

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF BULLITT COUNTY SANITATION)	
DISTRICT AS RECEIVER FOR THE ASSETS OF)	CASE NO.
BULLITT UTILITIES, INC. FOR A CERTIFICATE OF)	2014-00255
CONVENIENCE AND NECESSITY AND SURCHARGE)	
FOR SAME)	

ORDER

On July 17, 2014, Bullitt Utilities, Inc. (“Bullitt Utilities”) filed a Petition for Certificate of Convenience and Necessity and for Surcharge. The case resulted from a catastrophic failure of the steel aeration tank at Bullitt Utilities’ Hunters Hollow wastewater treatment plant (“WWTP”) on March 29, 2014.¹ On August 21, 2015, while its application in this case was pending, Bullitt Utilities, 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, opened a formal investigation into Bullitt Utilities’ request to abandon.² The Commission’s investigation into Bullitt Utilities’ request to abandon was docketed as Case No. 2015-00290.

¹ Order (Ky. PSC July 21, 2014), Appendix, Exhibit 4 (Energy and Environment Cabinet, Department for Environmental Protection, Division of Water, Wastewater Inspection Report, dated Apr. 2, 2014).

² Case No. 2015-00290, *Bullitt Utilities, Inc.’s Notice of Surrender and Abandonment of Utility Property* (Ky. PSC Aug. 24, 2015).

On August 24, 2015, the Commission held an evidentiary hearing in Case No. 2015-00290, and Christopher G. Cogan testified for Bullitt Utilities.³ 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 Bullitt Utilities.⁴ We found that Christopher G. Cogan was authorized to act on behalf of Bullitt Utilities' sole shareholder, Carroll F. Cogan.⁵

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;⁶ 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;⁷ 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.⁸

The Commission, by an Order entered August 31, 2015, in Case No. 2015-00290, found that Bullitt Utilities had carried its burden and met the requirements of

³ 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.

⁴ Case No. 2015-00290, *Bullitt Utilities, Inc.*, 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.

⁵ *Id.*, Order (Ky. PSC Aug. 31, 2015) at 5.

⁶ *Id.*, VR of Aug. 27, 2015 Hearing at 10:28:15–10:28:25 and 10:33:45–10:33:57.

⁷ *Id.* at 10:33:58–10:34:22.

⁸ *Id.* at 10:34:23–10:34:50.

KRS 278.021(2)(a) and (b), and the Commission made a finding of abandonment.⁹ 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 order attaching Bullitt Utilities' assets and placing them under the sole control and responsibility of a receiver, whichever occurred earlier.¹⁰

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.¹¹ 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.¹²

On September 23, 2015, the Franklin Circuit Court entered an order attaching the assets of Bullitt Utilities and appointing BCSD as receiver for the assets of Bullitt Utilities and placing those assets under the sole control and responsibility of BCSD.¹³ The Franklin Circuit Court authorized BCSD to take charge, preserve, operate, control, manage, maintain, and care for the Bullitt Utilities sewage collection and treatment

⁹ *Id.*, Order (Ky. PSC Aug. 31, 2015) at 5.

¹⁰ *Id.* at 6–8.

¹¹ *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).

¹² A copy of the September 16, 2015 BCSD Resolution is attached hereto as Appendix A.

¹³ A copy of the September 23, 2015 Franklin Circuit Court Order is attached hereto as Appendix B.

facilities.¹⁴ 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 such other powers as are usual and incidental to the management of a public utility providing sewage collection and treatment service to the public.¹⁵

The Commission's August 31, 2015 Order in Case No. 2015-00290 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 until 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.

Bullitt Utilities, having abandoned the Hunters Hollow collection system, no longer has any right to exercise powers regarding the preservation, operation, control, management, maintenance, or care of the assets and operations it has abandoned; therefore, Bullitt Utilities no longer has the right to prosecute this action. The Commission finds that Bullitt Utilities is without authority to continue as the applicant in this proceeding; therefore, Bullitt Utilities should be dismissed as the applicant. We find that Bullitt Utilities should be dismissed as a party to this case.

¹⁴ The September 23, 2015 Franklin Circuit Court Order.

¹⁵ *Id.*

Additionally, we find that BCSD, as receiver, has been vested by the Franklin Circuit Court with sole control and responsibility for the assets of Bullitt Utilities. Further, we find that BCSD, as receiver, is the only entity that has authority to collect the rates and charges to the customers served by the Hunters Hollow collection system, the former customers of Bullitt Utilities. Pursuant to KRS 278.021(6), KRS 278.021(7), and the Franklin Circuit Court's September 23, 2015 Order, BCSD, as receiver, is the only entity with authority to bring or defend any action regarding the assets and operations of the Hunters Hollow collection system. The Commission finds that BCSD should be substituted in place of Bullitt Utilities as the applicant in this proceeding.¹⁶

We further find that the style of this proceeding should be revised in order to reflect the substitution of BCSD, as receiver, for Bullitt Utilities. We find that BCSD, as receiver, should file an adoption notice of the tariffs of Bullitt Utilities.¹⁷

If Bullitt Utilities seeks to further participate in this 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 or develop facts that will assist the commission in fully considering the matter without unduly complicating or disrupting the proceeding."¹⁸

¹⁶ See Case No. 94-346, *W. Glenn Hogan, Complainant v. Spanish Cove Sanitation, Defendant*, (Ky. PSC Feb. 10, 1995), Order at 3. As explained in *W. Glenn Hogan*, although a change of plaintiffs by substitution of new persons in place of those who originally brought the suit is generally not permitted, it is permitted when there is no change in the cause of action and the party substituted bears some relation of interest to the original party. In this instance, BCSD has been appointed as the receiver of the assets of Bullitt Utilities and, therefore, now has all of the interests of Bullitt Utilities with regard to the prosecution of this application.

¹⁷ See 807 KAR 5:011, Section 11(d).

¹⁸ 807 KAR 5:001, Section 4(11)(a).

IT IS THEREFORE ORDERED that:

1. Bullitt Utilities is dismissed as the applicant in this case.
2. Bullitt Utilities is no longer a party to this action and is removed from the service list following service of this Order.
3. BCSD, as receiver, is substituted as the applicant in this case.
4. The style of this case should be revised to reflect the substitution of Bullitt County Sanitation District, as receiver, for Bullitt Utilities.
5. Within 20 days of the date of this Order, BCSD, as receiver, shall file with the Commission, using the Commission's electronic Tariff Filing System, an adoption notice.

By the Commission



ATTEST:



Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2014-00255 DATED **OCT 16 2015**

BULLITT COUNTY SANITATION DISTRICT
CORPORATE RESOLUTION 2015-3

RECEIVED
SEP 17 2015
JK

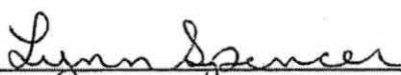
TO WHOM IT MAY CONCERN:

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.

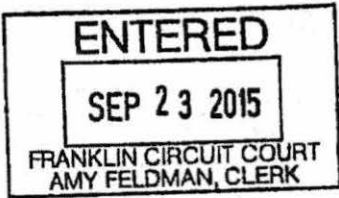
The undersigned further certifies the foregoing is a true and correct copy of the Resolution so adopted, that such Resolution remains in full force and effect and unrevoked as of this date, and that such Resolution is not in conflict with any charter or by-law of this District.



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

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2014-00255 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

*** **

ORDER

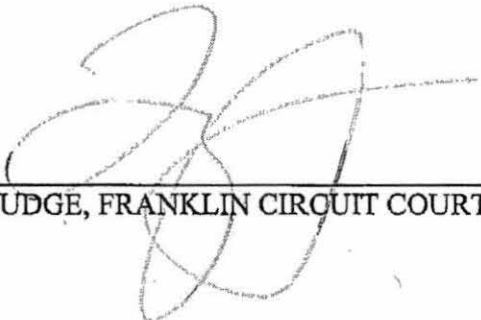
This matter having come before the Court of the motion of Plaintiff, Public Service Commission of Kentucky (hereinafter, "Commission") for the attachment of assets of Defendant, Bullitt Utilities, Inc. (hereinafter, "Bullitt Utilities") and the appointment of the Bullitt County Sanitation District (hereinafter, "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.

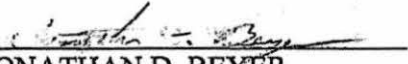
4. BCSD is authorized and directed to collect the rates and charges for Bullitt Utilities as established and as changed from time to time by the Public Service Commission; all receivables and profits; to deposit all funds coming to BCSD as receiver in a separate bank account; to employ or contract with 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.



JUDGE, FRANKLIN CIRCUIT COURT

Tendered by:



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