

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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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

**SUPPLEMENTAL MOTION OF THE UNITED STATES BANKRUPTCY TRUSTEE
FOR RECONSIDERATION/REHEARING OF MOTION TO DISMISS BULLITT
UTILITIES' APPLICATION FOR SURCHARGE**

Comes Robert Keats, as the Bankruptcy Trustee of Bullitt Utilities, Inc. ("Bullitt Utilities"), and for his Supplemental Petition for Reconsideration/Rehearing of the Order entered by the Public Service Commission ("Commission") on December 15, 2015, dismissing the above-styled action and dismissing the application for surcharge filed by Bullitt Utilities, states as follows:

(1) The Commission stated in its December 15, 2015 Order that the above-styled case, "resulted from a catastrophic failure of the steel aeration tank at Bullitt Utilities' Hunters Hollow Wastewater Treatment Plant ("WWTP") on March 29, 2014." (See December 15, 2015 order, p. 2) The Commission also stated that Bullitt Utilities tendered a Petition for Certificate of Convenience and for Surcharge. (See December 15, 2015 Order, p. 1.)

(2) As described in detail in the Post-Hearing Brief Of Bullitt Utilities, Inc., In Support Of Application For Surcharge ("Post-Hearing Brief"), Bullitt Utilities incurred extraordinary expenses in the approximate amount of \$3,467,528 in responding to the failure of the WWTP. This amount does not include the \$362,624 that would have been incurred by Bullitt Utilities in constructing the well and pump station to connect the Hunters Hollow collection

system to the Bullitt County Sanitation District's ("BCSD") sanitary sewer system. Accordingly, the evidence in the record, which was analyzed in detail in Bullitt Utilities' Post-Hearing Brief, establishes that approximately 90% of the amount of the Surcharge requested by Bullitt Utilities was to pay the extraordinary expenses incurred in responding to the WWTP's failure and not to construct the wet well and pump station.

(3) The requested Surcharge clearly constituted a significant potential asset of Bullitt Utilities, of course, subject to the Commission's approval. This asset, if granted, would enable Bullitt Utilities to pay its numerous creditors. If the Surcharge application is not granted, then the companies/creditors that provided assistance in responding to the failure of the WWTP will not be paid the significant amounts that are due them. Certainly, these companies/creditors will be unwilling to provide emergency assistance to a WWTP utility in the future, if such assistance is needed. Therefore, it is in the public's best interest to approve the Surcharge so that companies that can assist in responding to an emergency experienced by a WWTP utility will be willing to do so. This is particularly true where the companies/creditors that will be paid through the requested Surcharge provided valuable service and helped to address an environmental emergency.

(4) As stated in the Commission's December 15, 2015 Order, the Franklin Circuit Court appointed BCSD as the receiver for the assets of Bullitt Utilities on September 23, 2015. The Court authorized BCSD to take charge, preserve, operate, control, manage, maintain and care for the Bullitt Utilities sewage collection and treatment facilities." (See December 15, 2015 Order, p. 3) The Franklin Circuit Court further authorized BCSD to, among other things, "manage and maintain" the property of Bullitt Utilities. (See Franklin Circuit Court's Order of September 23, 2015) Finally, the Commission stated that BCSD was to collect all receivables

and profits, and to exercise generally the powers conferred by the Franklin Circuit Court and such other powers as are usual and incidental to the management of a public utility providing sewage collection and treatment services to the public. See Commission's December 15, 2015 Order, p. 5).

(5) The Franklin Circuit Court authorized BCSD to manage and control and take the action necessary to maintain and care for Bullitt Utilities' assets. However, the Court did not authorize the BCSD to move to dismiss the above-styled action, which included the Surcharge application. Again, this Surcharge is a significant potential asset with a value that could exceed \$3,400,000. BCSD did not have the authority to move to dismiss the Application for Surcharge without the specific approval of the Franklin Circuit Court, since it was a potential asset of Bullitt Utilities. Nor did the Commission have the authority to grant the Motion to Dismiss the Surcharge Application without the permission of the Franklin Circuit Court, since it had appointed BCSD as the receiver to maintain and manage Bullitt Utilities' assets.

(6) Even if BCD had the authority to move to dismiss the Surcharge application, its largest possible asset without Court approval, which is not the case, such action was directly contrary to its fiduciary duty as the receiver of Bullitt Utilities' assets. As a fiduciary, BCSD had the duty to manage and maintain Bullitt Utilities assets, not to wastefully seek to abandon them. BCSD's actions in obtaining the Commission's Order dismissing the Surcharge have left Bullitt Utilities with absolutely no possibility of paying the extraordinary debts that were incurred due to the failure of its WWTP.

(7) On December 18, 2015, a Chapter 7 Involuntary Bankruptcy Petition was filed in the United States Bankruptcy Court for the Western District of Kentucky in Case No. 15-34000(1) against Bullitt Utilities, by its two largest creditors, Veolia Water Technologies

("Veolia") and Perdue Environmental Contracting Company, Inc. (PECCO)". (See Attachment A) By Order of the United States Bankruptcy Court, the undersigned, Robert W. Keats, was appointed as the Chapter 7, Trustee of Bullitt Utilities' bankruptcy estate on December 29, 2015.

(8) The filing of the bankruptcy petition against Bullitt Utilities and the appointment of the undersigned as the Trustee of Bullitt Utilities' bankruptcy estate are matters that could not have been considered by the Commission in ruling on the BCSD's and the Attorney General's Motion to Dismiss the Surcharge Application.

(9) Due to the filing of the bankruptcy petition against Bullitt Utilities and the appointment of the undersigned as the Trustee of Bullitt Utilities' bankruptcy estate, which are matters that were not and could not have been considered by the Commission in granting the BCSD's and the Attorney General's Motion to Dismiss the Surcharge Application, the Commission is requested to reconsider/rehear its ruling on said motion and to deny same. The denial of the motion will retain a potential asset in Bullitt Utilities' estate. Indeed, while the circumstances concerning the construction of the wet well and pump station may have changed, the circumstances concerning the need to pay the creditors/companies that provided service needed to respond to the catastrophic failure of the WWTP have not.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by United States First Class Mail, postage prepaid, on this 5th day of January, 2016 upon:

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