

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) 2014-00255
CONVENIENCE AND PUBLIC NECESSITY AND)
SURCHARGE FOR THE SAME)

ATTORNEY GENERAL'S COMMENTS IN RESPONSE TO U.S. BANKRUPTCY TRUSTEE

Comes now the Attorney General of the Commonwealth of Kentucky ("AG"), by and through his Office of Rate Intervention, and hereby submits the following comments in response to the Bankruptcy Trustee of Bullitt Utilities, Inc.'s ("Trustee") Response to Commission's January 21, 2016 Order.

The simple truth to this case is that federal bankruptcy court is not the proper venue to air the creditors grievances in this case. The creditors were correctly denied party status in this proceeding, yet they now attempt to use federal bankruptcy law to circumvent the Commission's authority.

1. The Creditors Proper Venue for Recourse is in the Kentucky State Courts, not Federal Bankruptcy Court.

Bullitt Utilities was found by the PSC to have abandoned its assets. KRS 278.040 gives the PSC "exclusive jurisdiction over rates and service of utilities." Notably absent is any exception allowing a bankruptcy court to place control over rates and service into the hands of a trustee with no experience running a sewer utility such as Bullitt Utilities.

Franklin Circuit Court placed assets under the sole control and responsibility of BCSD as receiver. As part of the order from FCC, BCSD was authorized to collect all receivables and profits, and to exercise the powers usual to management of a public utility. Under state law, “The receiver shall operate the utility to preserve its assets, to restore or maintain a reasonable level of service, and to serve the best interests of its customers.”¹ BCSD has executed all of those requirements admirably. Noticeably absent from the requirement of that section, is for the receiver to serve the best interests of creditors. Once again, the creditors have a problem with the state law, and they have now fled to federal court in an attempt to circumnavigate Kentucky law.

The creditors did not appeal the FCC’s decision. They did not appeal the Public Service Commission’s decision to deny them party status. They did not request that the assets of the utility be returned to Bullitt Utilities or to be liquidated under KRS 278.021(7). The creditors failed to avail themselves of multiple avenues of recourse under state law, and instead filed an action in federal bankruptcy court. The proper venue for these disputes is not bankruptcy court, but in the state courts of Kentucky.

2. The Trustee and the Bankruptcy Court Have Taken an Overly Simplistic and Narrow View of the “Assets” of Bullitt Utilities.

The only real assets of Bullitt Utilities, is the collection system. If the Trustee is correct in his assertion of authority, he would not only receive payments made by BU’s customers, but he would now carry the responsibility of running a sewer collection system and ensuring that the collection system operates properly. Furthermore, when the contract with BCSD to treat the waste expires later this year, the trustee would then be responsible for treating the waste that

¹ KRS 278.021(5).

used to flow to the Hunters Hollow treatment plant. It is most unlikely that either the trustee or the bankruptcy court has analyzed that particular aspect of overseeing the assets of a sewer system.

Furthermore, a mere request for surcharge is not an asset. The receiver has provided not one instance where a court has held that a request for a surcharge from a state utility commission was considered to be an "asset". A request is simply that, something which may be granted or denied. A request for a surcharge does not constitute an asset, and is not something which the Trustee should control.

WHEREFORE, the Attorney General respectfully requests that the Commission take these comments into consideration.

Respectfully submitted,

ANDY BESHEAR
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 served electronically with hardcopies to follow via First Class U.S. Mail, postage pre-paid, to:

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this 22nd day of February, 2016



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