERATIVE, INC.)	

O R D E R

On November 27, 1991, the Brightleaf Estates Subdivision Sewage Treatment Cooperative, Inc. ("Brightleaf Estates") filed an application for Commission approval to transfer ownership of B.L.S.T., Inc. ("B.L.S.T.") to Brightleaf Estates. On December 19, 1991, Brightleaf Estates submitted an adoption notice and a letter for evidence of financial integrity.

Having reviewed the application and evidence of record and being otherwise sufficiently advised, the Commission finds that:

1. B.L.S.T. owns and operates a wastewater treatment plant in the Brightleaf Estates Subdivision of Mercer County, Kentucky, and is therefore a "utility" as defined by KRS 278.010(3)(f).

2. Brightleaf Estates is a nonprofit cooperative corporation. The members of Brightleaf Estates are the homeowners and business owners of all property within the Brightleaf Estates Subdivision, which are served by the sewer system to be transferred.

3. On October 8, 1991, a United States District Court by a Plea Agreement directed B.L.S.T. to convey and transfer to a

corporation to be formed by the Homeowners Association of the Brightleaf Estates Subdivision, the package sewage treatment plant, the real estate upon which it is located, all sewer lines and equipment necessary to operate the plant, all of which shall be conveyed without encumbrance.¹

4. Brightleaf Estates seeks approval by the Commission to transfer ownership of the sewer system to comply with said Plea Agreement.

5. No purchase/sale agreement between the parties exists.

6. Brightleaf Estates employs an individual who is licensed as an operator by the Natural Resources and Environmental Protection Cabinet, Division of Water.

7. Brightleaf Estates' assets will consist of approximately \$5,000 in cash to be transferred from B.L.S.T. to Brightleaf Estates plus the sewage treatment plant, lines, property rights and real estate that being Lot #3, Block E, of Brightleaf Estates Subdivision.

8. As of December 31, 1990, B.L.S.T. has assets of \$18,577 and reported current and accrued liabilities of \$18,577.² No annual report has been filed for 1991.

¹ Plea Agreement, United States of America v. B.L.S.T., Inc., a Kentucky corporation, and Jerry Tyler, an individual, Criminal Action No. 91-21, United States District Court, Eastern District of Kentucky (1991). A copy of said Plea Agreement is attached hereto as Exhibit A and incorporated herein by reference.

² Annual Report of B.L.S.T., Inc. for the year ended December 31, 1990, pages 2-3.

9. In view of the fact that the homeowners formed a nonprofit cooperative corporation incorporated on October 30, 1991; have been operating the treatment plant since June 11, 1991; are voluntarily paying \$16.10 above the current rates to defray the operating expenses incurred; have collectively paid \$1,000 to Mr. Tyler's attorney to release a mortgage on the sewer along with \$125 in past due property taxes; and have secured funding by the Bank of Danville for approximately \$200,000 for anticipated cost of improvements to the plant, Brightleaf Estates has sufficient financial integrity to ensure the continuity of sewage service.

10. Brightleaf Estates has the financial, managerial, and technical abilities to provide reasonable utility service to the persons formerly served by B.L.S.T.

11. The Commission will retain jurisdiction over the B.L.S.T. sewage treatment plant until such time as the deed of conveyance is signed and filed with the County Court Clerk's Office.

12. The fact that Brightleaf Estates Sewage Treatment Plant will serve only residents and businesses located in the Brightleaf Estates Subdivision and will not be treating sewage for the public for compensation, the facility is not a utility within the meaning of KRS 278.010(f). Accordingly, the facility would not fall under the Public Service Commission's jurisdiction at this time.

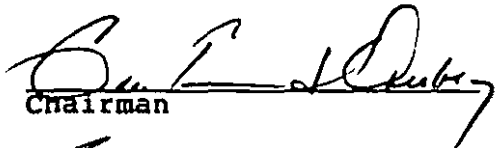
13. In view of the fact that Brightleaf Estates is non-jurisdictional, the matters arising out of Case No. 90-266³ concerning plant deficiencies would no longer fall under Commission jurisdiction and will therefore be dismissed by separate Order.

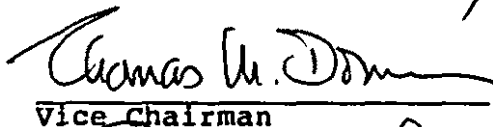
IT IS THEREFORE ORDERED that:

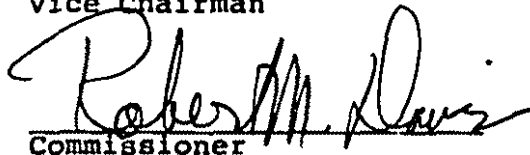
1. The proposed transfer be and it hereby is approved.
2. B.L.S.T. shall file with the Commission a stamped filed copy of the deed of conveyance within 10 days of the deed being filed with the County Court Clerk's Office.
3. Under the present conditions, Brightleaf Estates is not a utility within the meaning of KRS 278.010(f) and therefore, will not fall under the Public Service Commission's jurisdiction.

Done at Frankfort, Kentucky, this 27th day of January, 1992.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

³ Case No. 90-266, Investigation Into the Alleged Unauthorized Transfer of Stock and Ownership of B.L.S.T., Inc. from Jerry L. Tyler to Mike and Tim Montgomery and Alleged Deficiencies in the System.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
LEXINGTON

RECEIVED

NOV 11 1991

PUBLIC SERVICE
COMMISSION

CRIMINAL ACTION NO. 91-21

UNITED STATES OF AMERICA

PLAINTIFF

VS.

PLEA AGREEMENT

B.L.S.T., INC.,
A KENTUCKY CORPORATION, AND
JERRY TYLER, AN INDIVIDUAL

DEFENDANTS

* * * * *

1. Pursuant to Rule 11(e) of the Federal Rules of Criminal Procedure, this Plea Agreement is entered into between the United States of America, by and through Peter M. Davenport, Assistant United States Attorney for the Eastern District of Kentucky, and B.L.S.T., Inc., by and through its sole shareholder, Jerry Tyler, and its attorney, Thomas E. Clay, and Jerry Tyler, individually, in person and by his attorney, Richard Clay.

2. By their signatures below, all parties to this agreement understand and agree that this agreement constitutes the entire plea agreement between the United States and the defendants, and incorporates the complete understanding between the parties hereto, and no other promises have been made by the government to the defendant or to the attorneys for the defendant.

3. The defendant B.L.S.T., Inc. agrees to enter a plea of guilty, not nolo contendere or Alford, to Count 1 of the above-captioned criminal indictment, charging the defendant with a

violation of Title 33, United States Code, Sections 1311(a) and 1319(c)(2)(A).

The maximum punishment authorized to be imposed on the corporate defendant for Count 1 is a fine of not more than \$500,000.00, plus a mandatory special assessment of \$200.00 (pursuant to 18 U.S.C. Section 3013).

4. At the time of the entry of the plea of guilty, the defendant, B.L.S.T., Inc., through its sole shareholder, Jerry Tyler, with authority granted by resolution of the Board of Directors will admit facts necessary to support the plea being entered.

5. Defendant, B.L.S.T., Inc., will pay a fine of \$350,000.00 for its corporate criminal liability in Count 1 together with the mandatory special assessment of \$200.00. This fine of \$350,000.00 will be suspended, and defendant will be placed on unsupervised probation for up to eighteen (18) months on the condition that defendant, B.L.S.T., Inc., pay restitution, pursuant to the provision of Title 18, U.S.C. Section 3663 as follows:

B.L.S.T., Inc. will convey and transfer to a corporation to be formed by the Homeowners Association of the Bright Leaf Estates Subdivision, the package sewage treatment plant, the real estate upon which it is located, all sewer lines and equipment necessary to operate the plant, all of which shall be conveyed without encumbrance.

Jerry Tyler will cause to be conveyed without encumbrance to The Homeowners Association of the Bright Leaf Estates

Subdivision, an additional vacant lot presently owned by Tyler and Tyler, Inc., a corporation solely owned by Jerry Tyler.

Jerry Tyler further agrees for the term of his natural life to a permanent disqualification from any direct or indirect management position or participation in any sewage treatment facility. Such permanent disqualification shall not preclude ownership of corporate shares in the corporation to be formed by the Homeowners Association which will own the sewage treatment facility or by virtue of real estate holdings, but shall preclude exercise of any voting rights pertaining thereto, to include the selection of directors, other corporate officers, assessments or any other management matter submitted to shareholders. Such disqualification shall be personal to Jerry Tyler, individually and beneficially, but shall not preclude exercise of future participation or voting rights by any unrelated successor in interest.

B.L.S.T., Inc. and Jerry Tyler agree to publish in a newspaper of general circulation an advertisement in a form and size acceptable to the United States making a public apology for the environmental violations charged in the indictment.

It is agreed between the parties that the restitution and special assessments are to be completed at the time of sentencing or as soon thereafter as may be practicable.

6. The United States hereby agrees that upon the Court's acceptance of the pleas of guilty as set forth above, the United States will move the Court to dismiss the remaining counts of the

indictment herein at the time of sentencing as to B.L.S.T., Inc. and all counts as to Jerry Tyler, individually.

7. It is further understood and agreed by all parties to this agreement that:

The Court is not bound by the terms of this Agreement and may reject the same;

The Court may order, pursuant to 18 U.S.C., Section 3663, in addition or in lieu of any other penalty authorized by law, that the defendant make restitution to any victim of the offense;

The defendant reserves the right to bring to the attention of the Court, prior to or at the time of the imposition of the sentence, any and all relevant evidence in mitigation of sentence;

The United States expressly reserves the right to speak to the Court at the time of sentencing pursuant to Rule 32(a)(1) of the Federal Rules of Criminal Procedure. The United States further reserves the right to provide to the Court and to the United States Probation Office a statement of facts relating to all of the criminal conduct for which B.L.S.T., Inc. was responsible; and further reserves the right to correct and comment on any misstatements of fact made by the defendant or defendant's counsel in the course of the presentence investigation or in the course of the sentencing or other proceedings; and

The government shall make known to the Court, prior to or at the time of sentencing, the total extent of the defendants'

cooperation with the government or lack thereof, if appropriate in the opinion of the United States of America.

8. The United States agrees not to bring any additional criminal charges against the defendants based upon evidence in the possession of the United States at the time of this agreement and arising out of the defendants' conduct within the Eastern District of Kentucky, unless the defendants breach this plea agreement.

9. It is understood that this Plea Agreement does not and cannot bind the United States Attorney's Offices in any other districts or any state agency concerning any other matters possibly being investigated or prosecuted in any districts other than the Eastern District of Kentucky or by any state agency.

10. All parties hereto understand and agree that all statements and testimony made by the defendant Tyler must be truthful and that this agreement does not preclude the prosecution of the defendant for the offenses of perjury or making false declarations relating to such statements or any testimony rendered pursuant to this plea agreement.

11. A violation of any part of this agreement by the defendants will result in this entire agreement being null and void at the option of the United States. In the event that this agreement becomes null and void as a result of the actions of the defendants, it is understood and agreed that the United States may, at its discretion, reinstate the charges now pending against the defendants, and/or seek an indictment for any and all violations of federal law, including charges of perjury or giving false

statements. If the defendants breach this plea agreement, the defendants expressly acknowledge the right of the United States to institute charges against the defendants arising out of the above-described breach.

12. By subscription to this plea agreement, the defendants and defendants' attorneys acknowledge that the defendants understand the within agreement and that this agreement has been fully explained to the defendants and the defendants' entry into this agreement is free and voluntary.

10/8/91
Date

Jerry L. Tyler
Jerry Tyler, Defendant

Oct. 8, 1991
Date

Thomas E. Clay
for Richard Clay
Attorney for Defendant,
Jerry Tyler

Date 10/8/91

Jerry Tyler
B.L.S.T., Inc.
Jerry Tyler, Sole Shareholder

Oct. 8, 1991
Date

Thomas E. Clay
Thomas E. Clay
Attorney for Defendant,
B.L.S.T., Inc.

KAREN CALDWELL
UNITED STATES ATTORNEY

October 8, 1991
Date

BY: Peter M. Davenport
Peter M. Davenport
Assistant U.S. Attorney

PMD/rlo