

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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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 POST HEARING BRIEF

Comes now the Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, and states as follows for his post-hearing brief in the above-styled matter.

STATEMENT OF THE CASE

Bullitt Utilities, Inc. ("Bullitt Utilities") provides sewer service to the citizens of Hillview and Hunters Hollow. The Hunters Hollow collection system conveys wastewater from Hillview and Hunters Hollow to the Bullitt Utilities wastewater treatment plant ("WWTP") for treatment. Hillview has a population of approximately 9,000 people, though only a subset of the population is served by Bullitt Utilities.¹ Hunters Hollow has 123 homes, all of which are served by Bullitt Utilities.² The median household income of Hillview and Hunters Hollow is approximately \$40,000 - \$45,000, with many aging individuals living modestly on fixed incomes.³

On March 29, 2014, the Bullitt Utilities WWTP suffered irreparable damage due to the complete collapse of the 250,000 gallon aeration tank. An investigation was initiated by the Kentucky Public Service Commission ("Commission") on May 22, 2014, to explore various issues associated with Bullitt Utilities ability to continue to provide safe and reliable service to

¹ Public Comments of Mayor Jim Eadens, Video Transcript at 10:15:00 – 10:18:00.

² Public Comments of Mayor Linda Parker, VT at 10:18:00 – 10:20:25.

³ *Id.*

its customers. This investigation was assigned Case No. 2014-00163.⁴ Bullitt Utilities then filed an Application for a Certificate of Public Convenience and Necessity (“CPCN”) and Surcharge for Same on July 17, 2014, and the application was assigned Case No. 2014-00255. The investigation and application cases progressed simultaneously. A CPCN was granted to Bullitt Utilities in Case No. 2014-00255 on December 23, 2014. The Cities of Hillview and Hunter’s Hollow were granted intervention in Case No. 2014-00163 on January 23, 2015, but did not intervene in Case No. 2014-00255.⁵ The Attorney General was granted intervention in the respective cases on May 30, 2014, and on March 6, 2015. A hearing was held in the investigation case on March 31, 2015. By Order dated June 8, 2015, the record of Case No. 2014-00163 was incorporated into the record of Case No. 2014-00255.⁶ A hearing was held in Case No. 2014-00255 on June 9, 2015. This brief addresses issues and questions arising from the application Bullitt Utilities filed in Case No. 2014-00255.

The collapse of the aeration tank spread steel shrapnel, concrete, and raw sewage across the property of Bullitt Utilities. As a result of the collapse, the WWTP was severely damaged and could no longer provide any level of treatment to the wastewater that continued to be conveyed to the site of the now nonfunctioning facility. Absent proper treatment facilities, Bullitt Utilities was unable to provide any level of treatment to the wastewater flow from its 709 customers before the flow spilled on to the ground and eventually washed into a nearby creek. Bullitt Utilities secured a variety of service providers to begin treating the wastewater flow that continued to travel to the site of the failed WWTP. Over the next 15 months, Bullitt Utilities sporadically negotiated with Bullitt County Sanitation District (“BCSD”) to divert Bullitt Utilities wastewater flow to a BCSD WWTP for treatment. Multiple Informal Conferences were

⁴ *In the Matter of: An Investigation of Existing and Future Service of Bullitt Utilities, Inc.*

⁵ 23 January 2015 Order, Case No. 2014-00163.

⁶ 8 June 2015 Order, paragraph 6, Case No. 2014-00255.

organized by the Commission in an effort to bring the two parties to the negotiating table in hopes of getting an agreement in place. During the months Bullitt Utilities was unable to reach agreement with BCSD, Bullitt Utilities continued to pay private service providers to treat the wastewater flow. Finally, on May, 27 2015, BCSD began accepting wastewater flow from Bullitt Utilities. Bullitt Utilities now seeks to recover all expenses associated with the aeration tank's failure and subsequent treatment efforts.

Bullitt Utilities current Commission approved rate is \$26.83 per month for each customer. The application filed in the current matter requests the addition of a \$32.19 surcharge to each customer's monthly bill, for an indeterminate amount of time. Approval of the surcharge would result in a 120% increase to the monthly sewer bill of each Bullitt Utilities customer.

FAIR, JUST AND REASONABLE

The Legal Standard

Bullitt Utilities has the right to seek "fair just, and reasonable rates for the services rendered or to be rendered by it."⁷ However, Bullitt Utilities bears the burden to demonstrate, to the Commission's satisfaction, that the requested surcharge will result in fair, just and reasonable rates. The burden Bullitt Utilities bears is mandated by statute, in that: "At any hearing involving the rate or charge sought to be increased, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the utility..."⁸ This fundamental principle of ratemaking codified by the Kentucky Legislature requires an assessment of the final result, not simply an assessment of the individual vehicles or mechanisms used to arrive at the final result. As an applied concept, this requires the final rate impact to be fair, just and

⁷ Kentucky Revised Statutes 278.030(1).

⁸ KRS 278.190(3).

reasonable to the ratepayers who are subject to it. In recognition of this truism, the Court of Appeals of Kentucky expounded “we must look more to whether the result is fair, just and reasonable rather than at the particular methodology used to reach the result.”⁹ It is through this lens that we must assess the proposed result of the Bullitt Utilities application.

A 14 Year Surcharge is Not Fair, Just and Reasonable

Bullitt Utilities requests approval to collect a monthly surcharge of \$32.19 for as many years as it takes in order to recover the exorbitant expenses and debt Bullitt Utilities has accumulated since the aeration tank collapsed.¹⁰ When the total amount requested was \$1,614,731.22 Bullitt Utilities calculated it would need to collect the surcharge for seven (7) years.¹¹ Now that the alleged expenses Bullitt Utilities claims have ballooned to more than \$3,167,346.27,¹² Bullitt Utilities seeks to collect the surcharge for a period of fourteen (14) years or more.¹³ If the surcharge is approved as requested, the ratepayers in Hunters Hollow and Hillview will not be liberated from the surcharge until at least the year 2029, if even then. This would not be a fair, just and reasonable result.

A Surcharge Increasing Rates by 120% is Not Fair Just, and Reasonable

Bullitt Utilities currently charges its customers a Commission approved monthly rate of \$26.83 for service.¹⁴ The application before the Commission proposes a surcharge of \$32.19 be

⁹ *National-Southwire Aluminum Company v. Big Rivers Electric Corporation*, 785 S.W.2d 503 (Ky.Ct. App.) (Jan. 26, 1990).

¹⁰ VT at 10:44:42 – 10:45:39.

¹¹ Amended Application of Bullitt Utilities, Inc. for Surcharge, paragraph 29 and pages 12-13.

¹² Third Supplement to Answers of Bullitt Utilities, Inc., to Commission Staff's First Information Requests, Request No. 6(b), filed 5 June 2015.

¹³ VT at 10:44:42 – 10:45:39. (Seeking to collect the surcharge until all alleged expenses have been recovered.)

¹⁴ 23 February 2015, Notice of Filing, paragraph 7.

added to each customer's monthly bill.¹⁵ An additional charge of \$32.19 results in an effective increase of an astonishing 120% to each customer's bill.¹⁶ This Commission has previously recognized that "any increase in utility rates or charges has the potential to create a financial hardship for low-income customers."¹⁷ A 120% increase has the potential to create financial hardship for low-income, fixed-income, or any other household with carefully budgeted finances. The principle of Gradualism provides that ratepayers are more able to absorb an increase in fixed rates or fees over a period of time, rather than a large, acute increase in rates. Exercising this principle helps the Commission to protect the financial integrity of the ratepayers.

The Commission recently acknowledged its long history employing the principle of Gradualism in rate making in order to mitigate the financial impact of rate increases on customers.¹⁸ While the principle is most frequently employed with respect to fixed customer charges, it has also been employed to limit the increases of fixed sewer rates.¹⁹ Typically, the Commission has viewed determining what percentage increase violates the concept of Gradualism as a subjective process. However, here we know that a 120% increase would cause serious negative consequences to the ratepayers of Hillview and Hunters Hollow, as the

¹⁵ *Id.*

¹⁶ *Id.* (While the Notice states that the surcharge is 1.20% of the monthly rate for service, this number is incorrect. The actual percentage increase is 120%.)

¹⁷ 27 September 2000 Order, at 12, Case No. 2000-080, *In the Matter of: The Application of Louisville Gas & Electric Company to Adjust its Gas Rates and to Increase its Charges for Disconnecting Service, Reconnecting Service and Returned Checks.*

¹⁸ 22 June 2014 Order, Case No. 2014-00396, *In the Matter of: Application of Kentucky Power Company for: (1) A General Adjustment of its Rates for Electric Service; (2) An Order Approving its 2014 Environmental Compliance Plan; (3) An Order Approving its Tariffs and Riders; and (4) An Order Granting All Other Required Approvals and Relief.* ("...the Commission has long employed the principle of gradualism....") See also; 27 September 2000 Order, Case No. 2000-080, *In the Matter of: The Application of Louisville Gas & Electric Company to Adjust its Gas Rates and to Increase its Charges for Disconnecting Service, Reconnecting Service and Returned Checks.* ("... the Commission is adhering to the rate-making concepts of continuity and gradualism in order to lessen the impact of these increases on the customers that incur these charges.")

¹⁹ Case No. 2014-00390, *In the Matter of: Application of Kentucky-American Water Company for an Adjustment of its Wastewater Rates Pursuant to 807 KAR 5:076*; Case No. 97-243, *In the Matter of: The Application of the East Pendleton Water District for an Adjustment of Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities.*

surcharge would more than double the monthly bill. Additionally, the Mayors of Hillview and Hunters Hollow both agree that such a drastic and sudden increase in bills will harm the people in their communities.²⁰ The principle of gradualism exists to protect ratepayers from significant and acute rate increase that would cause harm. Here, the 120% increase would harm the ratepayers and violate the principle of gradualism. Therefore, a 120% increase in sewer rates would not be a fair, just and reasonable result.

A 14 Year Surcharge for 1 Additional Year of Service is Not Fair, Just and Reasonable

Bullitt Utilities has a contract with Bullitt County Sanitation District that provides for BCSD to treat the wastewater flow from the Hunters Hollow collection system.²¹ However, BCSD did not began accepting and treating the flow until May 27, 2015.²² The contract is currently the only agreement Bullitt Utilities has with any entity to provide service to the residents on the Hunters Hollow collection system.²³ Despite the fact BCSD did not start accepting the wastewater flow until May 27, 2015, the short term contract expires on December 31, 2016.²⁴ Implicit in the expiring contract is that on January 1, 2017, the residents of Hillview and Hunters Hollow will no longer have sewer service available to them. While Bullitt Utilities has engaged in unfruitful and sporadic discussions with Louisville MSD, BCSD and the Kentucky DOW regarding treatment options following the expiration of the contract with BCSD, there is currently no viable entity in a position to provide wastewater treatment to Bullitt Utilities customers after the expiration of the BCSD contract. Mayor Parker of Hunters Hollow summarized the question perfectly, stating: “Their contract is up next December. What do we do

²⁰ VT at 10:15:00 – 10:20:25.

²¹ Amended Application of Bullitt Utilities, Inc. for Surcharge, Attachment O.

²² 28 May 2015 Letter from Rob Moore to Ann Ramser.

²³ VT at 10:59:35 – 10:59:52.

²⁴ Amended Application of Bullitt Utilities, Inc. for Surcharge, Attachment O, paragraph 2.

then? They are still collecting the surcharge, but who's collecting the sewage?"²⁵ Allowing Bullitt Utilities to collect a 14 year surcharge with no guarantee of service, or reinvestment into the system past 2016 is not fair, just and reasonable.

Failing to Secure a Replacement WWTP is Not Fair, Just and Reasonable

Bullitt Utilities has requested a surcharge totaling over \$3 million in order to recover alleged expenses associated with the collapse of its WWTP. It is patently unreasonable that Bullitt Utilities spent over \$3 million, yet secured no new assets and no long-term solution for treating the waste from the Hunters Hollow collection system. Bullitt Utilities has long known that its facility was failing, and should have begun securing a replacement many years ago.²⁶ Instead, Bullitt Utilities management ignored the problems until the facility eventually collapsed. In DOW's report following the collapse, the state inspector found:

"The lack of proper operation and maintenance of an aging facility known to be greater than 30 years old, has contributed to the collapse of the structure resulting in the loss of all treatment capability."²⁷

That even after the facility collapsed from lack of proper maintenance, Bullitt Utilities still failed to secure a replacement WWTP is simply unconscionable. This situation was created by Bullitt Utilities negligent management, and the same negligent management now wishes to abandon its ratepayers without long-term service.

Bullitt Utilities briefly considered installing a used WWTP after the aeration tank collapsed, but rejected the idea because "it would take approximately six (6) months to locate

²⁵ VT at 10:19:30 - 10:19:45.

²⁶ 28 June 2014 Answers of Bullitt Utilities Inc., to Information Requests of the Public Service Commission, Tab 1, Case No. 2014-00163. (DOW Notices of Violation relating to Operation and Maintenance issued on 16 April 2009, 20 January 2010, 30 August 2010, 17 March 2011, 1 November 2011, 31 January 2012, 8 July 2012, 5 June 2013, 25 October 2013, and 29 March 2014).

²⁷ *Id.* at NOV dated 03/29/2014.

and install a used WWTP capable of treating the flow.”²⁸ This response from Bullitt Utilities seems to suggest that 6 months would be too long to wait. The estimate was later extended to 6-9 months.²⁹ If Bullitt Utilities had simply begun the process of securing a used WWTP when the facility collapsed, they could have had a used WWTP installed and operational sometime between September and December of 2014.³⁰ The cost to locate, and place a used WWTP was estimated to be between \$100,000 and \$300,000.³¹ Bullitt Utilities was paying Veolia approximately \$150,000 a month during this time, so the used WWTP would have paid for itself in a mere two months. Not only would this option have solved the problem of long-term service, but it would have saved the ratepayers and Bullitt Utilities millions of dollars in unnecessary expenses.

Even if Bullitt Utilities failed to locate a suitable used WWTP for purchase, Bullitt Utilities still should have continued to pursue purchasing a new WWTP. RWL Water – a multinational wastewater solutions company – provided Bullitt Utilities a quote of \$828,779.00 for a new WWTP.³² The estimated time to purchase and install the new WWTP was 6-12 months.³³ Again, this means Bullitt Utilities could have had a new WWTP installed sometime between September 2014 and March of 2015.³⁴ Despite the fact that numerous issues continued to prevent Bullitt Utilities from connecting with BCSD for the purpose of temporarily treating the wastewater, Bullitt Utilities chose not to pursue an alternative means of treating the flow either via a new or used WWTP. Bullitt Utilities now seeks recovery of alleged expenses

²⁸ AG’s Exhibit 2, page 3; 25 March 2015 Answers of Bullitt Utilities Inc., to Commission Staff’s First Information Requests.

²⁹ AG’s exhibit 3, page 3; 17 April 2015 Answers to Commission Staff’s Supplemental Request for Information to Bullitt Utilities.

³⁰ Assuming the process began in April 2014.

³¹ VT at 11:13:37 – 11:14:25.

³² AG’s Exhibit 4; 17 July 2014 Petition for Certificate of Convenience and Necessity and for Surcharge, exhibit 17.

³³ 17 April 2015 Answers to Commission Staff’s Supplemental Request for Information to Bullitt Utilities, Response to 3(b).

³⁴ Assuming the process began in April 2014.

totaling in excess of \$3 million, while Bullitt Utilities failed to secure any asset other than a connection to BCSD, which is contractually irrelevant as of December 2016. Over \$3 million spent and no long term solution to treating the wastewater is unconscionable, especially with the availability of other less expensive but permanent solutions. Instead of taking steps to mitigate the damages Bullitt Utilities caused to the ratepayers, as would be required under contract law, Bullitt Utilities continued to pay for temporary service longer than necessary and without ever securing a long-term solution. Under these facts, the Commission would be incorrect to find this behavior anything other than **not** fair, just and reasonable.

Recovery of All Claimed Expenses Would Not be Fair, Just and Reasonable

Expenses Associated with Settling DOW Violations

Bullitt Utilities has incurred numerous costs and expenses as a direct result of its efforts to come into compliance with Kentucky statutes and the Kentucky Division of Water (“DOW”) regulations. Bullitt Utilities now seeks recovery of those costs via surcharge. Those costs should be borne by the Bullitt Utilities shareholders, not the ratepayers. It is well established by numerous rulings of the Commission that:

“The Commission should not allow recovery of penalties, interest, or costs related to judgements or settlements with the Division of Water resulting from utility noncompliance with state statutes or regulations. All costs should be borne by the stockholders of the utility.”³⁵

³⁵ 28 April 2000 Amended Staff Report, Case No. 99-315, *In the Matter of: The Application of Gilbert Construction D/B/A Graham Estates for a Rate Adjustment Pursuant to the Alternative Rate Procedure for Small Utilities*. (By Order dated May 25, 200, the Commission ordered “The Findings contained in the Amended Staff Report are adopted and incorporated by reference into this Order as if fully set out herein.”) *See also*; Order 24 June 1998 Order, *In the Matter of: Application of Willow Creek Sewer System for a Rate Adjustment Pursuant to the Alternative Rate Filing Procedure for Small Utilities* (Adopting Staff’s position that “The Commission does not allow for recovery of [DOW] penalties.”); 14 February 2001 Order, *In the Matter of: The Application of B & H, Inc. for a Rate Adjustment Pursuant to the Alternative Rate Filing Procedure for Small Utilities* (Adopting Staff’s position that “Since it is the owner/manager’s responsibility to insure that the treatment plant is operated and

Bullitt Utilities reached settlement with the Kentucky Division of Water on November, 24 2014 for violations stemming from improper operation and maintenance of the WWTP, and the failure of the Bullitt Utilities aeration tank.³⁶ Specifically, Bullitt Utilities violated the following statutes and regulations:³⁷

1. KRS 224.70-110 - Discharging a pollutant into waters of the commonwealth (18 counts).
2. 401 KAR 10:031 Section 2 – Degradation of the waters of the Commonwealth (12 counts).
3. 401 KAR 5:005, Section 11 - Failure to provide for proper disinfection (3 counts).
4. 401 KAR 5:015, Section 2 - Failure to report a spill (8 counts).
5. 401 KAR 5:065, Section 2(1) - Failure to report a spill (16 counts).
6. 401 KAR 5:065, Section 1(5) - Failure to provide proper operation and maintenance.
7. 401 KAR 5:005, Section 11 - Failure to provide for secondary treatment.
8. 401 KAR 5:065, Section 2 – Failure to comply with the terms of the KPDES Permit.

In holding with the Commission’s precedent, any penalties or costs related to the settlement of those violations cannot be recovered from Bullitt Utilities ratepayers.

Paragraph 19 of the “PENALTIES AND COST RECOVERY” section of the Agreed Order states “BUI shall be liable for civil penalties in the amount of one hundred twenty-five thousand dollars (\$125,000) for the violations described... above.”³⁸ Paragraph 27 of the Agreed Order continues, “In lieu of payment of the civil penalties set forth in paragraph nineteen (19)

conforms to the appropriate regulatory guidelines, any fine or penalty assessed due to B & H’s failure to meet any established guideline should be borne by the owner/manager and not the ratepayers.”)

³⁶ Agreed Order between Kentucky Energy and Environment Cabinet and Bullitt Utilities; Case No. 2014-00163, Bullitt Utilities Hearing Exhibit 10.

³⁷ *Id.* at 2-3.

³⁸ *Id.*

above, BUI shall... connect its collection system to the BCSD sanitary sewer system... under the terms of an agreement negotiated between BCSD and BUI.”³⁹ Further, Paragraph 27 requires:

“BUI shall minimally comply with the provision set forth in said agreement, which include but are not limited to the payment of \$125,000 to BCSD and the payment of the cost to design and construct that part of the pipeline connecting the Hunters Hollow WWTP collection system to the BCSD sanitary sewer system, which part consists of the pumps, pipeline and two (2) flow meters from the Hunters Hollow WWTP site to the location where the flow meters are reasonably installed as agreed to by BUI and BCSD.”⁴⁰

As the settlement with DOW requires a payment of \$125,000 to BCSD and the payment of costs to design and connect the Hunters Hollow collection system to BCSD, those costs should not be recoverable via the surcharge. While it is not clear based on current filings what the final cost will be to connect Hunters Hollow collection system to BCSD, Bullitt Utilities has estimated the cost to construct the wet well and pump station necessary to connect with BCSD at \$326,215.⁴¹ Further, Bullitt Utilities seeks recovery of \$139,603 in payments to BCSD.⁴² This amount consists of the \$125,000 payment made to BCSD as required by paragraph 19 of the Bullitt Utilities settlement with DOW,⁴³ plus \$14,603 in additional costs to connect to BCSD.⁴⁴ Both the \$125,000 payment and the expenses associated with the connection to BCSD are required by the settlement between DOW and Bullitt Utilities. As such, these costs should not be recovered via surcharge.

³⁹ *Id.* at 9.

⁴⁰ *Id.*

⁴¹ 5 June 2015 Third Supplement to Answers of Bullitt Utilities, Inc., to Commission Staff’s First Information Requests, Request No. 6(a).

⁴² *Id.* at Request No. 6(b).

⁴³ Letter from Rob Moore to Scott Stutler dated November 7, 2014; Case No. 2014-00163, Bullitt Utilities Hearing Exhibit 12.

⁴⁴ Amended Application of Bullitt Utilities, Inc. for Surcharge, paragraph 12 (BCSD “worked to construct a pipeline connecting BCSD’s sanitary sewer system to the Hunters Hollow Sanitary Sewer System”) and Attachment H.

Legal Fees

The Commission includes legal fees in its definition of “costs related to judgments or settlements with the Division of Water.”⁴⁵ In response to a request from the Attorney General for Bullitt Utilities to “itemize the attorney fees by costs associated with PSC regulatory matters and costs associated with DOW regulatory matters,” Bullitt Utilities responded that “the PSC regulatory matters and the DOW regulator (sic) matters are intertwined, so that the legal work performed for Bullitt Utilities apply (sic) to both matters.”⁴⁶ Attorney fees stemming from a settlement with DOW that resolve issues originating with noncompliance with Kentucky’s regulations and statutes should not be recovered. As of June 5, 2015 Bullitt Utilities claimed \$91,414.71 in legal fees associated with this case.⁴⁷ Because the DOW and PSC legal fees are intertwined and cannot be separated, we must assume that 100% of legal fees were simultaneously due to the DOW regulatory matter and the PSC regulatory matter. As the utility bears the burden of demonstrating recoverable costs, and here it cannot demonstrate that any costs are solely related to the PSC regulatory matter, all legal fees associated with the aeration tank failure and subsequent regulatory matters must be removed from any calculation of the surcharge.

Late Fees

As established above, the Commission does not allow utilities to recoup monies from ratepayers the utility paid out as a result of noncompliance with state law. This same rationale

⁴⁵ *Id.* (“Staff recommends that all legal fees resulting from the DOW settlement... be denied”); *See also*, Order filed 31 August 2011 Order, Case No. 2010-00426, *In the Matter of: Alternative Rate Filing of Hillridge Facilities, Inc.*

⁴⁶ 26 March 2015 Answers of Bullitt Utilities, Inc. to Attorney General’s First Information Requests, Request for Information No. 7. (Eliminating legal fees for representation of Hillridge before the DOW.)

⁴⁷ 5 June 2015 Third Supplement to Answers of Bullitt Utilities, Inc., to Commission Staff’s First Information Requests, Request No. 6(b).

should be utilized when considering whether Bullitt Utilities may recover late fees assessed by Veolia. The concept that ratepayers must not be punished for mismanagement of a utility is just. Commission Staff recently recommended removal of late-payment penalties and interest from rates because the utilities “customers should not bear the financial burden for the company’s failure to pay... in a timely manner.”⁴⁸

Veolia has previously billed Bullitt Utilities for at least \$70,416.08 in late fees due to Bullitt Utilities failure to pay in a timely manner.⁴⁹ Veolia may have billed Bullitt Utilities for more than the \$70,416.08 in late fees, because a separate Veolia invoice for \$17,440.39 in late fees does not identify whether these are new late fees or the remainder of the \$70,416.08 listed in an earlier invoice.⁵⁰ These expenses should be removed from the calculation of the surcharge as improper, as the late fees are an assessed penalty resulting from the contract between the two parties. Ratepayers should not be required to pay for a utility’s failure to pay its debts in a timely manner, or for a breach in contract that was outside their control. In addition, Veolia also billed Bullitt Utilities \$62,376.46 for “legal fees related to debt collection.”⁵¹ For purposes of setting rates, these legal fees are the same as the late penalty. Both are penalties charged to Bullitt Utilities resulting from its inability to pay debts on time, and should not be passed on to the ratepayers who have no control over when Bullitt Utilities pays its bills. Bullitt Utilities holds its customers accountable for paying their sewer bills on time via a late payment charge.⁵² In the same vein, Bullitt Utilities should be held accountable for its failure to pay bills on time.

⁴⁸ 31 October 2013 Order, Case No. 2013-00258, *In the Matter of: Application of Classic Construction, Inc. for Rate Adjustment for Small Utilities Pursuant to 807 KAR 5:076*.

⁴⁹ Third Supplement to Answers of Bullitt Utilities, Inc., to Commission Staff’s First Information Requests, Attachment E (Veolia Invoice dated 05/01/2015).

⁵⁰ Answers of Bullitt Utilities, Inc. to Post-Hearing Data Requests, Exhibit A (Invoice dated 06/19/2015).

⁵¹ *Id.* (Invoice dated 06/18/2015.)

⁵² Bullitt Utilities tariff sheet No. 6, Paragraph 2. (“Late payment charge: A late payment or delinquent charge of 10% of the monthly bill shall be made when the bill is not paid within twenty day from the original mailing date of the bill. The Utility shall charge a bad check fee of \$10.00 for all returned checks.”)

Including the late fees and legal fees associated with late fees from Veolia in any surcharge calculation is not fair, just and reasonable.

CONCLUSION

Despite Bullitt Utilities assertions to the contrary, its intent is to use the collapse of the aeration tank and the surcharge to walk away from the business of providing sewer service. In this application, Bullitt Utilities requests that the Commission approve a surcharge that will free the shareholders from the corporate debt they have accumulated through a long history of poor or negligent management of this utility. Further, Bullitt Utilities is requesting that this Commission approve the surcharge without requiring the utility provide a plan that guarantees continuity of service past December 31, 2016. If this surcharge is approved, Bullitt Utilities gains financial freedom from its own mismanagement of the utility, and a disincentive to secure long-term service for its ratepayer. Ratepayers, meanwhile, would receive a 120% rate increase and 16 months of anxiety while they wait to see if another service provider is secured, or if BCSD will simply discontinue service to them on January 1, 2017. No rational mind could accept this as a fair, just and reasonable result. For these reasons and those stated above, the Attorney General requests that the Commission deny Bullitt Utilities request for a surcharge.

Respectfully submitted,

JACK CONWAY
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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:

Bullitt Utilities, Inc. dba Hunters Hollow Sewer
1706 Bardstown Road
Louisville, KY 40205

Honorable Robert C Moore
Hazelrigg & Cox, LLP
415 West Main Street
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this 20th day of July, 2015



Assistant Attorney General