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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

JAN 27 2017

Public Service
Commission

IN THE MATTER OF:)
)
ELECTRONIC APPLICATION OF BULLITT)
UTILITIES, INC. FOR A SURCHARGE)
)

CASE NO. 2016-00401

**RESPONSE OF THE CITY OF HILLVIEW, KENTUCKY TO THE
BRIEF OF BULLITT UTILITIES**

Now comes the City of Hillview, Kentucky (hereinafter, "Hillview") and files the within Brief in response to the Brief filed by Bullitt Utilities, Inc. (hereinafter, "BU") by Robert W. Keats, Chapter 7 Trustee. BU was required to file a brief supporting its contention that BU remained a utility subject to the jurisdiction of the PSC and that it retained the right under state law to request a surcharge rate. These issues have been addressed in Case No. 2014-00255 and BU has provided no law in its Brief that should cause the PSC to deviate from the orders and findings of said case.

The PSC, in Case No. 2014-00255, entered an Order on October 16, 2015, finding that

"...BCSD, as receiver, has been vested by the Franklin Circuit Court with sole control and responsibility for the assets of Bullitt Utilities. Further, we find that BCSD, as receiver, is the only entity that has authority to collect the rates and charges to the customers served by the Hunters Hollow collection system, the former customers of Bullitt Utilities. Pursuant to KRS 278.021(6), KRS 278.021(7), and the Franklin Circuit Court's September 23, 2015 Order, BCSD, as receiver, is the only entity with authority to bring or defend any action regarding the assets and operations of the Hunters Hollow collection system."

The PSC further stated,

"Bullitt Utilities, having abandoned the Hunters Hollow collection system, no longer has any right to exercise powers regarding the preservation, operation, control, management, maintenance, or care of the assets and operations it has abandoned..."

This Order made clear that BCSD is the appropriate entity to pursue a surcharge rate and that BU had lost the right. This Order was entered prior to the filing of the Chapter 7 bankruptcy petition. After the filing of the bankruptcy petition, the Chapter 7 Trustee attempted to intervene in 2014-00255 to pursue a surcharge. The PSC ultimately denied the motion and stated that

“Bullitt Utilities voluntarily abandoned its utility assets and lost its right [to] seek a surcharge prior to the institution of bankruptcy proceedings...We find that the Bankruptcy Court has exclusive jurisdiction over Bullitt Utilities’ assets and that the Bankruptcy Court’s Order entered December 29, 2015, granted the Trustee ‘full authority and control over the surcharge claim and any related claims in the possession of the Alleged Debtor.’ However, as of that date, Bullitt Utilities had abandoned all interests in its utility assets...”

Nothing has changed since the above-cited orders were entered in 2014-00255. BU, in its Brief, cited to Case No. 2015-00100 to support its contention that BU has the right to file the application for surcharge. The issue before the PSC in Case No. 2015-00100 was the abandonment of the utility not the authority to file an application for surcharge. In that case, the Regional Water Resource Agency (“RWRA”) was the likely receiver of Cedar Hills. Even though RWRA was not a utility regulated by the PSC, it was ordered that the PSC would retain jurisdiction over the setting of rates for Cedar Hills for the duration of the receivership. Nowhere in its Order did the PSC state that Cedar Hills retained the authority to request a surcharge.

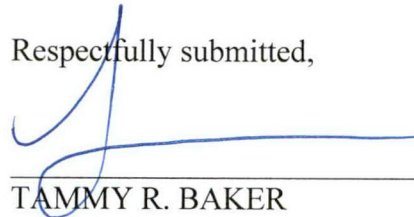
Hillview does not disagree that the PSC retains jurisdiction over BU as a utility. Hillview objects to the notion, however, that BU has authority to apply for a surcharge. The PSC instructed BU clearly in its April 14, 2016 Order in Case No. 2014-00255 as follows:

“[n]othing herein should be construed to prohibit the Trustee from requesting the Franklin Circuit Court to withdraw its September 23, 2015 Order appointing BCSD as receiver and thereby return to Bullitt Utilities possession and control of the sewer assets it formerly controlled, including the right to seek a rate surcharge. Alternatively, nothing herein should be construed to prohibit the

Trustee from seeking an order from the Bankruptcy Court transferring possession and control of these assets from BCSD, as receiver, to the Trustee.”

BU has not pursued either option and, as such, it is left with the April 14, 2016 Order in Case No. 2014-00255. The PSC has ruled in Case No. 2014-00255 that BU voluntarily gave up control of its assets, including the ability to request a surcharge. BU has taken no steps to secure return of control of its assets and has provided no law to support its contention that it somehow still has authority to request a surcharge.

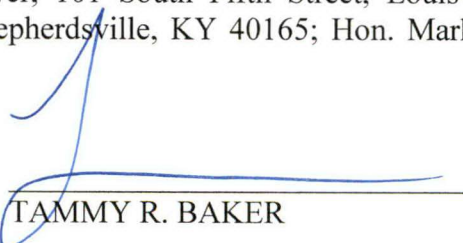
Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was delivered via U.S. Mail, first class, this 26th day of January 2017 to Hon. Kent A. Chandler, Assistant Attorney General, 1024 Capital Center Drive, Suite 200, Frankfort, KY 40601; Hon. Holland N. McTyeire V, Bingham Greenebaum Doll LLP, 3500 National City Tower, 101 South Fifth Street, Louisville, KY 40202; Hon. Robert Flaherty, P.O. Box 1446, Shepherdsville, KY 40165; Hon. Mark Edison, 178 Combs Court, Shepherdsville, KY 40165.



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