

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

IN THE MATTER OF:)

ELECTRONIC APPLICATION OF BULLITT)
UTILITIES, INC. FOR A SURCHARGE)

CASE NO. 2016-00401

**APPLICATION OF BU FOR A SURCHARGE
AND MOTION TO DEVIATE FROM THE COMMISSION’S RULES**

Bullitt Utilities, Inc. (“BU”), by Robert W. Keats, Chapter 7 Trustee for BU (the “Trustee”), requests authority from the Commission to implement a surcharge to pay for some of the extraordinary emergency costs it incurred in responding to the catastrophic failure of the Hunters Hollow Wastewater Treatment Plant and Sewer Collection System (the “WWTP”) owned by BU and to deviate from the Commission’s rules, to the extent necessary, for this surcharge added to BU’s rates.

BU’s Trustee has conferred with the Bullitt County Sanitation District (the “BCSD”), as the Receiver for BU, regarding this Surcharge Application. The Trustee shared a draft of this Surcharge Application with counsel for the BCSD.

“[T]he [BCSD] will not actively oppose any application for a surcharge by the Trustee, but cannot expressly support such a surcharge application in light of its duties to its customers and its responsibilities as appointed Receiver. BCSD will remain neutral with respect to any surcharge application for the benefit of creditors to [BU].”

Letter from the BCSD to the Trustee, November 4, 2016, p. 1. **Exhibit A.**

The BCSD was not BU’s Receiver when the costs sought to be reimbursed were incurred. As Receiver and under its contract with BU, the BCSD will continue to provide service to BU’s customers. The BCSD committed to “provide factual information and testimony as needed and required as to the current physical and financial condition of the Hunter’s Hollow System, and its

experiences and actions as Receiver pursuant to any surcharge application.” *Id.* The BCSD understands that its role as the Receiver for BU is to, among others, “serve the best interests of [BU’s] customers.” KRS 278.021(5).

I. INTRODUCTION

1. BU requests authority from the Commission for a surcharge of \$17.00 per month to be added to its customers’ bills for 20 years to recover about \$2,850,000 of the total of over \$3,400,000 in extraordinary emergency costs incurred by BU, which amount the Commission has already acknowledged. The surcharge requested in this Application has the following benefits over the previous surcharge requested by BU in PSC Case No. 2014-00255:

- The surcharge requested in this Application is about half of the monthly surcharge originally requested by BU.
- Upon information and belief, the surcharge requested will make the rates for BU’s customers comparable to their neighbors served by the Metropolitan Sewer District (“MSD”), Lake Columbia Utilities, also located in Bullitt County, which has a residential rate of \$50.32, the BCSD and other sewer utilities in the area.
- BU’s rate has been the same since about 1990.
- This surcharge will recover less than the amount the Commission recognized had been spent by BU to respond to the WWTP failure.
- The surcharge requested by this Application is only intended to repay the specific creditors/vendors of BU identified in this Surcharge Application.
- BU does not seek to construct any facilities in this Application so those issues need not be considered.
- All costs were incurred in 2014 and 2015 and BU will not seek any additional sums for reimbursement of the costs for the WWTP failure.

- The Commission can revisit the approval of the surcharge requested in this Application if the Trustee recovers any other money for BU's Bankruptcy Estate.
- The approval of the requested surcharge is a necessary predicate to the ultimate transfer of ownership and control of BU.

2. The surcharge sought by BU provides a fair, just and reasonable rate for BU's customers as required by KRS 278.030 and does not make BU's customers responsible for all costs incurred to respond to the WWTP failure, but only a percentage of those costs.

3. BU's vendors/creditors will not be fully compensated even if this surcharge is approved in the amount requested as they will incur significant costs for the time value of money and will not be reimbursed for all legal fees and other costs they have incurred to collect the amounts they are owed. The amounts sought to be recovered by this Surcharge Application do not include the costs of counsel retained by the Trustee to prepare, file and litigate this Surcharge Application or the costs of other professionals needed to present this matter to the Commission.

4. BU has consolidated the information filed in Case No. 2014-00255 in this Application. The Trustee presents information primarily from BU's December 10, 2014 Amended Application and BU's February 24, 2015 Notice of Filing in Case No. 2014-00255.

5. The Commission's December 23, 2014 Order identified seven filing deficiencies with BU's Amended Application which BU cured with its Notice of Filing. The Commission stated there were other filing requirements which applied to BU's Application but the Commission found "the extraordinary emergency experienced by [BU] justifies a waiver of all such requirements except those noted above." PSC Case No. 2014-00255, Order, December 23, 2014, p. 5. The reasons the Commission waived any other requirements also apply to this Application. The Commission's February 25, 2015 letter found BU's previous Application met

its minimum filing requirements. Likewise, this Application meets the Commission's minimum filing requirements.

6. To the extent necessary, BU requests a waiver for any other filing requirements for this Application in 807 KAR 5:001 Section 16 and 807 KAR 5:071 Section 3. BU makes this request because the information submitted with this Application was sufficient before for the Commission to determine BU met the Commission's minimum filing requirements. The Commission can effectively and efficiently review this Surcharge Application based on the information provided. 807 KAR 5:001 Section 16(10)(a). BU is not aware of any information required by the Commission which is available to BU and is not being provided with this Application. 807 KAR 5:001 Section 16(10)(b) & (c).

II. BACKGROUND

7. BU filed a previous Surcharge Application with the Commission, Case No. 2014-00255, which was dismissed by the Commission's December 15, 2015 Order. **Exhibit B**.

8. On December 18, 2015, Veolia Water Technologies, Inc. ("Veolia") and Perdue Environmental Contracting Company, Inc. ("PECCO") filed an Involuntary Chapter 7 Bankruptcy Petition against BU with the United States Bankruptcy Court for the Western District of Kentucky initiating the Bankruptcy Case *In re: Bullitt Utilities, Inc.*, Chapter 7 Case No. 15-34000-jal.

9. Veolia and PECCO also filed the Emergency Motion of the Petitioning Creditors Under 11 U.S.C. §§ 105(a) and 303(g) for Order Directing Appointment of Interim Trustee. Veolia and PECCO sought the appointment of an interim trustee who would have the authority to evaluate and assert BU's rights in connection with the prior Surcharge Case.

10. On December 29, 2015, the Bankruptcy Court entered an order granting the Motion and appointing the Trustee. **Exhibit C**. On January 20, 2016 the Bankruptcy Court

entered an Order for Relief allowing the Bankruptcy Case to continue and naming the Trustee as Chapter 7 Trustee. **Exhibit D**.

11. On January 4, 2016, the Trustee filed a Motion for Rehearing of the Commission's December 15, 2015 Order, which the Trustee supplemented on January 6, 2016. The Trustee also filed a Motion for Intervention.

12. On April 14, 2016, the Commission denied the Trustee's Motions for Intervention and Rehearing, attached as **Exhibit E**, because the Commission: (i) determined BU was no longer a party to the Surcharge Case when the Trustee was appointed and the Surcharge Case had been dismissed; (ii) was uncertain whether, and to what extent, the Trustee or the BCSD controlled BU and requested clarification from either the Bankruptcy Court or the Franklin Circuit Court on this issue; and (iii) was concerned about service to BU's 700 customers.

13. The Trustee sought relief from the Bankruptcy Court to address the issues raised by the Commission. The Bankruptcy Court's September 1, 2016 Memorandum-Opinion and Order confirmed the authority of the Trustee to refile the Surcharge Application for BU. *In re: Bullitt Utilities, Inc.*, Case No. 15-34000-jal, **Memorandum-Opinion & Order**, September 1, 2016, **Exhibit F**. The Bankruptcy Court's Order: (i) authorized the Trustee to act for BU in "all legal proceedings"; (ii) confirmed all of BU's assets are part of BU's Bankruptcy Estate "and are under the sole control and authority of the Trustee"; and (iii) authorized the Trustee "to re-file the Surcharge Claim" for BU. **Order** at 1. The Bankruptcy Court entered a September 26, 2016 Order to clarify its September 1, 2016 Order (included as part of **Exhibit F**). The September 1 and 26, 2016 Orders from the Bankruptcy Court provide the clarification requested by the Commission and confirm the Trustee has the authority to file this Surcharge Application for BU.

III. THE LEGAL STANDARD FOR THIS SURCHARGE APPLICATION

14. The Supreme Court in *Public Serv. Comm'n v. Commonwealth*, 324 S.W.3d 373, 374 (Ky. 2010) recognized the Commission has “authority to allow a utility to adjust its rates by imposing a surcharge or rider” to recover identified costs. The Supreme Court held “that so long as the rates established by the utility were fair, just and reasonable, the PSC has broad ratemaking power to allow recovery of such costs outside the parameters of a general rate case and even in the absence of a statute specifically authorizing recovery of such costs.” *Id.* The Supreme Court continued KRS 278.180 “governs how rate changes must be made,” but “does not require any particular process to allow a utility to change its rates other than complying with notice requirements.” *Id.* at 377.

15. The Supreme Court accepted the view that the Commission had authority to allow the recovery of costs through a surcharge without the need for a General Rate Case so long as the rates approved were fair, just and reasonable under KRS 278.030. The same analysis applies to this Surcharge Application which should be approved. The Test Period required by KRS 278.192 and 807 KAR 5:001 Section 16 does not apply to this Surcharge Application because the requested increase in rates is not related to past or future recurring costs.

16. In the *Application of Ridgelea Investments, Inc. for Alternate Rate Adjustment*, Case 2009-00500, the Commission considered a request for: (i) a general increase in rates; and (ii) a surcharge to recover costs for a non-recurring expense. Case No. 2009-00500, Order, April 8, 2011, pp. 2-3. For the General Rate Case, the Commission reviewed the operations of the utility during the Test Period. *Id.* at 3. The Commission did not consider the Test Period for the requested surcharge and, instead, evaluated the cost of the non-recurring item for which reimbursement was being sought. *Id.* at 3-4. The same analysis applies here.

IV. INFORMATION ON BU

17. BU is a Kentucky for-profit corporation formed on January 29, 1976 and is in good standing as required by 807 KAR 5:001 Section 14(2). **Exhibit G.** BU's principal place of business is 376 Norwood Way, Louisville, Kentucky 40229, which is the address for the BCSD its Receiver. The sole stockholder of BU is Carroll F. Cogan, and the registered agent of BU is Holland N. ("Quint") McTyeire V, Bingham Greenebaum Doll LLP, 3500 National City Tower, Louisville, Kentucky 40202. BU's Articles of Incorporation are attached as **Exhibit H.**

18. The WWTP is near Blue Lick Road in Bullitt County, Kentucky. BU has approximately 700 customers with a current rate of \$26.83 per month. BU received total revenues of \$247,776 in 2014 and \$248,868 in 2013 in BU's two most recent Annual Reports filed with the Commission.

19. As Receiver, the BCSD has filed four Quarterly Reports. **Exhibit I.** The BCSD has requested clarification from the Commission about the filing of BU's 2015 Annual Report. The Trustee will work with the BCSD and the principals of BU to file whatever the Commission deems appropriate for BU's 2015 Annual Report.

20. A KPDES permit was issued to BU for the WWTP on about October 24, 2008. **Exhibit J.** BU timely applied to renew its KPDES permit. BU is currently operated under a KISOP permit issued to the BCSD.

21. The WWTP began operation in 1977. Wastewater treatment was provided by an extended aeration plant, with chlorine disinfection, dechlorination and post aeration. The average daily dry weather flow of the WWTP was between 160,000 and 200,000 gpd. The WWTP discharged to an unnamed tributary to Brooks Run stream.

22. The KPDES permit issued for the WWTP required BU to comply with discharge limitations and monitoring requirements. "Any permit non-compliance shall constitute a

violation of KRS 224, among which shall be the following remedies: enforcement action, permit revocation, revocation and re-issuance, or modification; or denial of a permit renewal application.” **Exhibit J**, Part II, Page II-1.

V. RESPONSE OF BU TO THE WWTP FAILURE

23. On March 29, 2014, without warning, the WWTP suffered a catastrophic failure. Extraordinary emergency steps were immediately implemented by BU to treat the wastewater generated by BU’s customers to: (i) provide services to BU’s customers; (ii) comply with BU’s KPDES permit; and (iii) protect the environment and the health and safety of BU’s customers.

24. BU contracted with PECCO to install a mobile wastewater treatment plant to respond to the WWTP failure. The Kentucky Energy and Environment Cabinet, Division of Water (“DOW”), recommended PECCO to BU. PSC Case No. 2014-00255, BU’s Answers to the PSC’s First Information Requests, March 25, 2015, pp. 1-4.

25. PECCO’s system began operating on April 2, 2014. *Id.* PECCO’s system was designed to treat approximately 160,000 gpd of wastewater. *Id.* PECCO’s system was modified so it could treat about 200,000 gpd. *Id.*

26. BU considered connecting to the BCSD, but a dispute remained between the prior management of BU and the BCSD as to whether the BCSD reneged on an April, 2014 oral agreement to accept about 60,000 gpd of wastewater. *Id.* at 3-5. BU also considered installing a temporary WWTP but rejected that option because of the time to install such a facility. *Id.* at 3.

27. The DOW conducted several inspections of the WWTP after the installation of PECCO’s system. The DOW’s Wastewater Inspection Reports, filed in the prior Surcharge Case, showed PECCO’s system treated approximately 200,000 gpd of wastewater, but could not treat all of the flow from the WWTP during wet weather conditions as required by BU’s KPDES permit.

28. In April and May, 2014, the dispute between BU and the BCSD about whether the BCSD agreed to accept the flow of wastewater from BU remained unresolved and left BU with few options to treat any overflow of wastewater from its customers.

29. Effective June 1, 2014, BU contracted with Veolia for the installation and operation of an additional temporary system. In the previous Surcharge Case, BU explained the five options it considered instead of contracting with Veolia. Those options were:

- a. Installation of a used 300,000 gpd WWTP. BU could not locate a used WWTP of this size except for one owned by the BCSD which did not pass inspection. PSC Case No. 2014-00255, BU's Answers to the PSC's First Information Requests, March 25, 2015, p. 7 (BU provided an explanation of the steps required and time needed to locate a used WWTP in its April 17, 2015 Answers to the PSC's Supplemental Request for Information).
- b. Installation of a new 300,000 gpd WWTP. BU rejected this solution due to the cost of a new WWTP, which would be about \$1,000,000 or more, and the approximate six month time frame it would take to install a new WWTP. *Id.* Importantly, there was no guarantee the DOW would approve BU's installation of a new WWTP.
- c. Agreement with MSD. BU discussed a solution with MSD but any agreement between BU and MSD would be more costly than the temporary WWTPs provided by Veolia and PECCO and could not be implemented in any time period less than about 18 months. *Id.* at 7-8.

- d. Agreement with the City of Hillview to Accept Wastewater Over PECCO's Capacity. The WWTP owned by Hillview had no excess capacity. *Id.* at 8.
- e. Agreement with the BCSD to Accept Wastewater Over PECCO's Capacity. The BCSD advised BU by April 22, 2014 letter, attached as **Exhibit K**, it would not accept the flow of any wastewater from BU unless BU paid in advance for both short and long term solutions which included the construction of a new WWTP which would be owned by the BCSD. The cost of the BCSD's solutions was over \$1,000,000 and was cost-prohibitive to BU.

30. Beginning on about June 1, 2014, Veolia rented BU an ACTIFLO Turbo mobile equipment trailer and auxiliary equipment including a forwarding pump, filter press, sludge thickening tank and related equipment. An ACTIFLO Turbo mobile equipment trailer is a proprietary Veolia technology. Veolia also supplied BU with labor and services needed for the operation of its temporary WWTP for hourly and daily rates and supplied chemicals, spare parts and miscellaneous consumables required to operate the temporary equipment.

31. BU contends that the BCSD breached its written agreement with BU which delayed the connection of their sewer systems and caused a significant amount of the expenses BU incurred. BU asserts that it performed its obligations under its oral and written agreements with the BCSD, including payments to the BCSD of almost \$140,000, and the BCSD breached its obligations to accept the flow of wastewater from BU. The BCSD disputes that it breached any agreement with BU. The November 10, 2014 Agreement (the "Agreement") between the BCSD and BU and the First Amendment to that Agreement, as filed by BU in PSC Case No.

2014-00255, are attached as **Exhibit L**. The Commission need not decide the merits of the dispute between BU and the BCSD but need only decide BU's actions were reasonable under the circumstances, which is established by this Application.

32. The BCSD was required by the Commission and the DOW to accept the flow of wastewater from BU and eventually did so on May 27, 2015.

VI. THE COMMISSION'S INVESTIGATION CASE

33. On May 22, 2014, the Commission established the Investigation Case (Case No. 014-00163) to review issues surrounding BU's wastewater treatment services.

34. BU responded to numerous document requests from the Commission in the Investigation Case. The Commission conducted several Informal Conferences to address issues related to the failure of the WWTP. These Informal Conferences included representatives of some or all of BU, the BCSD, the City of Hunters Hollow, the Office of the Attorney General (the "AG"), the DOW and MSD.

35. The Commission conducted a Hearing in the Investigation Case on March 31, 2015. BU relies on Testimony by Jerry Kennedy, the BCSD's District Manager, to support its claims against the BCSD. The BCSD disputes that Kennedy's Testimony supports any claims against it.

VII. BU'S PREVIOUS REQUEST FOR A SURCHARGE

36. On July 17, 2014, BU filed its previous Application with the Commission (Case No. 2014-00255) for a Certificate of Convenience and Necessity and for a Surcharge. BU's Application sought to construct facilities to address the failure of the WWTP and to add a surcharge to its rates to recover its costs in responding to the WWTP failure.

37. On December 10, 2014, BU filed an Amended Application focusing on its request for a surcharge and providing more recent costs.

38. BU's prior Application did not meet the Commission's minimum filing requirements until about February 24, 2015. The Commission Staff, presumably relying on KRS 278.190(3), concluded no decision was required on BU's Surcharge Application until about December 23, 2015.

39. BU's two largest creditors supported BU's Surcharge Application. Veolia filed Public Comments supporting BU's Surcharge Application on June 8, 2015 and presented its Public Comments at the Hearing on BU's Surcharge Application the next day. PECCO also appeared at the Hearing and supported BU's Surcharge Application through Public Comments.

40. Veolia told the Commission BU's response to the failure of the WWTP through its deployment of the temporary mobile treatment systems supplied by Veolia and PECCO was the most technologically efficient and cost-effective solution to protect the environment and the health, safety and welfare of BU's customers in an emergency response situation. This was especially true given the BCSD's refusal to accept the flow of wastewater from BU until late May, 2015.

41. At the June 9, 2015 Hearing, BU presented Chris Cogan as its only witness. BU intended to present testimony from its expert witness Chris Crumpton. Crumpton, an engineer, presented a Report with his Pre-Filed Testimony explaining the reason for the failure of the WWTP was due to a design defect and not to any lack of maintenance. Crumpton did not appear at the Hearing and his Pre-Filed Testimony and Report were not admitted. Apparently, there was a miscommunication about the need for Crumpton to appear at the Hearing.

42. The undersigned counsel has contacted Crumpton and hopes to secure his testimony, if necessary, for any Hearing held for this Surcharge Application. Crumpton's previous Pre-Filed Testimony and Report will form the basis for any Pre-Filed Testimony here.

43. On July 21, 2015, BU submitted its Post-Hearing Brief in which it provided a list of the expenses it had incurred to respond to the WWTP failure. BU's prior presentation was not clear which vendors had been paid and in what amounts. BU is only requesting approval of the surcharge for vendors/creditors of BU not paid in the identified amounts on the List attached as **Exhibit M**, as those vendors/creditors have filed a Proof of Claim in the Bankruptcy Case, each of which is included as part of **Exhibit M**.

44. BU is not requesting a surcharge to reimburse any other persons or entities, although the proceeds from the Surcharge Case will be part of BU's Bankruptcy Estate and distributed in the Bankruptcy Case under the priority scheme established by the Bankruptcy Code. As the largest creditors of BU, representatives of Veolia and PECCO are prepared to testify at any Hearing for this Surcharge Application to demonstrate the charges they submitted were reasonable and appropriate to provide service to BU's customers and to protect the environment and the health and safety of BU's customers and should be reimbursed.

VIII. THE ABANDONMENT CASE

45. On August 24, 2015, the Commission opened the Abandonment Case (Case No. 2015-00290) to investigate the request by BU to abandon its facilities and service to its customers.

46. The Commission held a Hearing on BU's request on August 27, 2015. The Commission entered an Order on August 31, 2015, attached as **Exhibit N**, finding BU met the statutory requirements in KRS 278.021 to abandon its facilities and service obligations.

IX. THE RECEIVERSHIP CASE

47. On September 1, 2015, the Commission filed a Complaint and a Motion to Attach the Assets of BU and to appoint the BCSD as the Receiver for BU in the Franklin Circuit Court, Civil Action No. 15-CI-00946.

48. The Commission's Complaint identified the March 29, 2014 WWTP failure as the event which led to three proceedings before the Commission and acknowledged the large amount of money spent by BU in response. Franklin Circuit Court, Division II, Civil Action No. 15-CI-00946, Complaint, September 1, 2015, pp. 3-4, ¶ 20. BU "utilized temporary wastewater treatment facilities and operators while the parties explored long-term solutions. Expenses incurred in the course of the proceedings have exceeded \$3,400,000." *Id.* at 4, ¶ 23 (citing to BU's August 27, 2015 Compliance attached as Exhibit 2 to the Commission's Complaint).

49. The BCSD was appointed the Receiver for BU by September 23, 2015 Order.

Exhibit O.

X. COMPLIANCE WITH THE COMMISSION'S RULES AND REGULATIONS FOR THIS SURCHARGE APPLICATION

50. The information provided so far in this Application was primarily from BU's December 10, 2014 Amended Application in the previous Surcharge Case. The Commission's December 23, 2015 Order found BU's Amended Application deficient in seven ways. BU filed a February 24, 2015 Notice of Filing to address the deficiencies identified by the Commission, much of which is repeated below.

51. As required by 807 KAR 5:001 Section 4(3), BU provides contact information for the Trustee and his Special Counsel and requests the Commission direct all communications in this proceeding to them:

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Chapter 7 Trustee for the Bankruptcy
Estate of Bullitt Utilities, Inc.
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52. The Notice required by 807 KAR 5:011 Section 8(2)(b)1 is attached as **Exhibit P**.

This Notice was mailed to each of BU's customers' on November 28, 2016 based on a customer list provided by the Louisville Water Company (the "LWC"). A revised Tariff Sheet reflecting the proposed surcharge as required by 807 KAR 5:011 Sections 6 and 9 is attached as **Exhibit Q**. The surcharge is scheduled to begin on January 1, 2017 and the filing of this Surcharge Application gives the Commission more than 30 days' notice as required by KRS 278.180.

53. The BCSD will post at its office the Notice required to comply with 807 KAR 5:011 Section 8(1)(a). A copy of the Surcharge Application will also be available at the BCSD's office located at 376 Norwood Way, Louisville, Kentucky 40229 and at the office of Holland N. ("Quint") McTyeire V, Bingham Greenebaum Doll LLP, 3500 National City Tower, Louisville, Kentucky 40202, BU's Registered Agent.

54. BU has served a copy of this Surcharge Application by e-mail or regular mail or both on the Attorney General and all other parties to the previous Surcharge Case, PSC Case No. 2014-00255, and the Mayors of Hunters Hollow and Hillview who provided public comments at the June 9, 2015 Hearing as reflected on the Service List for this Surcharge Application. BU has also served a copy of this Surcharge Application by e-mail on all persons who have entered an appearance in the Bankruptcy Case. Shortly after the filing of this Surcharge Application, BU

will provide verification under 807 KAR 5:011 Section 8(3)(a) that it has made the Notices required by 807 KAR 5:011 Section 8.

55. The Trustee is not requesting the construction of any facilities so all of the Commission's rules and regulations for that issue do not apply to this Surcharge Application.

56. 807 KAR 5:071 Section 3(2)(b) requires BU to submit a Comparative Income Statement on a Commission Form showing the Test Period per the books, revenues and expenses for BU and showing the pro forma adjustments and explaining each adjustment. A Comparative Income Statement is unnecessary for the Commission to consider in this Surcharge Application because the costs sought to be recovered have already been incurred, are non-recurring and are unrelated to BU's annual income and expenses. The Commission will be able to examine the expenses submitted by BU's two largest creditors for which BU seeks reimbursement. To the extent necessary, BU seeks a waiver of any requirement that it submit a Comparative Income Statement with this Surcharge Application.

57. 807 KAR 5:071 Section 3(2)(c) requires BU to submit a detailed analysis of any expenses in the Comparative Income Statement which represents an allocation or proration of the total expense. For the same reasons expressed above, this expense information should not be required in this Surcharge Application and a waiver granted if necessary.

58. 807 KAR 5:071 Section 3(2)(e) requires BU to provide copies of all service contracts for outside services. BU advised in its February 24, 2015 Notice of Filing it had no such contracts.

59. As required by 807 KAR 5:071 Section 3(2)(g), BU provides a detailed customer listing showing the number of BU's customers in each customer class. **Exhibit R**. BU provided a similar Exhibit with its February 24, 2015 Notice of Filing. BU advised that it did not maintain

water consumption figures for each customer and did not provide that information to the Commission.

60. As required by 807 KAR 5:071 Section 3(2)(h), BU provides a copy of an Excel Spreadsheet from the LWC showing BU's revenues for 2015. **Exhibit S.**

61. 807 KAR 5:071 Section 3(2)(j) requires BU to explain its corporate or business relationships with any parent, subsidiary or any affiliated corporations or other business entities to afford the Commission a full and complete understanding of BU and its corporate or business relationships. BU advised in its February 24, 2015 Notice of Filing it had no such relationships to disclose.

62. 807 KAR 5:071 Section 16(d) requires BU to provide an estimate of the effect the new rate will have on the revenues of BU including the total revenues and percentage of the increase. The total amount of increased revenues resulting from the surcharge is about \$2,850,000 and the total revenues over the life of the surcharge will be about \$6,230,200. The percentage increase in the rate for BU's customers is about 63% or around half of the monthly rate increase originally proposed by BU in its previous Surcharge Application.

CONCLUSION

63. BU incurred extraordinary emergency costs to treat the wastewater resulting from the catastrophic failure of the WWTP. BU requests authority from the Commission for a surcharge to be applied to its customers' bills of \$17.00 per month for 20 years to recover some of the extraordinary emergency costs incurred by BU. The Supreme Court's decision in *Public Ser. Comm'n v. Commonwealth*, 324 SW 3d 373 (Ky. 2010) confirms the Commission has the authority to allow BU to adjust its rates by imposing a surcharge.

64. The principal reason for the size of the surcharge requested by BU is because there was no agreement satisfactory for the BCSD to accept the flow of wastewater from BU

until May 27, 2015. If the Trustee recovers any other money for BU's Bankruptcy Estate from any other source, the amount of the surcharge can be reviewed.

WHEREFORE, BU requests the Commission authorize a surcharge, effective on January 1, 2017, to be applied to the monthly bills of BU's customers of \$17.00 per customer per month for 20 years to recover some of the extraordinary emergency expenses to respond to the WWTP failure.

Respectfully submitted,

/s/ Holland N. McTyeire V

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CHAPTER 7 TRUSTEE FOR BULLITT
UTILITIES, INC.

CERTIFICATE OF SERVICE

I certify that on November 30, 2016, a copy of the Application Of BU For A Surcharge And Motion To Deviate From The Commission's Rules was served via United States mail sufficient postage prepaid or by e-mail on the following:

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