

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE
COMMISSION

In the Matter of:

APPLICATION OF BULLITT UTILITIES, INC.,) CASE NO.
FOR A CERTIFICATE OF CONVENIENCE AND) 2014-00255
NECESSITY, AND SURCHARGE FOR SAME)

ATTORNEY GENERAL'S MOTION TO SUBMIT MATTER TO DECISION ON THE
RECORD WITH AN OPPORTUNITY TO FILE BRIEFS

Comes now the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and requests that the Commission cancel the hearing currently scheduled for 9 June 2015 and submit this matter for decision on the record while allowing an opportunity to file briefs. To be clear, the attorney General requests that only the evidentiary hearing be canceled, while the opportunities for public comment continue to be afforded.

By Commission Order dated 15 May 2015, it was established that a hearing on this matter would be held on 9 June 2015. The Order required each party by 2 June 2015 to provide the names and titles of witnesses, the order in which each party intends to call witnesses, and a list of documents to be presented as exhibits. Further, the Order provided "Parties will present their witnesses in the following order: a. Bullitt Utilities, Inc; then b. Attorney General". By Order dated 22 May 2015, the Commission further required that "all parties **SHALL** file pre-filed testimony no later than June 2, 2015, of any witness to be presented at the formal hearing in this matter." (Emphasis added).

On 2 June 2015 the Attorney General filed his prehearing statement asserting that he does not plan to call any witnesses at the hearing and all documents he intends to use as exhibits have previously been filed with the Commission. As such, the Attorney General does not intend to enter original evidence into the record. Bullitt Utilities, the applicant, is seemingly disinterested

in the proceeding and filed nothing. It was not until two days past the deadline, on 4 June 2015, that Bullitt Utilities indicated on the record they intend to produce witnesses at the Hearing.

Bullitt Utilities notice filed on 4 June 2015 does not comply with the Commission's 22 May 2015 Order requiring a witness list by 2 June 2015. Even more significantly, Bullitt Utilities failed to comply with the provision mandating that any witness a party intends to call during the Hearing shall have supplied pre-filed testimony to the Commission by 2 June 2015. In addition, Bullitt Utilities has not indicated that it intends to offer any exhibits during the hearing. As the deadline to identify witnesses, produce witnesses' pre-filed direct testimony, and produce documents to be utilized during the hearing has passed, Bullitt Utilities has forfeited its right to call any witnesses or enter any documents as exhibits during the Hearing. As such, the evidentiary record in this case appears to be complete. Bullitt Utilities and the Attorney General are the only two parties involved in this matter. Because the Attorney General is the only party that reserved the right to enter any documents into the record as evidence, and he now waives that right should the motion to cancel the hearing be granted, no party will be prejudiced by the cancelation of the hearing.

Precedent exists to cancel a hearing where a party failed to file pre-filed direct testimony. In Case No. 2002-00094¹ the Commission required the parties to prefile direct testimony within 10 days. When all parties failed to do so, the Commission then canceled the hearing and submitted the matter on the record. In a similar instance, in Case No. 2001-00062, the Commission required parties to file a witness list and brief summary of the testimony.² When no

¹ In the Matter of: The Verified Joint Application of Elk Lake Property Owners' Association, Inc. and Kentucky-American Water Company for the Approval of the Transfer of the Ownership of the Assets of Elk Lake Property Owners' Association, Inc. Devoted to the Provision of Water Service to Kentucky-American Water Company; Order dated 26 April 2002.

² In the Matter of: Application of Hillridge Facilities, Inc. for an Adjustment of Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities; Order dated 25 January 2002.

such list or summary was filed, the hearing was canceled and the matter submitted on the existing evidentiary record. These cases are analogous to the instance at hand. The Commission's 22 May 2015 Order required pre-filed testimony by a date certain of any witness to be presented at the formal hearing. That deadline was missed, and as such the hearing should be canceled.

Even more egregious is Bullitt Utilities seeming failure to provide notice to the public of the hearing scheduled for 9 June 2015. The Commission's 15 May 2015 Order, paragraph 7, required Bullitt Utilities to publish notice of the hearing in accordance with 807 KAR 5:001, Section 9(2)(b)(2), "no more than 21 days and no less than seven days before the day of the scheduled hearing". As of 4 June 2015, a mere 5 days prior to the hearing, there has been no indication or evidence provided by Bullitt Utilities that notice has been provided to the public of the scheduled hearing. As of this date, it is logistically impossible for Bullitt utilities to meet this requirement. This failure on the part of Bullitt Utilities is alone grounds enough to cancel the scheduled hearing.

In the alternative, if the Commission proceeds to hearing, the witnesses produced by Bullitt Utilities should not be permitted to present any direct testimony, having waived that opportunity by failing to comply with the Commissions 15 May 2015 and 22 May 2015 Orders. Rather, any witness produced should be made available only for cross-examination by the Attorney General, Commissioners, and Commission staff. As Bullitt Utilities has never indicated any intention to utilize exhibits during the hearing, Bullitt Utilities should also be barred from using any documents either in the record or that would be new to the record.

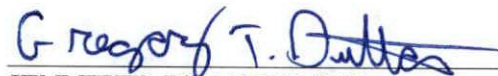
While the Commissions 15 May 2015 Order requires that any request to cancel or postpone the hearing be made at least one week before the hearing, crucial facts related to the

Attorney General's present request were not known in time sufficient to fully comply with the one week requirement. This Motion was filed as soon as practicable and as far in advance of the 9 June 2015 hearing as possible. The Attorney General was not aware of Bullitt Utilities absence of witnesses and exhibits until June 3rd and this Motion was filed promptly on June 4th. As such, the Attorney General requests deviation from paragraph 10 of the 15 May 2015 Order.

In conclusion, the Attorney General requests that the Commission cancel the hearing scheduled for 9 June 2015, accept public comment on 9 June 2015, submit the matter for decision on the evidentiary record as it stands today, and establish a two week deadline within which the parties may file briefs.

Respectfully submitted,

JACK CONWAY
ATTORNEY GENERAL



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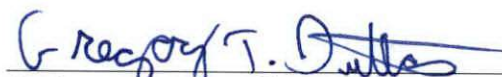
Certificate of Service and Filing

Counsel certifies that an original and ten photocopies of the foregoing were served and filed by hand delivery to Jeff Derouen, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; counsel further states that true and accurate copies of the foregoing were mailed via First Class U.S. Mail, postage pre-paid, to:

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Louisville, KY 40205

Honorable Robert C Moore
Hazelrigg & Cox, LLP
415 West Main Street
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this 4th day of June, 2015



Assistant Attorney General