

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

JAN 04 2016

PUBLIC SERVICE
COMMISSION

IN THE MATTER OF:)

APPLICATION OF BULLITT COUNTY)
SANITATION DISTRICT AS RECEIVER)
FOR THE ASSETS OF BULLITT)
UTILITIES, INC., FOR A CERTIFICATE)
OF CONVENIENCE AND NECESSITY,)
AND SURCHARGE FOR SAME)

CASE NO. 2014-00255

**APPLICATION OF THE INTERIM CHAPTER 7 TRUSTEE FOR
BULLITT UTILITIES, INC., UNDER KRS 278.400 FOR REHEARING OF ORDER
GRANTING JOINT MOTION TO DISMISS APPLICATION FOR A SURCHARGE**

Robert W. Keats, not individually but as interim chapter 7 trustee (the "Trustee") for the bankruptcy estate of Bullitt Utilities, Inc. ("BU"), hereby files this application requesting a rehearing of the *Order* entered by the Public Service Commission on December 15, 2015 (the "Order") granting the *Joint Motion to Dismiss Application for a Surcharge* (the "Joint Motion") filed by the Bullitt County Sanitation District (the "BCSD") and the Attorney General of the Commonwealth of Kentucky. In further support of this application the Trustee respectfully states as follows:

1. On December 18, 2015, Veolia Water Technologies, Inc. and Perdue Environmental Contracting Company, Inc. filed their involuntary chapter 7 bankruptcy petition with the United States Bankruptcy Court for the Western District of Kentucky (the "Bankruptcy Court"). As a consequence of that filing, there is now an involuntary chapter 7 bankruptcy case proceeding against BU as *In re Bullitt Utilities, Inc.*, Chapter 7 Case No. 15-34000-jal (the "Bankruptcy Case").

2. On December 29, 2015, the Bankruptcy Court entered an order (the "Bankruptcy Court Order") appointing the Trustee as interim chapter 7 trustee for BU and granting the

Trustee “full authority and control over the surcharge claim and any related claims in the possession of [BU]. The interim trustee shall promptly review the surcharge claim and the Surcharge Case, and then will make a determination regarding whether to reinstate the Surcharge Case, appeal the Surcharge Case or reassert the Surcharge Case.” (Bankruptcy Court Order, ¶ 2). A copy of the Bankruptcy Court Order is attached hereto as **Exhibit A**, also attached hereto as **Exhibit B** is a transcript of the Bankruptcy Court’s oral ruling in connection with the Bankruptcy Court Order.

3. By this application, the Trustee hereby seeks a rehearing of the Order and the Joint Motion under KRS 278.400. Here, the commencement of the Bankruptcy Case and the appointment of the Trustee as a fiduciary for BU’s creditors constitutes a change in circumstances sufficient to justify a rehearing.

4. This Application hereby complies with the timing requirements set forth in KRS 278.400.

5. The Trustee explicitly reserves all of his rights and the rights of BU’s bankruptcy estate, including, but not limited to, the right to further supplement this Application.

For the reasons set forth above, the Public Service Commission should conduct a rehearing on the Order and the Joint Motion.

Respectfully submitted,



Robert W. Keats
Keats & Schwietz LLC
P. O. Box 221377
Louisville, KY 40252-1377
Telephone: (502) 587-8787
E-mail: rkeats@bellsouth.net

Interim chapter 7 trustee for Bullitt Utilities, Inc.

CERTIFICATE OF SERVICE

I certify that the application was mailed sufficient U.S. postage prepaid, on this 4th day of January, 2016 to:

Bullitt Utilities, Inc. P.O. Box 91588 Louisville, KY 40291	Robert C. Moore Hazelrigg & Cox, LLP 415 West Main Street, 1 st Fl P.O. Box 676 Frankfort, KY 40602-0676 <i>Counsel for BU</i>	John Woolridge Robert P. Flaherty Asst. County Attorney 300 S. Buckman Street P.O. Box 1446 Shepherdsville, KY 40165 <i>Counsel for the BCSD</i>
Gregory T. Dutton Assistant Attorney General Office of the Attorney General, Utility & Rate Intervention 1024 Capital Ctr. Dr., Ste. 200 Frankfort, KY 40602-8204 <i>Attorney General</i>		



Interim chapter 7 trustee for Bullitt Utilities, Inc.

EXHIBIT A

(Bankruptcy Court Order)

**UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION**

In re:	:	Chapter 7
	:	
Bullitt Utilities, Inc.,	:	Case No. 15-34000
	:	
Alleged Debtor.	:	

**ORDER GRANTING EMERGENCY MOTION OF THE
PETITIONING CREDITORS UNDER 11 U.S.C. §§ 105(a) AND 303(g)
FOR ORDER DIRECTING APPOINTMENT OF INTERIM TRUSTEE**

This matter coming before the Court on the *Emergency Motion of the Petitioning Creditors Under 11 U.S.C. §§ 105(a) and 303(g) for Order Directing Appointment of Interim Trustee* (the “Motion”)¹ filed by Veolia Water Technologies, Inc., formerly known as Veolia Water Solutions & Technologies North America, Inc. (together, “Veolia”), and Perdue Environmental Contracting Company, Inc. (“Pecco”) (collectively the “Petitioning Creditors”); the Court having reviewed the Motion; the Court having found that (i) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (ii) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b), and (iv) notice of the Motion was sufficient under the circumstances; and the Court having determined that good and sufficient cause having been shown; IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.
2. An interim trustee shall be immediately appointed under section 303(g) of the Bankruptcy Code and shall have full authority and control over the surcharge claim and any related claims in the possession of the Alleged Debtor. The interim trustee shall promptly review the surcharge claim and the Surcharge Case, and then will make a determination regarding

¹ Capitalized terms used herein but not otherwise defined shall have the meanings given to them in the Motion.

whether to reinstate the Surcharge Case, appeal the Surcharge Case or reassert the Surcharge Case.

3. This Court shall retain jurisdiction over any and all matters arising from the interpretation or implementation of this Order.

Tendered by:

James R. Irving
BINGHAM GREENEBAUM DOLL LLP
3500 National City Tower
101 South Fifth Street
Louisville, Kentucky 40202

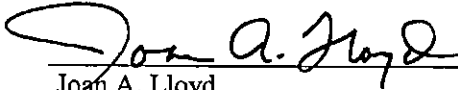

Joan A. Lloyd
United States Bankruptcy Judge
Dated: December 29, 2015

EXHIBIT B

(Transcript)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF WESTERN KENTUCKY

x- - - - - x
IN THE MATTER OF: . Case No. 115-23000-jal
 . Louisville, Kentucky
 BULLITT UTILITIES, .
 . December 29, 2015
 Debtor. .
x- - - - - x

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE JOAN A. LLOYD
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES:

For the Debtor: DELCOTTO LAW GROUP
 BY: JAMIE HARRIS, ESQ.
 200 North Upper Street
 Lexington, KY 40507

 HAZELRIGG & COX, LLP
 BY: ROBERT MOORE, ESQ.
 415 West Main Street
 Frankfort, KY 40602

For the Creditors: BINGHAM GREENEBAUM DOLL
 BY: JAMES R. IRVING, ESQ.
 QUINT McTYEIRE, ESQ.
 3500 National City Tower
 101 South Fifth Street
 Louisville, KY 40202

U.S. Trustee: OFFICE OF UNITED STATES TRUSTEE
 BY: CHARLES MERRILL, ESQ.
 601 West Broadway, Suite 512
 Louisville, KY 40202

ECRO Operator: Penny R. Haas

Proceedings recorded by electronic sound recording, transcript
 produced by transcription service.

TRACY GRIBBEN TRANSCRIPTION, LLC
859 Nutswamp Road
Red Bank, New Jersey 07701
800 603-6212
(732) 263-0044 Fax No. 732-865-7179
www.tgribbentranscription.com

I N D E X

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

ORAL ARGUMENT	PAGE
BY MR. IRVING	3/21
BY MS. HARRIS	11/26
BY MR. MOORE	14
BY MR. MERRILL	20
DECISION	26

1 THE COURT: Enter your appearances, please.

2 MR. IRVING: Good morning, Your Honor, Jim Irving, here
3 for the petitioning creditors, Veolia Water Technologies and
4 Perdue Environmental. Also with me is Quint McTyeire.

5 MS. HARRIS: Jamie Harris on behalf of the alleged
6 debtor. Also present today is Robert Moore.

7 MR. MERRILL: Charles Merrill for the United States
8 Trustee, Your Honor.

9 THE COURT: All right. This is on an involuntary
10 petition; and an emergency motion to appoint a trustee.

11 MR. IRVING: Yes, Your Honor. Would you like me to
12 take the podium or --

13 THE COURT: Doesn't matter, as long as you're talking
14 into this, it's okay.

15 MR. IRVING: I'll take the podium if you don't mind.

16 THE COURT: Okay.

17 MR. IRVING: Your Honor, first off, thank you so much
18 for hearing us on such notice, especially over the holidays. As
19 I said, Your Honor, we represent the two petitioning creditors
20 and two of the largest creditors, if not the largest two
21 creditors of the alleged debtor, Bullitt Utilities.

22 Bullitt Utilities is a Kentucky for profit corporation
23 that provided utility services in Bullitt County around Hunters
24 Hollow. Had about 700 customers. And this all stems from, as
25 set forth in the statement of petitioning creditors, it's docket

1 number 3 in the bankruptcy case. This all stems from the
2 catastrophic failure of the waste water treatment plant in
3 Hunters Hollow. As a result, the alleged debtor retained a
4 number of companies to provide environmental services. The two
5 petitioning creditors came in on short notice, provided
6 equipment, man hours, other services, to help treat waste water
7 for approximately a year. And incurred significant debt.

8 During that time they were told that they'd be paid by
9 a refinancing or a surcharge application. And Your Honor, what
10 that meant was, Bullitt Utilities, although it's a for profit
11 corporation, had to apply to the Kentucky Public Service
12 Commission to increase rates or to assess a special surcharge to
13 pay for creditors, you know, new facilities, et cetera.

14 A refinancing never occurred to pay the creditors. But
15 there was an application for surcharge that was made. It was
16 fully briefed. It was fully argued and presented before the
17 Kentucky Public Service Commission.

18 THE COURT: By the debtor.

19 MR. IRVING: By the debtor.

20 THE COURT: At that time.

21 MR. IRVING: By the alleged debtor. The petitioning
22 creditors, Veolia, moved to intervene in that case, but was
23 denied the opportunity to. We did file what is analogous to an
24 amicus brief in support. But we were not allowed to actually
25 intervene as a party.

1 That was set for statutory ruling by December 23rd at
2 the latest, of this year. So just six days ago. In the meantime,
3 Bullitt Utilities, the alleged debtor, sent a letter to the
4 Kentucky Public Service Commission at one point saying in
5 essence, we're not sure how we can continue to operate here. We
6 have a lot of liabilities. I'm not sure how this is going to
7 proceed. The Kentucky Public Service Commission interpreted that
8 as a motion for abandonment. And it then initiated an
9 abandonment case before it. Which ultimately resulted in a
10 separate receivership case before the Franklin Circuit Court.

11 The Bullitt County Sanitation District was appointed as
12 receiver for the alleged debtor's hard assets, the actual water
13 treatment pipes and system. The Bullitt County Sanitation
14 District is analogous to like MSD here in Jefferson County. It's
15 a public organization. It's in Bullitt County. It has a larger
16 net of customers than Bullitt Utilities. Importantly, it doesn't
17 have to apply to the Kentucky Public Service Commission to
18 increase rates.

19 Also significantly, Bullitt Utilities may have
20 litigation claims against Bullitt County Sanitation District
21 because Bullitt County Sanitation District and Bullitt Utilities
22 were party to a contract. There was likely a breach of that
23 contract. And there may be damages. None of that has been
24 asserted. But there is certainly a conflict issue.

25 Nevertheless, Bullitt County Sanitation District, as

1 receiver, takes over for Bullitt Utilities in the surcharge
2 application, which is just waiting for a decision, and goes on to
3 file a motion to dismiss the surcharge application just weeks
4 before there's a final ruling. That motion to dismiss was
5 granted. It's without prejudice. But the surcharge claim, which
6 has a potential value of up to \$3.4 million, it could be less,
7 it's all dependent upon what the Kentucky Public Service
8 Commission awards as far as how much rates can go up and for how
9 long, was abandoned. This very valuable asset to pay the alleged
10 debtor's creditors, Veolia and PECCO, which have almost \$2.8
11 million of claims that they provided when they came in and
12 started providing services.

13 Veolia and PECCO have tried to be involved at the State
14 level and have been denied that opportunity. We've had
15 conversations with Bullitt Utilities about trying to get repaid
16 or work out a settlement, but nothing is happening. And in doing
17 our research, we further determined that other creditors of
18 Bullitt Utilities, the alleged debtor, are getting paid. Some of
19 those are smaller amounts, some of those might be larger amounts.
20 Upon information and belief it's possible that one of their loan
21 facilities was just paid off, or it was satisfied in the fall. I
22 don't know the exact figures.

23 And also upon information and belief there may be some
24 real claims here for preferences, obviously if some creditors are
25 being paid and not others. Fraudulent transfers, potentially.

1 Director and officer liability issues. You have representations
2 or operations that were made while the company was seemingly
3 wildly insolvent.

4 And here the Bullitt County Sanitation District, when
5 it's been acting as receiver, unlike many cases, Your Honor,
6 where we would guess and I would, you know, propose to you that
7 there might be this, these dark clouds, these malicious intents,
8 we know what the Bullitt County Sanitation District's intents
9 were because as a public body they have minutes. And they
10 attached letters from their attorneys in those minutes.

11 And Exhibit 10 to the pass for declaration, Your Honor,
12 is a letter from the Bullitt County Sanitation District's
13 attorney to the Bullitt County Sanitation District, saying, well,
14 how can we figure out how to use the proceeds of the surcharge
15 application for ourselves. What are we going to do about all
16 this debt that Bullitt Utilities owes so we don't -- and
17 basically Your Honor, you read between the lines, so we don't
18 have to pay it. And we can use the money to make system
19 improvements and for our own purposes. And that's not the only
20 letter. There's actually kind of reposit throughout the record
21 of the Bullitt County Sanitation District, there are statements
22 like that.

23 So, what we're here today as kind of on two parts. The
24 petitioning creditors filed this case in good faith because we
25 believe it's the last best hope to recover anything from Bullitt

1 Utilities on these \$2.8 million in claims. And we think actually
2 that there are probably other petitioning creditors that may seek
3 to join with us as well. But we're still researching that. We
4 researched heavily, we think that the relief is appropriate
5 because there are fewer than 12 creditors here. We did pretty
6 extensive research and we documented that in the statement of
7 petitioning creditors. If there are more than 12 creditors we'd
8 like to talk with them and see if they're interested in joining
9 with us.

10 The debtor's generally not paying its debts as they
11 come due. They've admitted as much in everything from press
12 releases to pleading, to letters, to public agencies. And a
13 receiver was appointed less than 120 days ago by the Franklin
14 County Circuit Court. The amount in controversy is far exceeds
15 the 15,000 at 2.8 million. And we think there is an irreparable
16 harm here if an interim trustee isn't appointed.

17 We only seek a very limited relief of an interim
18 trustee. We don't want the interim trustee to have to operate
19 everything. We don't want the interim trustee to have to go
20 through all the books and records and be a full Chapter 7 trustee
21 at this point. We just want a fiduciary to look at the surcharge
22 case on behalf of creditors, and the surcharge case was supposed
23 to be to repay us, it was promised to us. If you look at the
24 pleadings, that's what it's supposed to be about. We just want a
25 fiduciary to look at the surcharge case and say, is it worth it

1 to apply for a rehearing, the deadline to do so is approximately
2 January 4th, there may be three additional days for mailing
3 depending on how you count it.

4 Should there be an appeal of the dismissal of the
5 surcharge case? The deadline is approximately January 14th.
6 Again, plus or minus three days. Or because the case was
7 dismissed without prejudice, should it be asserted. It's been
8 fully briefed. You could arguably just have the evidence
9 transferred over and put before the Public Service Commission
10 again.

11 Ultimately, Your Honor, as the creditors, we're not
12 saying you have to do one thing or another. I think we would
13 suggest a rehearing and a reinstatement would make a lot of
14 sense. Because it's fully briefed. And we love a favorable
15 decision.

16 But throughout this process, no one has looked out for
17 the petitioning creditors. In fact the letter from the Bullitt
18 County Sanitation District's lawyers, and the actions, make it
19 pretty clear that right now everyone is looking out for everyone
20 but the petitioning creditors. So we believe that the
21 appointment of an interim trustee is necessary.

22 Further, Your Honor, we think that if a trustee does
23 get in this case, I think one of the questions that came into my
24 mind is, well, if Your Honor appoints an interim trustee, are
25 they going to be on the hook, what assets are going to be

1 available to pay for them to take, to spend a couple of hours, a
2 couple of days to look at this. Upon information and belief
3 there should be some -- there may be some cash with Bullitt
4 Utilities, the alleged debtor. If not, the alleged debtor is
5 generating revenue from those 700 customers. Under a contractual
6 agreement 80 percent of that is going to Bullitt County
7 Sanitation District, but 20 percent may be left over as a
8 generated cash stream. We believe that there are likely
9 preferences. There may be fraudulent transfers. We think
10 there's a very good, and this is down the road, director and
11 officer liability claim issue. I'm not sure if there's a policy
12 or not, Your Honor.

13 And then the final issue, Bullitt County Sanitation
14 District wants to take over the pipeline system for Bullitt
15 Utilities. It wants that to be part of BCSD. There is a hard
16 asset here. That might not have a lot of cash value on the
17 street, but even just the assumption of debt, the assumption of
18 some of the debt that's owed to petitioning creditors and the
19 other unpaid creditors in this case, could go a long way to
20 assisting us.

21 So in short, Your Honor, we think that the appointment
22 of an interim trustee on a limited basis is appropriate. It can
23 be tailored under 105(a) and 303(g) for the purposes necessary.
24 Judge Lorch did that in the Eastern Livestock case a few years
25 ago in the Southern District of Indiana, you know, allowing a

1 trustee to proceed on a, for an operational standpoint. But
2 allow an actual bankruptcy trustee to look at books and records.
3 We think that the standards for appointment of an interim trustee
4 into the case law are, is there likelihood that an order for
5 relief will be entered. We think for all of the reasons set
6 forth in the petitioning creditors' statement and what I just
7 told you there is. All of the 303 requirements are met.

8 And it's just a reasonable likelihood, Your Honor, you
9 don't have to say it's definitely going to happen, just there's a
10 reasonable likelihood. And then the last one is, is there an
11 immediate harm if a trustee is not appointed. And there is. An
12 asset, potentially worth \$3.4 million, but certainly worth
13 something, is going to be lost, deadlines are going to pass if an
14 interim trustee is not appointed.

15 Do you have any questions, Your Honor?

16 THE COURT: Not right now.

17 MR. IRVING: Okay, thank you.

18 THE COURT: All right.

19 MS. HARRIS: Your Honor, we feel the standard hasn't
20 been met here. As set forth in their papers, courts looking at
21 there being a reasonable likelihood that the Bankruptcy Court
22 will enter an order of relief and without the appointment of the
23 trustee there's a substantial risk of loss to the estate.

24 As a preliminary matter, they did attempt to do an
25 investigation into the number of creditors. However, that

1 snapshot was back in July, and creditors that existed at the time
2 of the surcharge brief. The filing was on December 18th. As of
3 December 18th the debtor submits that it has over 20 creditors.
4 And that it would be a far cry to say that there's a reasonable
5 likelihood that an order of relief will be entered in this case
6 when there are two petitioning creditors instead of three that
7 are required. And of course there are probably some evidentiary
8 issues, are any of these creditors, did they get avoidable
9 transfers, things of that nature. But based on that, Your Honor,
10 there's just insufficient evidence in the record to support that.

11 Additionally, Your Honor, we've been in the process of
12 being retained, this was filed close to the holidays, so we
13 didn't file a formal response in the record due to the time
14 constraints. We apologize for that. But this is likely going to
15 be a case where we're going to ask for a dismissal as well
16 abstention from the Court under 305.

17 There are exiting receiver proceedings. This case was
18 filed essentially because they couldn't intervene in the PSC
19 case. This is a substantial burden to place on a bankruptcy
20 trustee to come in and investigate whether this has any validity
21 or not, and to bear the cost of that in light of the fact that
22 they're proposing a \$20 bond, the level of bond proposed is
23 woefully low. We think that should be more like 20, \$25,000
24 because it's designed to protect the intended indemnification for
25 legal fees, et cetera, for the alleged debtor.

1 But that's a tremendous burden to place on a trustee
2 when there's been really no showing that that asset has any
3 value. The current receiver receives all the revenue. Bullitt
4 Utilities has no assets and no revenue. So, there isn't going to
5 be a cash, an immediately available cash source for the trustee,
6 interim trustee.

7 Your Honor, I just don't think the burden has been met
8 here that there's going to be a reasonable likelihood that an
9 order of relief is going to be granted and that there's a
10 substantial risk of loss to the estate. What you have here is a
11 couple of creditors who are unhappy with the results of the PSC
12 Commission's findings and rulings. And that is arguably, in my
13 opinion, that's a basis for almost bad faith here, that the
14 bankruptcy is not even used for a legitimate purpose, a
15 bankruptcy purpose. It's basically being used as a strategy to
16 obtain a legal strategy here in order to try to get some
17 recovery.

18 And I sympathize with the fact that they're looking to
19 try to get some kind of recovery, that's understandable, any
20 creditor would. But in looking at the creditor body as a whole,
21 this process and procedure was set up before the Bankruptcy
22 Court, and it just doesn't appear appropriate, Your Honor, that
23 the Bankruptcy Court trustee would be involved on an interim basis
24 on such short notice. Typically an evidentiary hearing is
25 required for these type of findings. We don't really have the

1 time to do that here in looking at deadlines of the 4th or the
2 14th. But there's no guarantee that a trustee would even think
3 that this has value and it's sort of surprise, Happy New Year,
4 Trustee, you've got this deadline to go do this. So it's a lot
5 of burden to place on a trustee. So we just don't think the
6 burden has been met, Your Honor.

7 THE COURT: Are there any current employees?

8 MR. MOORE: No, Your Honor.

9 THE COURT: So all, there are no employees. It is not
10 operating.

11 MR. MOORE: That's correct, Your Honor.

12 THE COURT: So no employees. Not operating. Is there
13 any directors and officers insurance?

14 MR. MOORE: No, Your Honor.

15 THE COURT: So no D&O. When was the last time Bullitt
16 Utilities operated in the sense that it was controlling its own
17 checkbook and had employees?

18 MR. MOORE: That would have been mid September of 2015.

19 THE COURT: Does it have a current business office that
20 is under lease?

21 MR. MOORE: The way that Bullitt Utilities operates,
22 Your Honor, is it has a contract, administrative secretary, and I
23 believe she works out of her house. Bullitt Utilities has, have
24 no individual employees of its own for, I don't believe, for
25 throughout 2015. And I do not believe that they actually have

1 leased, that Bullitt Utilities actually leased office space.

2 THE COURT: So their administrative secretary worked
3 out of her home, and basically did all the bookkeeping?

4 MR. MOORE: Yes, Your Honor.

5 THE COURT: Okay.

6 MR. MOORE: If I could add just a little bit more
7 information. The sole shareholder of Bullitt Utilities is a
8 gentleman that's in his mid to late 80s. And he is very ill and
9 suffers from a significant Alzheimer's and/or dementia. And so
10 there has been a son acting as a durable power of attorney for
11 his father who has been addressing the catastrophic failure of
12 the waste water treatment plant. And that son lives in Sarasota.

13 THE COURT: Does Bullitt Utilities, through this son,
14 under this durable power of attorney, have any intention to file
15 anything in the Franklin Circuit Court on behalf of Bullitt
16 Utilities to preserve the alleged caused of action?

17 MR. MOORE: A motion was prepared yesterday, and it may
18 have already been filed, that will be heard by the Franklin
19 Circuit Court on Monday, January the 4th, confirming that Bullitt
20 Utilities has the authority to file an appeal to the Franklin
21 Circuit Court appealing the PSC's order dismissing the surcharge
22 case. Since the Franklin Circuit Court appointed the receiver
23 and handed all of the assets of Bullitt Utilities to the
24 receiver, I felt like to, out of an abundance of caution we
25 should, that Bullitt Utilities should get confirmation that it

1 has authority to file that appeal before doing so. So that's why
2 that motion is scheduled to be heard on Monday.

3 THE COURT: Are you representing Bullitt Utilities?

4 MR. MOORE: Yes, I'm an attorney and I'm with
5 Hazelrigg, the law firm Hazelrigg and Cox, located in Frankfort,
6 Kentucky.

7 THE COURT: Okay.

8 MR. MOORE: And I represented Bullitt Utilities through
9 the Public Service Commission proceedings as well.

10 THE COURT: Okay.

11 MS. HARRIS: Additionally, Your Honor, I think it's
12 important to note that the case was dismissed without prejudice.
13 So if a trustee was appointed, if later on the order of relief is
14 entered, a trustee could investigate whether that has value or
15 not additionally without having being forced into this on the
16 January 4th deadline. But it does appear that the alleged debtor
17 is taking actions to preserve that cause of action.

18 THE COURT: Are you being paid?

19 MR. MOORE: There is an outstanding balance, but I have
20 been paid, I would say, up through mid November of 2015.

21 THE COURT: Do you have a personal guarantee. This is
22 relevant in a bankruptcy. You know, lawyers who don't get into
23 Bankruptcy Courts don't necessarily get it, but your fee
24 arrangement could be important.

25 MR. MOORE: Yes, I have a personal guarantee.

1 THE COURT: From the son or from the father?

2 MR. MOORE: That's correct.

3 THE COURT: So from the father, you have the personal
4 guarantee for your -- so they retained you personally?

5 MR. MOORE: That's right.

6 THE COURT: And so you're rendering services to Bullitt
7 Utilities at their direction.

8 MR. MOORE: That's correct, Your Honor.

9 THE COURT: Okay.

10 MR. MOORE: And Your Honor, the Public Service
11 Commission proceeding, you may be very familiar with how the
12 Public Service Commission works. But I could give you some
13 information about a surcharge and whether that is or is not a
14 valuable asset, if that would be helpful.

15 THE COURT: You can go ahead and tell me.

16 MR. MOORE: Okay. The application for surcharge was
17 filed on behalf of Bullitt Utilities and what we were doing was
18 seeking to have this surcharge approved so that monies could be
19 obtained from the customers of Bullitt Utilities to pay for these
20 astronomical costs that were incurred to operate the waste water
21 treatment plant after, or to provide waste water treatment after
22 the plant failed.

23 The Public Service Commission does not like surcharges
24 in my experience. And so you have somewhat of a burden to meet
25 in order to get the Public Service Commission to approve a

1 surcharge. And this would, in my experience, this would be an
2 unusual surcharge for the Public Service Commission to approve.
3 For instance, where you've had a horrible ice storm and LG&E has
4 suffered incredible expenses due to a bad ice storm, then the
5 Public Service Commission may grant a surcharge to pay those
6 additional unanticipated expenses incurred by the utility.

7 But to the best of my knowledge, this is the first time
8 that a surcharge application was filed where you actually had the
9 waste water treatment plant facility or utility facility
10 completely failed due to an engineering defect from when it was
11 built 40 years ago.

12 So I tell you that just to let you know that it's not
13 clear that the PSC would approve the surcharge in the first
14 place.

15 THE COURT: So you're saying an act of God has a
16 different, it's on a different layer if you will, than what could
17 be just an antiquated facility in the eyes of the PSC?

18 MR. MOORE: In the eyes of the PSC, there could be a
19 difference. There could also be -- so the PSC may or may not
20 approve the surcharge based on that distinction. They may also
21 decide not to approve it on a 100 cents on the dollar. They may
22 say, well, and despite the fact that Bullitt Utilities made every
23 effort to be very prudent with its expenditures and obtain these
24 services at absolute lease cost possible, the PSC could grant
25 only 50 cents on the dollar. And so instead of getting a

1 surcharge approved for 3.4 you would get it approved for perhaps
2 1.7 million.

3 And then the other issue is, the Public Service
4 Commission only in this instance has jurisdiction over the
5 privately owned utility. If a publicly owned entity such as MSD
6 or the Bullitt County Sanitation District takes ownership of the
7 facility, then at that point the PSC can no longer enforce the
8 surcharge.

9 THE COURT: Well, the receivership is not ownership
10 though.

11 MR. MOORE: But it's not, but of course the
12 receivership is temporary. And you can't pick up and move all
13 these collection lines. And the entity that is closest and that
14 would be logical to take ownership of the collection lines and to
15 provide service to these customers, is the Bullitt County
16 Sanitation District.

17 THE COURT: I got it. Let me ask you a question. Why
18 has the shareholder, through his son, paying you to file these
19 motions in the Franklin Circuit Court? Is there a financial
20 interest? Are they, is there a guarantee of a bond that the
21 family has signed off on. What is it. Is it out of the goodness
22 of their heart? I mean, if all you are is a shareholder, why
23 not, especially if the old man has dementia, why does the son
24 care? What's the interest?

25 MR. MOORE: The son does feel a responsibility to the

1 creditors that came forward and provided these services, enabling
2 the waste water treatment to occur.

3 THE COURT: But he has no guarantee, there's no direct,
4 no privity of contract.

5 MR. MOORE: (no audible response)

6 THE COURT: Well, all right.

7 MR. IRVING: Your Honor, do we have time to just
8 address a few very, very short points?

9 THE COURT: Yes, I'm going to hear from Mr. Merrill
10 now.

11 MR. IRVING: Okay.

12 MR. MERRILL: I think a lot of what I have to say here
13 has already been addressed. I'm certain that doesn't surprise
14 you. The problem that I have is that I can't really determine
15 what a trustee would do in these circumstances given that you
16 don't have an operating entity. And as you know, operating
17 Chapter 7s are not particularly common, and they have a certain
18 set of problems associated with them.

19 And as I understand it, in order for the surcharge to
20 really be an asset, you would need an operating entity, because
21 you would need to be providing services to the people who use
22 this waste water treatment so you could bill them. And if you
23 don't have an operating entity, that's not really an asset for
24 the trustee.

25 THE COURT: But see that's a legal analysis. And

1 that's for someone else to decide, not this Court.

2 MR. MERRILL: I agree with you. That was the, that's
3 the other problem that I have as well is that I'm not sure that
4 this is the best forum for this case right now. So that, you
5 know, there was the abandonment of the assets back in August that
6 would be operated. And then after that there is some indication
7 of perhaps preferences or fraudulent conveyances. But there's
8 not a whole lot there.

9 So I'm not completely convinced that there's much for a
10 trustee to do here. And then secondly, limiting the trustee's
11 role, the trustee's duties are outlined under Section 704. I'm
12 not sure that effectively there's a way to limit the trustee's
13 role once they're appointed. The interim appointment under
14 303(g), there's nothing in 303(g) that says this is what seems to
15 be akin to an examiner instead of a full-fledged trustee under
16 704.

17 So that bothers me as well, because there are other
18 duties as you know, that once a trustee is appointed, kick in
19 immediately. And essentially could possibly create liability for
20 the trustee that I think could be problematic in a circumstance
21 like this.

22 THE COURT: Okay.

23 MR. IRVING: I'll start with Mr. Merrill's points
24 first. I think that there is authority to limit the scope of the
25 trustee's authority. It has been done, I believe in some other

1 cases. And I think that the interplay of 303(g), I hate to say
2 this, but your 101(a) equitable powers, and also with the
3 interplay of 544 and what role to give to a receiver as compared
4 to a trustee or debtor in possession. There are models for Your
5 Honor to follow in this limited circumstance.

6 What a trustee would do here, the emergency relief
7 we're seeking is solely to look at the surcharge case. And I was
8 very pleased to hear that the alleged debtor is going to file an
9 appeal or is going to seek the authority to file an appeal. We
10 didn't know that before we heard it out in the hall today, Your
11 Honor.

12 But what I think is important is, the trustee should be
13 appointed so that he or she has the full range of options
14 available to him or her. And that will only happen if an interim
15 trustee is appointed now. The right for a rehearing will expire
16 if it's not preserved right now.

17 I also think that there is something to note that the
18 Bullitt Utilities is correct, surcharge is no guarantee. It is
19 an increased revenue stream going forward. And there's no law
20 that was cited to you about how an act of God might be different
21 than you know, other causes for a surcharge. We haven't been
22 able to discover any case law, any statutory guidance on that. I
23 know that that has been discussed a lot in the surcharge case.
24 Mr. McTeiyre could relate to that. But we haven't heard
25 anything.

1 And I think one of the reasons that the equity owner,
2 his name is Carroll Cogan, he's of the Cogan family and
3 developers. They developed this particular utility district, or
4 the Bullitt Utilities. They have some other private for profit
5 utilities around the State as well. And a number of
6 subdivisions. We believe that they probably could satisfy a
7 judgment even without D&O insurance if one were obtained against
8 them.

9 But we think that one of the reasons that they've been
10 doing what they've been doing is, Veolia has been very active in
11 pressuring to make sure that there is some effort to get us paid.
12 PECCO has been very active in pressuring to make sure there's
13 some effort to get us paid. We also think that there are D&O
14 liability claims here, under basically the expanded fiduciary
15 duty that's owed to creditors of an insolvent corporation.

16 You know, you see so much litigation, about in
17 Delaware, is a cognizable cause of action under Kentucky law.
18 The Eastern District had an opinion about that just earlier this
19 spring. So we think that there's also some pecuniary interest of
20 the Cogans as well to keep this going forward. And perhaps to
21 make sure that a trustee is not appointed to bring that claim on
22 a derivative basis. Or investigate books and records, or
23 preferences or fraudulent transfers.

24 A few things to address Ms. Harris' points about the
25 numbers of creditors. We believe -- we did use numbers from the

1 end of the summer. That's true, those are about three months
2 old. We believe those are probably relatively fresh however,
3 Your Honor, because shortly thereafter, according to just what
4 you heard, Bullitt Utilities stopped operating. And there was
5 the appointment of a trustee. So I doubt that they incurred a
6 lot of additional creditors, if any additional creditors, during
7 the fall, because for most of that period, per the comment today,
8 they weren't operating.

9 Now if there were additional creditors, that's
10 something we'd be happy to address. But as Your Honor knows,
11 under 303 it's a burden shifting. And the petition creditors
12 have the initial burden of proof to demonstrate that there are 12
13 or fewer creditors, or any of the other elements of 303 are met.
14 So that's what the petitioning creditors, the statement of
15 petitioning creditors and the supporting declarations and the 200
16 something pages of exhibits are for. To meet that initial
17 burden.

18 At this point if Ms. Harris wants to say there are
19 additional creditors, and shift the burden back to us, and say
20 that there's not a reasonable likelihood, I think we need to hear
21 more than just there could be. And I recognize that's difficult
22 in this limited time frame. But I think that for the purposes of
23 this limited time frame, at least makes it reasonably likely, the
24 key phrase, that an order for relief will be entered.

25 As regard the bond, bonds are posted for damages. And

1 if there are any damages from the appointment of an interim
2 trustee, they'll be related to what the interim is trustee over,
3 which is just the surcharge case. The alleged debtor is not a
4 party in the surcharge case any more. So I'm not sure how there
5 should be a large bond or we could possibly owe them damages for
6 a case that they're not even a party to, that by their own
7 admission they have to go to Franklin Circuit Court to file a
8 motion to get authority to get back into, so that they can
9 appeal.

10 We're not doing this as a litigation tactic, Your
11 Honor. And this is larger about the bankruptcy case. We're not
12 unhappy with the PSC's ruling. The PCS hasn't made any rulings
13 other than dismissing the case. We want somebody to look out for
14 creditors. That hasn't happened. The Bullitt County Sanitation
15 District's letters have told us that it's not happening. They've
16 said in their own letters, I'm quoting Exhibit 10 here. "We also
17 discussed in the near future it would be our opinion that the
18 Sanitation District would seek the grant of authority to file a
19 bankruptcy on behalf of Bullitt Utilities". It seems as though
20 this has been kind of set up to abandon assets, switch things
21 over, get outside a statutory period perhaps, and then there's
22 nothing there, and then discharge our debt.

23 And we need someone to look into more than just the
24 surcharge claim. Preferences, fraudulent transfers, the D&O
25 claims, which we believe are very valuable. We also think that

1 these assets themselves have value because Bullitt County
2 Sanitation District wants to take them in. They've already
3 hooked up their own systems. They're already Bullitt County
4 Sanitation District pipes hooking in to Bullitt Utilities.
5 That's been key actually in remediation. We don't have to keep
6 providing services.

7 But there is an obvious play here and that play that's
8 being made is to the detriment of creditors.

9 THE COURT: Anything else, Ms. Harris?

10 MS. HARRIS: Your Honor, we can file the list of
11 creditors by this afternoon or I can even recite the over 20 on
12 the record now, if that's necessary.

13 THE COURT: Well, that's part of an answer. An answer
14 is, there are more than 12 creditors, or 12 or more creditors.
15 Anything else?

16 MS. HARRIS: We just believe, Your Honor, that the
17 burden just simply hasn't been met under the circumstances.

18 THE COURT: Okay. Well, here's the thing. And I'll
19 say some things on the record. Because that's kind of the way I
20 work through. You know, involuntary bankruptcy petitions are
21 discouraged. It's litigation. It's simply litigation. It's a
22 complaint, there's a chance to answer, and then these things
23 develop over time. I know I used to do quite a bit of it when I
24 was practicing law. So I'm real familiar with what's going on.

25 There's some nuances or issues we'll say in this case,

1 that make this, justify the Court hearing it on a shortened
2 string. The Court hasn't gone through the answer process and the
3 discovery that would normally take place, especially in a hotly
4 defended case.

5 But you know, here's where the Court's coming from.
6 There aren't any employees. No existing employees. The debtor
7 really didn't have a place of business. What it had was an
8 administrative secretary who handled all the bookkeeping for
9 Bullitt Utilities out of her home. There isn't any directors and
10 officers insurance to which creditors could look in the event
11 that there's a failure to fulfill any fiduciary duty to
12 creditors.

13 Two expert counsel are here on behalf of Bullitt
14 Utilities. One bankruptcy counsel, one counsel that's going to
15 handle the supposedly this issue in front of the PSC. And has
16 direction from the sole shareholder or the son holding a durable
17 power of attorney for the sole shareholder. But there's no
18 direct privity of contract between Bullitt Utilities,
19 shareholder, or the son of the shareholder, the power of
20 attorney, and the petitioning creditors. Meaning that the
21 petitioning creditors and any other creditors who might seek to
22 join, are at the whim of a person that lives in Sarasota, Florida
23 who is giving an agent in Kentucky directions about how to manage
24 what, no one knows what's that worth, that surcharge claim, but
25 there's no privity of contract upon which the petitioning

1 creditors could hold either the son of the shareholder that lives
2 in Sarasota accountable, the shareholder, or -- I mean, you could
3 hold Bullitt Utilities responsible, but Bullitt Utilities
4 tomorrow may tell you, Mr. Moore, you're done. Not paying your
5 bill. All you are is an agent and that's actually that's the
6 only reason you all make a living as lawyers, because if it was
7 your problem you wouldn't be doing this.

8 You act largely, but within a professional discretion,
9 at the whim of your clients, each one of you. So absent the
10 privity of the directing agent in Sarasota, telling Mr. Moore
11 what to do, it leaves the petitioning creditors, and the
12 creditors who don't know about this case, very vulnerable. And
13 it may be a total goose egg at the end of the day for creditors,
14 this surcharge case. And whatever kind of causes of action might
15 be available under the Bankruptcy Code.

16 In State Law by the way you're talking about Pepper
17 versus Litton, I mean, that's an old case. But I cut my teeth as
18 a young lawyer on Pepper versus Litton. And there's all kinds of
19 cases that flow from that. But that is you know, if
20 shareholders, directors and officers, actually it's directors and
21 officers, but if they benefit when creditors are disadvantaged in
22 an insolvency, there could be personal liability. Is it likely?
23 No, because those are touch cases.

24 On the other hand, it's an asset. And I'm very, very
25 familiar with it and the concept. And it is really violating the

1 distribution scheme under corporation law is all it is. I mean,
2 bankruptcy, the Bankruptcy Laws and whether it's written in the
3 statute or it was judge made law back in the good old days, what
4 it really was honoring, that case law was honoring a violation of
5 the distribution code of corporation law. And so if there's been
6 a violation of that, that could be an asset.

7 Again, it's probably unlikely because you know, I don't
8 know, I mean, the Court doesn't know. It's not my business
9 necessarily to know what the value of an asset is. It could be,
10 you know, what is it, the peppercorn. It could be a peppercorn.
11 Or it could be, you know, truly a three ring circus. And but the
12 real problem here today is what I said, and that is in the
13 goodness of his heart, Mr. Moore has appeared in front of this
14 Court because you're an agent. But as an agent, you also have
15 the right to say no, tomorrow or this afternoon, if you go back
16 to your office and you've got a fax that in any way contradicts
17 with your decision as a professional to continue, then you will
18 stop. You will stop. Because you're not in the business of
19 putting yourself on, out there. I mean, you're not out there
20 personally thank goodness.

21 That's the point here. The absence of privity between
22 the guy paying Mr. Moore to do this job, with these creditors,
23 leads the Court to believe that there is true jeopardy. Not that
24 I don't believe everything you said, I really do believe
25 everything Mr. Moore. But unless he's working for you guys, all

1 bets are off in terms of reliability of that. Because who knows
2 what he might be asked of. We don't know. I mean, the universe
3 is infinite in the sense that he could be asked to do something
4 he disagrees with this afternoon. Boom, that's it. You all have
5 lost your hearing date.

6 So, it's, this is problematic because it's so early in
7 the case. But there is, I'll also tell Mr. Moore, Ms. Harris, no
8 you primarily Mr. Moore, you know, you'll probably right now,
9 gosh why did she do that. And then get in your car and head
10 back home and think, gosh, I'm glad she did that, because now you
11 can get employed by the creditors, because you know what's going
12 to happen, I am going to appoint a trustee. And it is early in
13 the case, Ms. Harris, you're right.

14 But the downside to counsel for Bullitt Utilities, the
15 downside to the directors and officers, if there are any, and the
16 shareholders, is that if this isn't preserved this whole thing
17 could really turn into a real ugly mess. If it's going to be
18 nothing, let it be nothing now than let it be something later
19 after the toothpaste is out of the tube. I like my metaphors.
20 But you know what I mean. Some times can get out of control and
21 really go south on the lawyers who are sitting here doing their
22 very best to represent their clients, but it may turn out to be
23 that you're just in line of people that got, you know, the boom
24 dropped on.

25 Because I'll tell you, there's a part of the Court

1 that's looking at these creditors thinking, well, they showed up.
2 They showed up to do what must have been a horrible job, you
3 know, a waste water treatment plant goes, crashes after 40 years.
4 It must have been a real bad job.

5 And public policy says that they really shouldn't be
6 mistreated. We want them as a community to show up the next time
7 a waste water treatment plant doesn't -- so at the very minimum,
8 your clients may not get paid, but they need to be treated
9 fairly. And we just do not need to see the system unravel where
10 there is no remedy when there's still a few days, there's ten
11 days or whatever it is, I don't know, 12,15 days of a chance to
12 look at it. If you cut off the right to look at it, by that
13 independent fiduciary, who may probably turn right around and
14 hire Mr. Moore, at least try like crazy to hire him, then what
15 you've done is you've really let the whole fabric of reliability
16 of the judicial system to redress wrongs. Or at least get that
17 opportunity.

18 So I'm probably not as articulate as I would be
19 normally, although maybe I do run on a bit. But that's really
20 the Court's reasoning is that there's probably a big fat goose
21 egg out there for these petitioning creditors and the trustee.
22 But I don't know and I'm not prepared to sit here and say to
23 creditors who in good faith provided these services, that they
24 don't get the opportunity to an independent, for an independent
25 party to take control of this, since there's no operation,

1 there's nothing. They're not, the receiver is getting all of the
2 money. So it's not like they're going to have to take over some
3 real company. They're going to have to hire guys to drive trucks
4 around and you know, pump raw sewerage out of things. They're
5 not. The trustee is going to be like every other Chapter 7
6 trustee. And in just the integrity of the system, that is the
7 fabric of the expectations of contractors, doing business for
8 public utilities or, even private utility, they need to have a
9 redress for their wrongs. Even if it turns out to be a bad zero.
10 That's my thinking.

11 And my thinking also is for counsel, I'm not really,
12 it's not my job to look out for you, you all are professionals
13 and you know what you're doing. But honest to goodness, there is
14 something to the fact that now you're going to be, there's going
15 to be a trustee, Mr. Merrill is going to find somebody. And that
16 could be a challenge. There may be nobody out there. But at
17 least the system tried to operate, okay? The system tried to
18 operate.

19 Who's going to pay for any legal motions, I don't know.
20 I can assure you that the man in Sarasota is going to say, I
21 guess I'm not paying for it if Mr. Moore isn't working for me
22 now. Or is now in a position where there's a trustee who's the
23 proper party in interest. I don't know how it's all going to
24 fall out. But I know that the integrity of the system requires
25 that there be an opportunity for the redress of wrongs, even if

1 there's almost no chance. Okay?

2 So, Mr. Merrill, I'm going to enter an order, ordering
3 you to appoint a trustee, and there is no money to pay anybody.
4 Have at it, good luck. I'll sign the order, I'm in town. As soon
5 as you -- what he does, you'll nominate somebody right?

6 MR. MERRILL: Right.

7 THE COURT: And I'll have to sign off on that.

8 MR. MERRILL: Well, once you --

9 THE COURT: Or do I in a 7, I know on 11s I do.

10 MR. MERRILL: Once you enter the order, then I just
11 appoint. In general we go through the randomized process through
12 the Clerk's Office, I'll go back and discuss with my boss whether
13 or not we should pick somebody outside of that employment process
14 given the unique characteristics of what's happening here. Which
15 may end up coming to pass. But once you sign the order --

16 THE COURT: I'm done then.

17 MR. MERRILL: You're done, I make the appointment.

18 THE COURT: Now 11 is different. I think I have to
19 sign off on that.

20 MR. MERRILL: That's correct.

21 THE COURT: All right, well, this is a non operating
22 entity so I wouldn't imagine there will be any wrinkle that would
23 even -- besides not signing off on it, that would come up. But I
24 will be around. I'll be taking some time off in a couple weeks,
25 beginning January 11, but I'll have access to a computer and I

1 can do almost everything long distance. In fact I'm pretty sure
2 they're all glad when I leave town.

3 So, anyway, with that, I'm going to sign off on the
4 order. And for all the reasons I've stated in the record, that
5 you know, Ms. Harris, I overrule your objection on the basis that
6 I think that there is a need for an independent fiduciary in
7 this, which is no knock on the lawyers involved. It has to do
8 with the lack of privity between the payor and these creditors.
9 And that is an inherent conflict of interest that is unreasonable
10 for this Court to expect lawyers to evaluate what's the right
11 thing to do there under those circumstances. All right?

12 MR. IRVING: Thank you, Your Honor.

13 MR. MERRILL: Thank you.

14 THE COURT: You all have a good day.

15 * * *

16 C E R T I F I C A T I O N

17 I, Patricia Poole, court approved transcriber, certify that
18 the foregoing is a correct transcript from the official digital
19 audio recording of the proceedings in the above-entitled matter.

20
21 /S/PATRICIA POOLE

22
23 TRACY GRIBBEN TRANSCRIPTION, LLC

December 29, 2015

24 DATE
25