

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 28, 2015, the Commission received a request filed by Bullitt Utilities, Inc., ("Bullitt Utilities") pursuant to 807 KAR 5:001, Section 13, that seeks confidential treatment for portions of a Durable Power of Attorney ("Power of Attorney") that was supplied in response to a Commission Staff request for information made during the evidentiary hearing held in this matter on August 27, 2015. No party to the case filed a response to the request for confidential treatment.<sup>1</sup>

Carroll F. Cogan, the sole shareholder of Bullitt Utilities, is named as one of two Principals in the Power of Attorney. Bullitt Utilities requested confidential treatment for the identity of the second individual named as a Principal in the Power of Attorney and for the identities of three entities listed in the Power of Attorney. Bullitt Utilities, in its request, stated that these portions of the Power of Attorney contain information that is unrelated and irrelevant to the issues in this case.<sup>2</sup> Further, Bullitt Utilities stated that this information is of a personal nature and public disclosure would constitute a clearly

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<sup>1</sup> 807 KAR 5:001, Section 13(2)(d), states: "Unless the commission orders otherwise, a party may respond to a motion for confidential treatment within seven (7) days after the motion is filed with the commission."

<sup>2</sup> Bullitt Utilities, Inc.'s Request for Confidential Treatment at 1.

unwarranted invasion of privacy.<sup>3</sup> Bullitt Utilities requested that “the redacted portions of the Durable Power of Attorney remain confidential throughout this proceeding and until the redacted portions are required to be used in another proceeding or transaction.”<sup>4</sup>

### DISCUSSION

The Commission is a public agency subject to Kentucky’s Open Records Act, and all public records of the Commission “shall be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884.”<sup>5</sup> Therefore, “[a]ll material on file with the commission shall be available for examination by the public unless the material is confidential.”<sup>6</sup> We have held that in order “[t]o determine if the information provided ... should be disclosed, the Commission must first determine if the information is of a personal nature.”<sup>7</sup> If the information is of a personal nature, the Commission must then determine if the disclosure would be an invasion of personal privacy.”<sup>8</sup>

As we have observed:

The policy of openness for the public good is based upon the public’s right to verify that agencies are properly performing their statutory functions. “That purpose is not fostered however by disclosure of information about private citizens

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 2.

<sup>5</sup> KRS 61.872(1).

<sup>6</sup> 807 KAR 5:001, Section 13(1).

<sup>7</sup> Case No. 2013-00008, *Glen and Patricia A. Damron v. Louisville Gas and Electric Company*, (Ky. PSC Nov. 13, 2013) at 3.

<sup>8</sup> *Id.*

that is accumulated in various government files that reveals little or nothing about an agency's own conduct."<sup>9</sup>

The Commission finds that the identity of the second individual who is also named as a Principal in the Power of Attorney is of a personal nature. We find, however, that the individual is, per the Commission's public records, a creditor of Bullitt Utilities and is therefore a person with an interest in Bullitt Utilities. We find that the identity of the second person is, therefore, relevant to Bullitt Utilities and this proceeding. Bullitt Utilities failed to demonstrate that disclosure of the information would result in an unwarranted invasion of privacy. We find that Bullitt Utilities has not met its burden of proof that this information is excluded from disclosure pursuant to KRS 61.878, and that therefore we should deny this portion of the request for confidential treatment.

With regard to the identities of the three entities for which Bullitt Utilities seeks confidential treatment,<sup>10</sup> we find that entity "a" is a public utility subject to the jurisdiction of the Commission and that Carroll F. Cogan is listed as an officer in the Commission's public records for this entity. We find that the public has a right to know who is exercising power on behalf of Carroll F. Cogan for entity "a" and that Bullitt Utilities did not demonstrate how such a disclosure is an unwarranted invasion of personal privacy. We find that Bullitt Utilities failed to meet its burden of proof that this information is excluded from disclosure. We deny confidential treatment for the identity of entity "a."

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<sup>9</sup> *Id.*, quoting *Zink v. Commonwealth, Dep't of Workers' Claims, Labor Cabinet*, 902 S.W.2d 825, 828 (Ky. App. 1985).

<sup>10</sup> The Power of Attorney contains a list of four entities. Bullitt Utilities appears as item "c" in the listing. For purposes of discussion in this Order, the three remaining entities are identified as "a," "b," and "d," as per their listing in the Power of Attorney.

We find that entity “b” is the parent corporation of “a” and that Carroll F. Cogan's interest in “b” is a matter already disclosed in the Commission's public records. We find that the public has a right to know Carroll F. Cogan's interest in “b” and also to know who is exercising power on his behalf with regard to entity “b.” Bullitt Utilities failed to demonstrate how the disclosure of the information is an unwarranted invasion of personal privacy. We find that Bullitt Utilities failed to meet its burden of proof that this information is excluded from disclosure. We deny confidential treatment for the identity of entity “b.”

We find that entity “d” has, per the Commission's public records, an interest in Bullitt Utilities. We find that the identity of “d” is, therefore, relevant to Bullitt Utilities, and the public has a right to know Carroll F. Cogan's interest in this entity. We find that the public has a right to know who is exercising power on behalf of Carroll F. Cogan's interest in this entity. We find that Bullitt Utilities failed to meet its burden of proof that this information is excluded from disclosure. We deny confidential treatment for the identity of entity “d.”

IT IS THEREFORE ORDERED that:

1. Bullitt Utilities' request for confidential treatment is denied.
2. The material denied confidential treatment shall be withheld from public inspection for 20 days from the date of this Order to allow Bullitt Utilities to seek any remedy afforded by law.

By the Commission

ENTERED  
SEP 17 2015  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
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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