

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION INTO ALLEGED UNAUTHORIZED)
CHARGES OF BULLITT HILLS, INC. D/B/A) CASE NO. 91-167
HUNTERS HOLLOW SEWER SYSTEM)

O R D E R

On May 30, 1991, the Commission initiated this investigation to determine whether Bullitt Hills, Inc. d/b/a Hunters Hollow Sewer System ("Hunters Hollow") collected contributions in aid of construction ("CIAC") which were not authorized by the Commission. The Commission had received information that Hunters Hollow had charged CIACs to customers tying on to a new sewer main extension to South Louisville Industrial Park and to Terrace Garden Condominiums. The extension was built at the expense of the developer of the industrial park and condominiums.

Based on additional information provided by Hunters Hollow, the Commission, by Order dated September 9, 1991, found that a prima facie showing had been made that Hunters Hollow had violated KRS 278.160 by charging customers CIACs which were not authorized by its tariff and which had not been approved by the Commission. The nine entities charged the CIACs were notified of their right to intervene, but no requests for intervention were received by the Commission.

At an informal conference held on October 3, 1991, Hunters Hollow stipulated that in conjunction with the sewer main

extension to the industrial park and condominiums, CIACs were charged for providing waste treatment plant capacity to nine persons or entities.

However, Hunters Hollow stated at the informal conference that several of the nine CIACs were charged to the developer of the project or to contractors, rather than to the ultimate customers. Hunters Hollow took the position that the language in its tariff which authorizes the utility to negotiate CIACs charged for the purpose of land development or to any party that will not be committed to the payment of a monthly rate,¹ authorized the charges at issue, since some of the nine entities never became customers, and those who did become customers were not customers committed to a monthly rate at the time the CIACs were charged. As such, Hunters Hollow believed that the charges were not subject to approval of the Commission. Hunters Hollow further asserted that in many instances there is no way to know at the time the utility charges a CIAC whether the entity charged will be the ultimate customer.

Subsequent to the informal conference, Commission Staff and Hunters Hollow entered into a Settlement Agreement resolving all

¹ The provision reads as follows: The charges for connections made for the purpose of land development or for any party that will not be committed to the payment of a monthly rate in accordance with the established rate schedule as approved by the Public Service Commission are subject to negotiation between the Utility and the party requesting the connection. Any such connection that will affect the rate paid by any consumer of this Utility shall be subject to the approval of the Public Service Commission.

outstanding issues in this case. Hunters Hollow entered into the Settlement Agreement with the understanding that its effectiveness is conditioned upon its acceptance by the Commission. The Settlement Agreement was filed with the Commission on November 25, 1991. A copy of the Settlement Agreement is attached hereto and incorporated herein as Exhibit A.

In summary, the Settlement Agreement provides that:

1. No penalties will be assessed against Hunters Hollow for the alleged violations of KRS 278.760 in this proceeding, nor will Hunters Hollow be required to refund any of the CIACs at issue herein.

2. Within 20 days of the date of entry of an Order of the Commission approving and adopting this Settlement Agreement, Hunters Hollow will file with the Commission a revised tariff sheet which amends the tariff provision at issue to eliminate any ambiguity discussed herein. Hunters Hollow agrees to replace the existing language on Original Sheet 4 with the following:

B. Other Connections:

Any prospective customer, and any subdivider, developer, contractor, or other entity which is not a prospective customer, requiring service for a defined undeveloped area that is determined feasible to serve, will be charged the full cost of installation. In such instances the prospective customer, subdivider, developer, contractor, or other entity which is not a prospective customer will be charged a contribution in aid of construction.

If any prospective customer is directly charged a contribution in aid of construction, the contribution charged shall be subject to Public Service Commission approval. If any subdivider, developer, contractor, or any other entity which is not a prospective customer is directly charged a contribution in aid of construction, the contribution charged shall be subject to negotiation between the

utility and the subdivider, developer, contractor or other entity which is not a prospective customer, and such charge shall not be subject to Public Service Commission approval.

Any customers ultimately connected under this arrangement shall be charged according to the utility's current approved rates filed with the Public Service Commission.

For purposes of this provision the term "prospective customer" shall mean any person, firm or corporation which expresses a present intent to become an ultimate user or customer of the utility at the time of the contribution in aid of construction is charged.

After consideration of the record in this proceeding, the Settlement Agreement and the underlying factual and legal analysis necessary to evaluate the Settlement Agreement, the Commission finds:

1. That even though the entities which were charged CIACs were not actually customers at the time of the charge, the distinction drawn by Hunters Hollow is one without significance inasmuch as the charges were a condition of service to a potential customer.

2. That the provision in Hunter Hollow's tariff under which it acted, which was approved by the Commission as written in 1983, is ambiguous and could be interpreted in the manner adopted by Hunters Hollow.

3. That the evidence as a whole indicates that Hunters Hollow charged the CIACs in a way that it believed was consistent with its tariff.

4. That the Settlement Agreement is reasonable, supported by the evidence of record, is in accordance with the law, and does not violate any regulating principle.

5. That the tariff amendment allowed by the Settlement Agreement will result in fair, just, and reasonable CIACs to Hunters Hollow's customers.

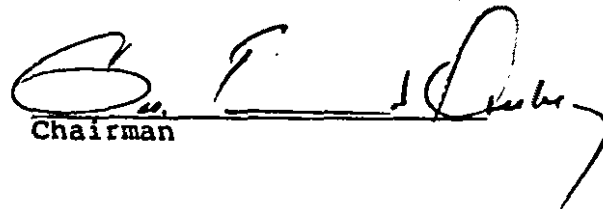
IT IS THEREFORE ORDERED that:

1. The Settlement Agreement is hereby adopted and approved as settlement of all outstanding issues in this proceeding.

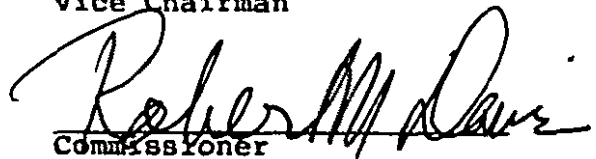
2. Within 20 days from the date of this Order, Hunters Hollow shall file its revised tariff setting forth the language contained herein.

Done at Frankfort, Kentucky, this 18th day of December, 1991.

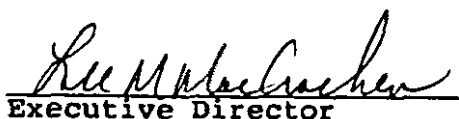
PUBLIC SERVICE COMMISSION


Chairman

Vice Chairman


Commissioner

ATTEST:


Executive Director

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CHARGES OF BULLITT HILLS, INC. D/B/A) CASE NO. 91-167
HUNTERS HOLLOW SEWER SYSTEM)

SETTLEMENT AGREEMENT

On May 30, 1991, the Commission initiated this investigation to determine whether Bullitt Hills, Inc. d/b/a Hunters Hollow Sewer System ("Hunters Hollow") collected contributions in aid of construction ("CIAC") which were not authorized by the Commission. The Commission had received information that Hunters Hollow had charged CIACs to customers tying on to a new sewer main extension to South Louisville Industrial Park and to Terrace Garden Condominiums. The extension was built at the expense of the developer of the industrial park and condominiums.

In its Order initiating the investigation, the Commission directed Hunters Hollow to file additional information concerning the alleged charges. After reviewing Hunters Hollow's response to the Order, the Commission by Order dated September 9, 1991 found that a prima facie showing had been made that Hunters Hollow had violated KRS 278.160 by charging customers CIACs which were not authorized by its tariff and which had not been approved by the Commission. The Commission ordered Hunters Hollow to appear at an informal conference for the purpose of discussing the allegations. On September 23, 1991, Hunters Hollow certified to the Commission

that, in compliance with the Commission's Order of September 9, 1991, Hunters Hollow served a copy of that Order on the nine entities charged the CIACs, notifying said entities of their right to intervene in this proceeding. No requests for intervention were received.

Commission Staff and representatives from Hunters Hollow held the informal conference on October 3, 1991. As a result of that conference, Staff and Hunters Hollow have entered into this proposed Settlement Agreement with the understanding that its effectiveness is conditioned upon its acceptance by the Commission.

Hunters Hollow stipulates that in conjunction with the sewer main extension to the industrial park and condominiums, CIACs were charged for providing waste treatment plant capacity to nine persons or entities. However, Hunters Hollow stated at the informal conference that several of the nine CIACs were charged to the developer of the project or to contractors, rather than to the ultimate customers. It is Hunters Hollow's position that the language in its tariff which authorizes the utility to negotiate CIACs charged for the purpose of land development or to any party that will not be committed to the payment of a monthly rate,¹

¹ The provision reads as follows: The charges for connections made for the purpose of land development or for any party that will not be committed to the payment of a monthly rate in accordance with the established rate schedule as approved by the Public Service Commission are subject to negotiation between the Utility and the party requesting the connection. Any such connection that will affect the rate paid by any consumer of this Utility shall be subject to the approval of the Public Service Commission.

authorized the charges at issue, since some of the nine entities never became customers, and those who did become customers were not customers committed to a monthly rate at the time the CIACs were charged. As such, Hunters Hollow believes that the charges were not subject to the approval of the Commission. Hunters Hollow also pointed out that in many instances there is no way to know at the time the utility charges a CIAC whether the entity charged will be the ultimate customer.

It is Staff's position that even though the entities which were charged CIACs, and who ultimately became customers of the utility, were not actually customers at the time of the charge, the distinction drawn by Hunters Hollow is one without significance inasmuch as the charges were a condition of service to a potential customer. However, Staff also believes that the provision in Hunters Hollow's tariff under which it acted, which was approved by the Commission as written in 1983, is ambiguous and could lend itself to the interpretation adopted by Hunters Hollow. The evidence as a whole indicates that Hunters Hollow charged the CIACs in a way that it believed was consistent with its tariff.

Therefore, in a joint effort to resolve this matter and to avoid additional time and expense on the part of both the Commission and Hunters Hollow, the signatories hereto agree to the compromise of the case set out herein.

NOW, THEREFORE, the signatories agree that:

1. No penalties will be assessed against Hunters Hollow for the alleged violations of KRS 278.060 in this proceeding, nor will

Hunters Hollow be required to refund any of the CIACs at issue herein.

2. Within 20 days of the date of entry of an Order of the Commission approving and adopting this Settlement Agreement, Hunters Hollow will file with the Commission a revised tariff sheet which amends the tariff provision at issue to eliminate the ambiguity discussed herein. Hunters Hollow agrees to replace the existing language on Original Sheet No. 4 with the following:

B. Other Connections:

Any prospective customer, and any subdivider, developer, contractor, or other entity which is not a prospective customer, requiring service for a defined undeveloped area that is determined feasible to serve, will be charged the full cost of installation. In such instances the prospective customer, subdivider, developer, contractor, or other entity which is not a prospective customer will be charged a contribution in aid of construction.

If any prospective customer is directly charged a contribution in aid of construction, the contribution charged shall be subject to Public Service Commission approval. If any subdivider, developer, contractor, or any other entity which is not a prospective customer is directly charged a contribution in aid of construction, the contribution charged shall be subject to negotiation between the utility and the subdivider, developer, contractor or other entity which is not a prospective customer, and such charge shall not be subject to Public Service Commission approval.

Any customers ultimately connected under this arrangement shall be charged according to the utility's current approved rates filed with the Public Service Commission.

For purposes of this provision the term "prospective customer" shall mean any person, firm or corporation which expresses a present intent to become an ultimate user or customer of the utility at the time of the contribution in aid of construction is charged.

3. The proposed Settlement Agreement is submitted for purposes of this case only and is not deemed binding upon the signatories hereto in any other proceeding, nor is it to be offered or relied upon in any other proceeding involving Hunters Hollow or any other utility.

4. It is agreed that if the Commission issues an order adopting this proposed Settlement Agreement in its entirety, Hunters Hollow shall file neither an application for rehearing with the Commission, nor an appeal to the Franklin County Circuit Court from such order.

5. If this proposed Settlement Agreement is not adopted in its entirety, Hunters Hollow reserves the right to withdraw from it and require that hearings go forward upon all or any matters involved herein, and that in such event this settlement shall not be deemed binding upon the signatories hereto, nor shall same be admitted into evidence or referred to or relied on in any manner by any signatory hereto.

6. All of the signatories hereto agree that the foregoing Settlement Agreement is reasonable and in the best interest of all concerned, and urge that the Commission adopt this settlement in its entirety.

7. If adopted in its entirety by the Commission, this Settlement Agreement constitutes a final adjudication of the allegations raised in the Commission's show cause Order of September 9, 1991.

AGREED TO:

Christopher D. Moore
Christopher D. Moore
Counsel for Commission Staff

November 22, 1991
(date)

Carroll F. Cogan
Carroll F. Cogan, President
Bullitt Utilities, Inc.
d/b/a Hunters Hollow
Sewer System

Nov. 20, 1991
(date)

Rand E. Kruger
Rand E. Kruger
Counsel for Bullitt Utilities, Inc.
d/b/a Hunters Hollow Sewer System

Nov. 20, 1991
(date)