

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AMENDED APPLICATION OF BULLOCK PEN )  
WATER DISTRICT FOR APPROVAL TO ENTER )  
INTO A LEASE AGREEMENT WITH THE BANK )  
OF KENTUCKY, INC. IN A PRINCIPAL AMOUNT )  
NOT TO EXCEED \$600,000.00 FOR THE ) CASE NO. 2013-00096  
PURPOSE OF REFINANCING CERTAIN )  
OUTSTANDING DEBT OBLIGATIONS BETWEEN )  
THE KENTUCKY RURAL FINANCE )  
CORPORATION AND BULLOCK PEN WATER )  
DISTRICT )

ORDER

Bullock Pen Water District ("Bullock District") has requested clarification of our Order of January 4, 2013 in Case No. 2012-00507<sup>1</sup> in which we authorized the water utility to enter a lease agreement with Bank of Kentucky, Inc. to borrow funds to refinance existing debt obligations, but created some uncertainty about the water district's authority to continue to assess a surcharge to fund the new debt obligation. By this Order, we clarify and modify that earlier Order.

Bullock District is a water district organized pursuant to KRS Chapter 74. It owns and operates water treatment and distribution facilities that provide water service to 6,742 customers in Boone, Gallatin, Grant, Kenton, and Pendleton counties, Kentucky.<sup>2</sup>

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<sup>1</sup> Case No. 2012-00507, *Application of Bullock Pen Water District for Approval to Enter into a Lease Agreement with the Bank of Kentucky, Inc. in a Principal Amount Not to Exceed \$860,000.00 for the Purpose of Refinancing Certain Outstanding Debt Obligations between the Kentucky Rural Water Finance Corporation and the Bullock Pen Water District* (Ky. PSC Jan. 4, 2013).

<sup>2</sup> *Annual Report of Bullock Pen Water District to the Public Service Commission for the Calendar Year Ended December 31, 2012* at 5 and 27.

In Case No. 2002-00015,<sup>3</sup> Bullock District applied to the Commission for authority to enter an Assistance Agreement with Kentucky Rural Water Finance Corporation ("KRWFC") to borrow \$719,000, for a Certificate of Public Convenience and Necessity to construct certain facilities, including its Phase V Water System Improvement Project, and for authorization to assess a monthly surcharge of \$15 to customers receiving water service through Phase V Water System Improvement Project. Approximately \$377,000 of the loan proceeds was to be used to finance the construction of the Bullock District's Phase V Water System Improvement Project. Bullock District proposed to use the proceeds of the proposed surcharge solely to service the portion of the KRWFC loan related to that project.

On March 18, 2002, the Commission granted Bullock District's application and, more specifically, authorized the proposed monthly surcharge. We restricted the use of the surcharge proceeds to servicing the obligations created under the Assistance Agreement and ordered collection of the surcharge to cease when the portion of the debt obligation related to the Phase V Water System Improvement Project had been retired. Bullock District executed the Assistance Agreement with KRWFC on May 1, 2002.<sup>4</sup>

In Case 2012-00507, Bullock District applied to the Commission for authorization to enter into a lease finance agreement with The Bank of Kentucky, Inc. ("Lease Finance Agreement"). Under the terms of this agreement, Bullock District would receive

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<sup>3</sup> Case No. 2002-00015, *Application of the Bullock Pen Water District for a Certificate of Public Convenience and Necessity to Construct and Finance an Improvements Project and to Implement a Surcharge to Its Existing Rates Pursuant to KRS 278.020 and 278.300* (Ky. PSC Mar. 18, 2002).

<sup>4</sup> Bullock District reduced the monthly surcharge to Phase V Water System Improvement Project to \$10 in 2007. See Case No. 2007-00448, *Application Of Bullock Pen Water District To Adjust Surcharge Assessment* (Ky. PSC Nov. 8, 2007).

\$860,000, which it would use to retire all outstanding Bullock Pen Water System Revenue Bonds of 1978 and the debt obligation created by the 2002 Assistance Agreement. In its application, Bullock District made no reference to the monthly surcharge assessed to the customers receiving water service through Phase V Water System Improvement Project. It estimated that execution of the proposed Lease Finance Agreement and retirement of the existing debt instruments would result in total gross savings and net present value savings of \$130,553 and \$82,666, respectively.

On January 4, 2013, the Commission authorized Bullock District to enter the Lease Finance Agreement with The Bank of Kentucky, but found that “[u]pon the execution of the proposed Lease Finance Agreement, the obligations created under the Assistance Agreement will be retired and, pursuant to the terms of the Commission’s Order authorizing collection of the surcharge [on Phase V Water System Improvement Project customers], the surcharge should terminate.”<sup>5</sup> We further found that “[t]ermination of the collection of the surcharge should be stayed for a period of 60 days from the date of the execution of the Lease Finance Agreement to permit Bullock Pen [District] sufficient time to request the assessment of a new surcharge.”<sup>6</sup>

Based upon these findings, we directed Bullock District to cease charging the existing monthly surcharge within 60 days and, if it wished to continue assessing a surcharge, to apply for authority to assess such surcharge within 30 days and to include

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<sup>5</sup> Case No. 2012-00507, Order of January 4, 2013 at 4.

<sup>6</sup> *Id.*

in its application for a new surcharge “a detailed explanation as to why a surcharge is required and is reasonable.”<sup>7</sup>

Upon reviewing the Commission’s Order of January 4, 2013, Bullock District’s Board of Commissioners became concerned that pursuing the Lease Finance Agreement would result in the termination of the existing monthly surcharge on Phase V Water System Improvement Project customers without any authorization for a replacement surcharge. If such event occurred, all Bullock District ratepayers would be financing the outstanding costs associated with the Phase V Water System Improvement Project, not merely the customers who directly benefit from the Project.

On March 11, 2013, Bullock District applied to the Commission for authorization to enter into a revised agreement with The Bank of Kentucky, Inc. Under the terms of the revised agreement, the proceeds are less and are used only to retire the outstanding Bullock Pen Water System Revenue Bonds of 1978 and the portion of the 2002 Assistance Agreement that is unrelated to the Phase V Water System Improvement Project. While still producing savings to the water district, the revised transaction achieves fewer savings than if refinancing all obligations that remain from the 2002 Assistance Agreement. The revised transaction would not affect Bullock District’s authority to assess the current Phase V Water System Improvement Project surcharge, but would deprive Phase V Water System Improvement Project facilities users of any savings achieved from refinancing all obligations remaining from the 2002 Assistance Agreement.

Following the submission of its application regarding the revised lease finance agreement, Bullock District and Commission Staff held discussions regarding the

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<sup>7</sup> *Id.* at 5.

revised transaction and eventually executed an agreement, a copy of which is appended to this Order. In the Settlement Agreement, they acknowledge that excluding the Phase V Water System Improvement Project debt from the refinancing arrangement reduces the level of savings that could be achieved and is not in the public interest. They agree that the Order of January 4, 2013, requires clarification to eliminate any uncertainty over Bullock District's continued assessment of a surcharge to those customers who receive their water service through Phase V Water System Improvement Project facilities.

Bullock District and Commission Staff agree that an unstated premise of the Commission's Order of March 22, 2002, is that the users of those facilities would pay a surcharge until all obligations arising from the facilities' construction were satisfied, including any obligations created solely for the purpose of refinancing the original obligation. They further agree that, based upon this premise, Bullock District should be permitted to continue assessing a surcharge on Phase V Water System Improvement Project users until these obligations are paid, but that the surcharge amount and the time period of its assessment should be revised to reflect the terms of the Lease Financing Agreement and any savings achieved by the execution of that agreement.

The Commission considers the Settlement Agreement between Bullock District and Commission Staff as an amendment to Bullock District's Application and as a request for clarification of our Order of January 4, 2013. Having reviewed the Settlement Agreement and the records of Cases No. 2002-00015 and No. 2012-00507, the Commission finds that clarification of our Order of January 4, 2013, is required.

When Bullock District sought a Certificate for Phase V Water System Improvement Project and authorization to enter the 2002 Assistance Agreement, Bullock District clearly indicated that the Project would be undertaken only if the benefited customers were solely responsible for paying the Project's costs. The Phase V Water System Improvement Project surcharge was the mechanism to allocate these costs and had to remain in effect so long as the Project had outstanding debt. In our Order of March 22, 2002, we did not contest either premise, but authorized the surcharge to remain in place so long as the obligations of 2002 Assistance Agreement existed. We made no provision, however, for any refinancing of the 2002 Assistance Agreement. By the literal terms of our Order of March 22, 2002, the Phase V Water System Improvement Project surcharge must end when the obligations arising under the 2002 Assistance Agreement are retired.

Recognizing that the surcharge's termination would be inconsistent with the underlying premise of our Order of March 22, 2002, we sought in our Order of January 4, 2013, to comply with the letter of that earlier Order. We authorized Bullock District in the Order of January 4, 2013, to continue collecting the existing surcharge for 60 days to provide Bullock District adequate time to file for a new surcharge on Phase V Water System Improvement Project facilities' users<sup>8</sup> that reflected any savings resulting from the refinancing.

Given Bullock District's response to the Order of January 4, 2013, it is obvious that we failed to communicate our intentions clearly. This Commission encourages all

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<sup>8</sup> KRS 278.180(1) provides: "[N]o change shall be made by any utility in any rate except upon thirty (30) days' notice to the commission, stating plainly the changes proposed to be made and the time when the changed rates will go into effect." As any permanent extension of surcharge constitutes a new rate for service, KRS 278.180 and 807 KAR 5:011, Sections 6 and 9, require Bullock District to submit a tariff sheet setting forth the new surcharge rate.

water utilities to engage in transactions that will reduce their debt-service costs. To the extent that our Order of January 4, 2013, did not adequately communicate our intentions and has encouraged Bullock District to do the contrary, the Order should be clarified to state clearly that Bullock District will be permitted to assess a surcharge to Phase V Water System Improvement Project facilities' users until all obligations arising from those facilities' construction are satisfied, including obligations created solely for the purpose of refinancing the 2002 Assistance Agreement and reducing the water district's debt-service costs. The surcharge rate and period of assessment, however, will reflect any savings achieved as a result of the Lease Finance Agreement.

IT IS THEREFORE ORDERED that:

1. The Settlement Agreement between Bullock District and Commission Staff is approved.

2. Ordering paragraph 5 of the Commission's Order of January 4, 2012, in Case No. 2012-00507 is amended as follow:

5. Bullock Pen shall terminate collection of the current Phase V Water System Improvement Project surcharge no later than 60 days from the date of the execution of the Lease Finance Agreement.

3. Ordering paragraphs 6, 7, and 8 of the Commission's Order of January 4, 2012, in Case No. 2012-00507 are vacated.

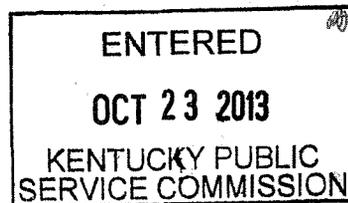
4. Within 30 days of execution of the Lease Financing Agreement, Bullock District shall file with the Commission a tariff sheet setting forth a revised monthly surcharge rate for Phase V Water System Improvement Project users, the period in which the surcharge will be assessed, and the total amount that the surcharge must collect to pay the outstanding debt-service costs associated with the Phase V Water

System Improvement Project. Bullock District shall file with the tariff sheet the calculations used to derive the revised surcharge amount and period of assessment.

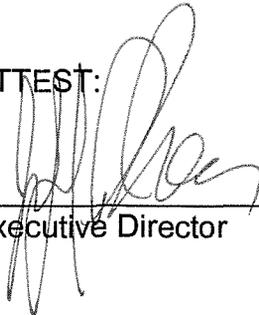
5. When filing its tariff sheet, Bullock District shall comply with the provisions of KRS 278.180 and 807 KAR 5:011 to include the publication of notice of the revised Phase V Water System Improvement Project monthly surcharge in accordance with 807 KAR Section 8.

6. All provisions of the Order of January 4, 2013, in Case No. 2012-00507 that are not specifically addressed in this Order remain in full force and effect.

By the Commission



ATTEST:

  
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Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE  
COMMISSION IN CASE NO. 2013-00096 DATED **OCT 23 2013**

**APPENDIX**

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DISTRICT )

SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered this 27<sup>th</sup> day of September, 2013, by and between the STAFF OF THE PUBLIC SERVICE COMMISSION OF KENTUCKY ("Commission Staff") and BULLOCK PEN WATER DISTRICT ("Bullock Pen District").

WITNESSETH:

THAT, WHEREAS, Commission Staff and Bullock Pen District stipulate the following:

1. In Case No. 2002-00015,<sup>1</sup> Bullock Pen applied to the Commission for authority to enter an Assistance Agreement with Kentucky Rural Water Finance Corporation ("KRWFC") to borrow \$719,000, a certificate to construct certain facilities, including its Phase V Water System Improvement Project, and authorization to assess a monthly surcharge of \$15 to customers receiving water service through Phase V Water System Improvement Project.
2. Bullock Pen intended to use \$377,000 of the funds borrowed from KRWFC to finance the construction of the Phase V Water System Improvement Project.

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<sup>1</sup> Case No. 2002-00015, *Application of the Bullock Pen Water District for a Certificate of Public Convenience and Necessity to Construct and Finance an Improvements Project and to Implement a Surcharge to Its Existing Rates Pursuant to KRS 278.020 and 278.300* (Ky. PSC Mar. 18, 2002).

3. Bullock Pen proposed to assess a monthly surcharge of \$15 to customers receiving water service through Phase V Water System Improvement Project to service the portion of the KRWFC loan related to that project.
4. On March 18, 2002, the Commission granted Bullock Pen's application and, more specifically, authorized the proposed monthly surcharge. Use of the surcharge proceeds was restricted to servicing the obligations created under the Assistance Agreement." Collection of the surcharge was to cease when the portion of the debt obligation related to the Improvement Project had been retired.
5. Bullock Pen executed the Assistance Agreement with KRWFC on May 1, 2002.
6. In Case 2012-00507,<sup>2</sup> Bullock Pen District applied to the Commission for authorization to enter into a lease finance agreement with The Bank of Kentucky, Inc. Under the terms of this agreement, Bullock Pen District would receive \$860,000 which it would transfer to the trustee or paying agent for Bullock Pen Water System Revenue Bonds of 1978 to retire all outstanding bonds and to KRWFC to retire the debt obligation created by the 2002 Assistance Agreement. In its application, Bullock Pen District made no reference to the monthly surcharge assessed to the customers receiving water service through Phase V Water System Improvement Project.
7. Bullock Pen District estimated that execution of the proposed Lease Finance Agreement and retirement of the existing debt instruments would result in total gross savings and net present value savings of \$1 30,553 and \$82,666, respectively.
8. On January 4, 2013, the Commission granted Bullock Pen District's application to enter the proposed lease finance agreement with The Bank of Kentucky, but found that "[u]pon the execution of the proposed Lease Finance Agreement, the obligations created under the Assistance Agreement will be retired and, pursuant to the terms of the Commission's Order authorizing collection of the surcharge [on Phase V Water System Improvement Project customers], the surcharge should terminate. The Commission further found that "[t]ermination of the collection of the surcharge should be stayed for a period of 60 days from the date of the execution of the Lease

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<sup>2</sup> Case No. 2012-00507, *Application of Bullock Pen Water District for Approval to Enter Into a Lease Agreement with The Bank Of Kentucky, Inc. in a Principal Amount Not To Exceed \$860,000.00 for the Purpose of Refinancing Certain Outstanding Debt Obligations Between the Kentucky Rural Water Finance Corporation and the Bullock Pen Water District* (Ky. PSC Jan. 4, 2013).

Finance Agreement to permit Bullock Pen [District] sufficient time to request the assessment of a new surcharge."

9. In its Order of January 4, 2013, the Commission ordered that Bullock Pen District to cease charging the existing monthly surcharge within 60 days and, if it wished to continue assessing a surcharge, to apply for authority to assess such surcharge within 30 days and to include in its application for a new surcharge "a detailed explanation as to why a surcharge is required and is reasonable."
10. Based upon its interpretation of the Commission's Order of January 4, 2013, Bullock Pen District's Board of Commissioners became concerned that continuing with the proposed Lease Finance Agreement as originally proposed would result in the termination of the existing monthly surcharge on Phase V Water System Improvement Project customers without any authorization for a successor surcharge.
11. On March 11, 2013, Bullock Pen District Bullock Pen District applied to the Commission for authorization to enter into a revised lease finance agreement with The Bank of Kentucky, Inc. Under the terms of the revised Lease Finance Agreement, the proceeds of the agreement would be reduced and would be used only to retire all outstanding Bullock Pen Water System Revenue Bonds of 1978 and the outstanding portion of the 2002 Assistance Agreement with KRWFC that is unrelated to the Phase V Water System Improvement Project.

NOW, THEREFORE, Bullock Pen District and Commission Staff agree as follows:

1. Any revision to the original proposal to refinance Bullock Pen District's existing debt obligations that would exclude the portions of the 2002 Assistance Agreement with KRWFC that are related to the Phase V Water System Improvement Project will reduce the level of savings achieved from such refinancing and is not in the public interest.
2. The conditions set forth in the Commission's Order of March 18, 2002 regarding termination of the Phase V Water System Improvement Project surcharge were intended to apply only when the debt obligation evidenced by the 2002 Assistance

Agreement was completely retired and not merely replaced by another debt obligation designed to reduce Bullock Pen District's debt service costs.

3. The Commission's Order of January 4, 2013 should be clarified to resolve any uncertainty over Bullock Pen District's continued assessment of a surcharge to those customers who receive their water service through Phase V Water System Improvement Project facilities.

4. Upon Bullock Pen District's execution of the originally proposed Lease Financing Agreement with The Bank of Kentucky, Bullock Pen should be permitted to continue to assess a surcharge to its customers who receive water service through the Phase V Water System Improvement Project, but the amount of the monthly surcharge and the period of its assessment should be revised to reflect the terms of the Lease Financing Agreement and any savings achieved by the execution of that agreement.

5. Within 30 days of execution of the Lease Financing Agreement, Bullock Pen shall file with the Commission, in addition to the documents that the Order of January 4, 2013 currently requires, revised tariff sheets setting forth the revised monthly surcharge for Phase V Water System Improvement Project customers and the period it will be assessed. Bullock Pen District will also file the calculations used to derive the revised surcharge amount and period of assessment.

6. At the time of its filing of revised tariff sheets with the Commission, Bullock Pen District shall also publish notice of any revisions to its monthly surcharge in accordance with 807 KAR 5:011, Section 8.

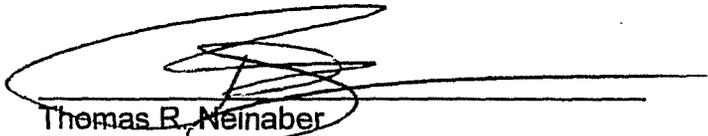
7. Commission Staff shall recommend to the Commission that this Settlement Agreement be approved.

8. This Agreement is subject to the acceptance of and approval by the Public Service Commission.

9. If the Public Service Commission fails to accept and approve this Settlement Agreement in its entirety, none of the terms of this Settlement Agreement shall be binding on either signatory.

10. If the Public Service Commission accepts and adopts this Settlement Agreement in its entirety and enters an order to that effect, Bullock Pen District shall not apply for rehearing in this proceeding nor bring an action for review of that order.

AGREED TO BY:



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