

UNITED STATES BANKRUPTCY COURT
DISTRICT OF WESTERN KENTUCKY

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IN THE MATTER OF: . Case No. **15-334000**-JAL
. Louisville, Kentucky
BULLITT UTILITIES, INC. .
Debtor, .
. ADVERSARY PROCEEDING:
. NO.:
x- - - - - x

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE JOAN A. LLOYD
UNITED STATES BANKRUPTCY JUDGE

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I N D E X

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1 THE CLERK: All rise. This court is now back in
2 session.

3 THE COURT: All right. Thank you for your
4 indulgence. The sounds of drills and wires everywhere outside,
5 so let's get cracking before something happens again. I've got
6 the appearances. Has anything changed?

7 THE CLERK: Do you want them to redo their
8 appearances?

9 THE COURT: Please redo the appearances because it
10 wasn't working.

11 MR. KEATS: Robert Keats, Trustee, along with Quint
12 McTyeire and also Jim Irving.

13 MR. MCGHEE: Your Honor, James McGhee appearing on
14 behalf of the Bullitt County Sanitation District in its
15 capacity as receiver. With me today is Rob Flaherty, Assistant
16 County Attorney for Bullitt County, Jerry Kennedy, the District
17 Manager, and Chuck Callahan, the Chair of the Board of
18 Commissioners.

19 MR. CHANDLER: Kent Chandler on behalf of the
20 Attorney General.

21 THE COURT: And it's noted that you were not late.

22 MR. CLEVELAND: Daniel Cleveland on behalf of the
23 Energy and Environment Cabinet. And appearing with me is Lena
24 Seward.

25 THE COURT: Okay. Now we're ready to go. Mr. Keats,

1 my apologies.

2 MR. KEATS: Thank you, Judge. We're finally here.
3 This is a case that seems to keep on going. But the Trustee is
4 here on the expedited emergency motion of the Trustee seeking
5 entry of an order enforcing the automatic stay ordering the
6 Bullitt County Sanitation District as a custodian to provide
7 service to the debtor's customers and to also prohibit the BCSD
8 from disconnecting or discontinuing service to the 700 plus
9 customers of which it is serving even prior to the time which
10 the Trustee was told that it would seek an emergency. Back on
11 September 2nd the Trustee was advised that Rob Flaherty who is
12 a Bullitt County attorney will be seeking an emergency order
13 from the Franklin Circuit Court in an effort to try to
14 terminate the receivership that was set into motion by that
15 Court earlier last year.

16 But anyway, we have certain issues that simply
17 because this motion was filed on Friday morning, we had to go
18 ahead and do something, and that was to file the expedited
19 emergency motion. They filed theirs sometime early in the day,
20 we filed our response in an expedited emergency motion late on
21 in the day.

22 This follows a meeting. Now of course back on
23 September 2nd we were advised that Rob Flaherty was going to
24 seek this emergency order. However, I did respond to that to
25 an email from Charity Neukomm that says look, I haven't had the

1 opportunity to talk to you all or at least try to begin to
2 cobble out some type of agreement to the extent that I could
3 even do that until now. So, we did set up a hearing or a
4 meeting among ourselves which lasted about two hours on last
5 Thursday, and discussed the issues that are confronting both of
6 us.

7 The meeting was quite productive, to me anyway.
8 Learning about what their problems were. And I'm not sure if
9 they're really appreciative of the problems that I had as being
10 the Trustee, or what would happen if they were to
11 automatically, or if the Franklin Circuit Court were to go
12 ahead and enter an order that the Trustee is going to become
13 now the new receiver of the Bullitt Utilities Collection
14 System. I think that that would have been very difficult,
15 because I think it would put at risk the health, welfare and
16 safety of residents of Hunter Hollow and would jeopardize
17 whether or not they're actually going to continue on to receive
18 sewer services from the Bullitt County Sanitation District.

19 We did have -- And although the Trustee formulated
20 some things that he wanted in the agreement, I think that we
21 were getting hung up on some issue about whether or not there's
22 going to be some cooperation from the BCSD in order for the
23 Trustee to try to achieve his objectives. And of course one of
24 those objectives was to pursue before the public service
25 commission, his surcharge claim and to also incorporate in

1 that, from what I've heard from the hearing on Thursday,
2 incorporate the possibility of BCSD also recovering some of the
3 costs that it incurred in the initial collection of the, I
4 guess the initial connection of the collection system from BU
5 to the BCSD.

6 We thought that we could have some kind of an idea,
7 some agreement toward the end of day. But I think it became
8 very plain to me that because of what I learned at the meeting
9 between us that Thursday morning and from looking back through
10 the records that I have from the BSE and all those hearings,
11 that there may be some other entities that need to be involved
12 in the preparation of an agreement between the BCSD and BU.
13 And those entities I think would include the Natural Resources,
14 or actually the Environmental and Energy Cabinet, perhaps the
15 PSC, perhaps even the Attorney General. Because I think all of
16 our interests deal with these kind of issues which are coming
17 forth in the BCSD BU matter. And those have to do with some
18 regulatory requirements.

19 We learned that BCSD has not been meeting its
20 Kentucky, I guess pollution discharge elimination system
21 permits. They've been in some violation. Which means that
22 whatever the flow is coming from, the 107 customers within the
23 Hunters Hollow area and beyond, that perhaps it's not even
24 capable of treating all that. There are some problems with the
25 small treatment plants operating even within the Bullitt County

1 area. There's just not a sufficient capacity for them to do
2 that. I think we know that. We knew that before, and I think
3 they knew that at the time, that the 700 customers were from
4 Hunters Hollow were actually connected up to them.

5 I want to try to resolve that issue. The Bankruptcy
6 Court was requested primarily from the public service
7 commission which says look, you guys, you Bullitt Utilities
8 Trustee, you go back to the Bankruptcy Court and seek a
9 clarification of what the Trustee's authority is and things
10 like that. And that was done. The Trustee did, or the Court
11 did enter its opinion and order back on September 1st. But
12 apparently that's created enormous amount of confusion with
13 BCSD as to what that said.

14 Part of what we did at that meeting on that past
15 Thursday was to maybe talk about that and see what the limits
16 are. But I think that BCSD said Keats, we're going to turn
17 this over to you. And I said look, I'm a trustee, I'm in a
18 small office, one person. I don't know that that's going to be
19 really appropriate. I don't think it's going to be helpful, I
20 don't think it's going to lead me into operating a company that
21 wasn't actually authorized to do so as I was appointed the
22 trustee in the case.

23 So anyway, these are the kind of issues that are of
24 concern to me. Also the issues too with the early termination
25 of the Hunters Hollow connection by BCSD might also trigger a

1 potential penalty from the Department of Environment and
2 Energy.

3 There's lot of whole issues that if the Trustee is
4 now going to be totally responsible for all these things there
5 has to be some permeating, there would have to be some changes
6 in maybe some control and all that. But again, the trustee
7 really was not directed to run an operating Chapter 7. And
8 what's that what this would become.

9 We did have a hearing before the Franklin Circuit
10 Court and I spoke in opposition to the presentation made by Rob
11 Flaherty who is one of the assistant attorneys for the Bullitt
12 County. And what's also interesting during that time, the
13 Court asked anybody else who was there who wanted to make some
14 presentation, and those there included the Department of
15 Environment and Energy. Also the attorney general made some
16 presentation also. And the representative Mr. Spenard from the
17 Public Service Commission was also there.

18 And aside from all that, the Court was looking for,
19 you know, what to do and that the parties had already, I think,
20 each one of us had presented an order for the Court to sign. I
21 suggested the Court sign my order because it contained a couple
22 of aspects which I thought might be important. One was that
23 this matter be held in abeyance subject to any further order of
24 the Bankruptcy Court. And the Court agreed to that.

25 But also within my order, tendered order, and I have

1 not seen an order yet from the Franklin Circuit Court, but to
2 encourage the parties to accomplish an agreement that is
3 mutually beneficial to BCSD/BU. And now I think we also
4 incorporate the issues that the other regulatory parties also
5 have.

6 It was interesting to me, and I think to those who
7 were with me that day that some representatives of Metropolitan
8 Sewer District happened to be there. And I think they just
9 happened to be there actually. But anyway, we had some
10 discussion with them and found that what they were saying about
11 the connection possibilities from this community and others
12 within the Bullitt County area was possible. And to me, I've
13 always heard that it was not, and that MSD was somewhere about
14 four years away. MSD represented that under certain conditions
15 with cooperation of Bullitt County and also with the Bullitt
16 County Sanitation District that things could be done maybe in
17 less than a year.

18 But of course a lot of this has to be done in the
19 form of, I think an appropriate agreement that not only
20 involves the BCSD and BU, i.e. the trustee in this case, but
21 also will have to, in my opinion, need to involve the interest
22 of also the regulatory bodies. And then also MSD needs to also
23 join in. I think that's the ultimate solution here, and would
24 like to go ahead and proceed on in that light.

25 In regard to the other arguments I think in the case,

1 the rejection is rejection. But, you know, in this kind of a
2 thing I think that I was quite satisfied with the Franklin
3 Circuit Court's order and appointing the BCSD as the receiver.
4 And in that order there were certain provisions, and one of
5 those, I believe item 4 which is a normal kind of a, which I
6 think is a normal kind of an order for appointing somebody as a
7 receiver to keep accounts, collect the rates, and things like
8 this.

9 But the most interesting part to me, as I think I
10 discussed with the Court prior, was to pay the reasonable and
11 necessary expenses already or hereinafter incurred as a result
12 of either connections or whatever.

13 Now, in accordance with the initial order or the
14 initial agreement that the parties had, there were provisions
15 in there where some portion would come back to Bullitt
16 Utilities. And that never happened. And so far in regard to
17 the Franklin Circuit Court's order appointing them as the
18 receiver, none of those necessary expenses already incurred had
19 been paid back to any of the creditors. So I was quite
20 interested in retaining that portion of the order.

21 Now, I think the upshot is that the Franklin Circuit
22 Court yesterday decided to -- Well, I don't have a copy of the
23 order yet but I believe that it will and did say that it would
24 hold this matter in abeyance until such time as there are
25 further orders entered by the Court. And I would encourage

1 them also to -- encourage that the trustee and BCSD and others
2 necessary, I think in order to formulate some kind of an
3 agreement between the parties that I think will be mutually
4 agreeable, I think will be mutually beneficial, and I think
5 will also help cure many of the problems.

6 Now, even before -- I think that our break was
7 beneficial to me because I did kind of walk around and see is
8 there any disagreement in trying to go to MSD to conduct a
9 meeting. And of course a lot of the folks from BCSD have been
10 this route before, they say. But from the representations made
11 by the MSD personnel that were at the Franklin Circuit Court
12 hearings, it seemed to me like they've been thinking about
13 this. They went out of their way to come to the hearing. They
14 weren't told about it, but I think they found their way there.

15 And I think that that is at least a step, a critical
16 step in moving this thing along. It's not simply the agreement
17 between BCSD or the Bullitt Utilities. I think it embodies, if
18 we're going to have a successful agreement, I think it embodies
19 the interests of a lot of other persons. And I would encourage
20 the Court to at least order that be done.

21 As far as the other provisions that were contained
22 within the expedited order about enforcing the automatic stay
23 or ordering BCSD to remain as custodial, I think the Franklin
24 Circuit Court has probably done those kinds of things already
25 for us. So it is holding, and I would --

1 THE COURT: Let me -- Hold the phone. So you think,
2 even though you don't have an order, the way you heard that
3 Franklin Circuit Court just wants to make sure that this Court
4 is not asserting authority over these issues. And it will pick
5 up the ball and probably force the parties to enter into some
6 kind of an agreement.

7 MR. KEATS: That was my interpretation of the
8 Franklin Circuit Court order, that all proceedings before the
9 Franklin Circuit Court with relation to all matters concerning
10 Bullitt Utilities and the Bullitt County Sanitation District
11 are stayed pending further orders --

12 THE COURT: In deference to this Court's authority.

13 MR. KEATS: Yes.

14 THE COURT: But after -- whatever this Court decides,
15 if the ball flies back into his Court --

16 MR. KEATS: It could.

17 THE COURT: -- he's going to pick it up.

18 MR. KEATS: That's right. Should the Court make that
19 decision. But I think the Court also recognizes that turning
20 it over to the trustee is not going to solve the problem.
21 Turning it over to the trustee simply to operate and maintain
22 the system won't. But the key part of the trustee would be
23 that okay, try to put together an agreement. An agreement
24 though, I think in my estimate, would have to include the
25 interests of other parties which I would like to also make

1 binding within the agreement. And should there be any
2 agreement between BU and BCSD and I think it's really a matter
3 of course too that that agreement must be approved by the
4 Environment and Energy Cabinet.

5 So I think there's a lot of things churning here.
6 And I think that the agreement would also be beneficial also in
7 our attempting to pursue our surcharge claims. I've told BCSD
8 that to the extent that there's additional costs, and we talked
9 about some additional costs at the time of the collection
10 system connection, that perhaps could be incorporated in that.
11 But I need some experts to help me along in this way. And of
12 course the trustee will of course require assistance in these
13 efforts, and we'd like the Court to approve the application to
14 employ the Greenebaum firm who has been very helpful to the
15 trustee as this case has been going along.

16 So anyway, I propose another meeting, a very serious
17 meeting in an effort to involve as many parties as it can to
18 work through this property. I mean work through the problem
19 and their property. But you know, it involves a lot of
20 interests. And my concern about it I think goes beyond my
21 requirements as a bankruptcy trustee to try to cobble something
22 together that will be beneficial and be of value I think to the
23 customers of the BCSD, be beneficial to the community that
24 seeks the sewer services.

25 You know, water and sewer services are the most

1 critical things that we need to ensure our health, welfare and
2 safety. So think these are very important things and I think
3 that I can probably -- I think I can accomplish that part
4 anyway.

5 THE COURT: All right. Who's next? Who wants to
6 speak next? Are you just going to stand there? That's okay.
7 Did you have something else you wanted to say?

8 MR. KEATS: No, I don't, Judge.

9 THE COURT: I don't want to hurry you away.

10 MR. KEATS: Okay. Thank you.

11 THE COURT: I mean, you were waiting for me to have
12 -- I have plenty of commentary but I think I'll wait until the
13 end.

14 MR. KEATS: All right. Sure.

15 MR. MCGHEE: Good morning, Your Honor. James McGhee
16 appearing on behalf of Bullitt County Sanitation District in
17 its capacity as the receiver. Your Honor, we've been trying to
18 comply with the Court's order. We've attempted to reach an
19 agreement with the Trustee to operate on the ground under the
20 Trustee's authority. So day to day nothing would change from
21 the receivership when the Franklin Circuit Court said that the
22 receiver was charged to preserve, protect, control, manage,
23 maintain and care for the assets of the debtor, to when this
24 Court said the Trustee has the sole authority and control of
25 the assets.

1 THE COURT: That isn't what the Court said.

2 MR. MCGHEE: Your Honor, the order that was entered
3 on September 1st, an actual order on page 12 provides that all
4 the debtor's assets, including the surcharge claim, and it
5 references the PSC case number, are part of the debtor's
6 bankruptcy estate and are under the sole control and authority
7 of the Trustee.

8 THE COURT: Recognizing that there's an existing
9 contract between BCSD and the debtor to provide the services.
10 I know your rejection argument. But I know you know better,
11 rejection does not mean termination.

12 MR. MCGHEE: But Your Honor, and we are not
13 attempting to terminate the contract.

14 THE COURT: Yes you are.

15 MR. MCGHEE: What we are attempting to do is have --
16 There are two separate sources of authority and obligation for
17 BCSD, one in its capacity as the receiver. The receiver is
18 charged with actually operating it. The receivership is not a
19 contract. The contract --

20 THE COURT: You know, you're going to -- How many
21 angels can dance on the head of a pin? That's your argument.
22 You know, I understand that all the parties here who practice
23 law in the regulatory arena or in the state and county
24 government probably aren't aware of the little details because
25 it's just not what they do every day. Just like we don't deal

1 with the little details on regulatory matters every day. But
2 the contract that was presented by the Trustee between Bullitt
3 Utilities and BCSD did provide for treatment and carrying
4 forward of the operational capacity that the debtor had to its
5 customers.

6 MR. MCGHEE: And BCSD wants to continue treatment,
7 Your Honor. Right now though BCSD has been threatened for
8 failing to turn over assets of the estate in various pleadings
9 and for violating the stay.

10 THE COURT: Well, what assets were threatening? It's
11 the chosen action. It's a chosen action that your client has
12 articulated repeatedly that it is not going to press. It
13 cooperated -- In my opinion it's pretty clear. We spent a lot
14 of time on that. What BCSD and the Attorney General have done
15 is make the decision to terminate any recourse by the creditors
16 of BU to even have those claims determined. Right, up, down --
17 it's not this Court's job to decide that. That's another
18 Court's job. But what --

19 You know, BCSD has done a pretty comprehensive job of
20 standing in the way of any hearing of whether or not those are
21 valid and legitimate enforceable claims as against the
22 recipients of these sewer services.

23 MR. MCGHEE: Your Honor --

24 THE COURT: That's the only thing that the Trustee
25 has tried to assert authority over. And BCSD -- You know, what

1 my opinion acknowledged is that there is an existing contract
2 and there is a receivership. Franklin Circuit Court knows much
3 more about how that operates than this Court. The Court never
4 said, I never said in my opinion that the Trustee and the
5 Estate of BU was going to take control of operations such as
6 the sewer treatment. It was only going to take control of the
7 chosen action.

8 MR. MCGHEE: And Your Honor --

9 THE COURT: Recognizing that this contract goes
10 through what, November, early December?

11 MR. MCGHEE: December, Your Honor. But the contract
12 though, we are not terminating. It's an executory contract
13 that's been rejected. The contract would be with the debtor
14 and the Trustee would have responsibility for directing BCSD on
15 that contract.

16 THE COURT: That's not what rejection means.

17 MR. MCGHEE: Well, on the receivership though --

18 THE COURT: And that's not what my opinion meant.

19 MR. MCGHEE: On the receivership though, Your Honor,
20 we don't have any choice to obey the Trustee. Even in the
21 Trustee's tendered order --

22 THE COURT: I'll tell you what you don't have the
23 choice of doing, is terminating a contract. Because Section
24 362 prohibits what you're trying to do in another forum. You
25 don't have stay relief to terminate a contract. Even if it's

1 been rejected it's not terminated.

2 MR. MCGHEE: That contract, we have not sent a notice
3 of termination. We're not trying to turn off the flow, Your
4 Honor. But the Trustee in his order that he's proposing to the
5 Court asks for turnover, among other things, of the cash of the
6 debtor to the Trustee. And so again there's a conflict between
7 --

8 THE COURT: Well, I haven't ruled on that motion. If
9 he's asking for cash that BCSD needs as receiver to fulfill its
10 responsibilities to the Franklin Circuit Court and under this
11 contract then the Court will get to that.

12 MR. MCGHEE: Thank you, Your Honor. In the Court's
13 opinion it noted and quoted the PSC staff opinion that provides
14 that the assets of the utility are under the sole control and
15 responsibility of the receiver. We don't want to operate
16 assets of the estate, which is what the Court said in its
17 order, without some agreement with the Trustee that this is
18 appropriate.

19 THE COURT: You do have an agreement.

20 MR. MCGHEE: Only at the time when the Trustee has
21 now said that the receivership should remain in place. But
22 otherwise though the Trustee would not say if the pipes in the
23 ground that belong to Bullitt Utilities were now property of
24 the estate. When the receiver incurs indebtedness --

25 THE COURT: Let's apply some commonsense here. BCSD

1 has the authority from the Franklin Circuit Court under a
2 receivership order. It has the authority and the
3 responsibilities, the benefits and the burdens of the contract
4 with BU to provide these services. It is getting money from
5 the customers. I'm not sure how the finance works, but BCSD is
6 not working for free, is it?

7 MR. MCGHEE: BCSD has two responsibilities --

8 THE COURT: One of your lawyers is saying it's
9 working for free. Well, what are the customers -- where is the
10 money that the customers pay going?

11 MR. MCGHEE: The money the customers pay is going
12 into the receivership account. And the receivership is
13 managing that money and paying the expenses out of that.
14 Separately the contract provides that 20 percent would go
15 towards BU, back when BU was operating. And the 80 percent
16 would go to BCSD to pay for the treatment at the end of those
17 pipes. But that 20 percent that the contract allocates to BU
18 has not been sufficient. And so in the interim --

19 THE COURT: All right, so that's --

20 MR. MCGHEE: -- the receivership has been --

21 THE COURT: -- what you're saying Mr. Keats wants to
22 get his hands on, that 20 percent.

23 MR. MCGHEE: I'm not sure if Mr. Keats wants to get
24 his hands on the 100 percent or not, but the receivership --

25 THE COURT: No, 20. So you're saying the

1 receivership order upset 80 percent of the monies collected and
2 put it in the receivership account are for operations, 20
3 percent were going to go to BU.

4 MR. MCGHEE: No, Your Honor. That is the contract
5 preexisting the receiver order that provided, back when Bullitt
6 Utilities, not the receiver, had operational control. The 20
7 percent to BU to operate and 80 percent would be to BCSD to pay
8 for the treatment of the wastewater. But now that the
9 receivership is in place, BCSD is in a position where both
10 controls the cash and, as receiver, and then is obligated by
11 contract to pay itself. And it has not fully paid itself,
12 instead has been paying more than the 20 percent to pay for the
13 operations of the facilities.

14 THE COURT: Okay. So the receivership is operating
15 at a deficiency.

16 MR. MCGHEE: Yes. But --

17 THE COURT: Why?

18 MR. MCGHEE: I'm sorry?

19 THE COURT: Why?

20 MR. MCGHEE: There is not sufficient money to pay the
21 80 percent --

22 THE COURT: Why?

23 MR. MCGHEE: -- of the revenue.

24 THE COURT: Why? Because the rate is inadequate.
25 The rate is inadequate. That is not this Court's bailiwick.

1 The rate is inadequate for the services you're saying that
2 BCSD, as a contracting party and as a receiver is -- It's
3 obligated to do these things but it's operating in the red,
4 which explains a lot about BCSD's position. It's not getting
5 paid enough.

6 MR. MCGHEE: The receivership is operating in the
7 red, absolutely Your Honor. And that's where we, as receiver,
8 could not disburse the funds after the Court put them under the
9 sole control and authority of the Trustee. And the Court's
10 order, even though it noted --

11 THE COURT: Well, I'm going to clarify that. The
12 debtor, BU clearly has title to its assets. But to the extent
13 that the Franklin Circuit Court, under an order that this Court
14 is honoring, is the point of BCSD as the receiver and believes
15 that this contract is still in existence, then BCSD needs to
16 control that cash necessary to operate.

17 The only thing that the Trustee has requested the
18 authority to pursue is the chosen action that creditors have
19 against or through the PCS to have their claims asserted
20 against, appropriately against BU and in the -- the surcharge
21 process. Totally out of this Court's bailiwick. It's simply a
22 chosen action. And if what you're saying is the confusion
23 that's been created is the way I drafted my opinion and order,
24 then I'm going to clarify it.

25 And the clarification is this. The Trustee is only

1 asserting the right to manage that asset to find out if it is
2 good or bad, I don't know, valid and enforceable. The Court
3 never intended, and I don't think the Trustee ever articulated
4 that it was going to control the cash and the operations
5 necessary to run the receivership.

6 MR. MCGHEE: As long as the receivership remains in
7 place and we're authorized to act under the Franklin Circuit
8 Court's order, Your Honor, then we have no more issue.

9 THE COURT: Well, this Court is -- All this Court is
10 trying to make clear to everybody is there's only one asset,
11 and if I was -- I've got to tell you, I really worked pretty
12 hard on this opinion. I didn't realize there was an ambiguity.
13 And here's the thing. The receiver is the receiver until the
14 Franklin Circuit Court says otherwise. The contract between
15 BCSD and BU, whatever the terms are, the rejection did not
16 terminate it. Rejection is not termination.

17 It is what it is, however, according to State law.
18 And that could be either litigated here or it could be
19 litigated in a, probably a better forum so that all the issues
20 are in front of the Franklin Circuit Court or PSC. I'm not
21 sure where you all will take that. But no, the Trustee does
22 not, under my order, did not get the authority for everything.
23 He has -- As the Trustee he is the fiduciary designated by law
24 to hold title. But that doesn't necessarily mean control.

25 Remember the bundle of sticks? Those of us who went

1 to U of L Law School, the bundle of sticks? I don't think they
2 do it in every law school. But Trustee has title which is part
3 of the bundle of sticks. Control and operation and cash from
4 the receivership is controlled by BCSD until the Franklin
5 Circuit Court says otherwise.

6 MR. MCGHEE: Thank you, Your Honor.

7 THE COURT: Is there any other issue today? The
8 Court is not going to enter an order -- I mean, there is an
9 automatic stay. Is there something that you all think that the
10 Franklin Circuit Court needs from me other than the clear and
11 unambiguous statement that there is an automatic stay that
12 prohibits the termination even of a rejected contract? That
13 would require stay relief. If you seek to terminate that
14 contract then you've got to come back here and get stay relief.

15 When that contract terminates by its natural term,
16 well then it goes away. But if there's going to be litigation
17 over whether that contract exists, then you need stay relief
18 from this Court. I would say that that would be necessary
19 because it's going to be the Franklin Circuit Court is going to
20 decide it. Your Judge there knows a lot more about the details
21 of operations of a utility than this Court, because they're the
22 designee Court. So the automatic stay exists and it protects
23 even a rejected contract. Because BU has the right to enforce
24 those terms against BCSD, just as BCSD has the right to enforce
25 the terms against BU. But that's for litigation elsewhere.

1 So the stay is in effect, the State Court never
2 intended -- You know, what I said was the Trustee was going to
3 take charge of this chosen action to determine whether or not
4 it had any legs on it, legal legs. But the Court, you know,
5 identified the contract and the receivership recognizing the
6 authority of the Franklin Circuit Court. And the right of BCSD
7 to possess and manage those assets during the pendency of this
8 case. At least until they expire by the stated terms or the
9 Franklin Circuit Court decides otherwise.

10 MR. MCGHEE: Thank you, Your Honor.

11 THE COURT: Is anybody in the room that's unclear?
12 Mr. Chandler?

13 MR. MCGHEE: Well, Your Honor, the receivership
14 though wouldn't expire when the contract does.

15 THE COURT: I understand that.

16 MR. MCGHEE: Okay.

17 THE COURT: I understand that there are two methods
18 or two statuses by which BCSD is operating. One is under this
19 contract and the other is under the receivership. Both of
20 which this Court has no interest in interfering with the
21 Franklin Circuit Court in its determination on that except that
22 the termination of the contract would -- you'd have to get stay
23 relief. Termination of the receivership is totally up to --
24 that's not this Court's bailiwick.

25 MR. MCGHEE: Thank you, Your Honor.

1 THE COURT: Does that make sense? Well, you
2 understand. I mean, you might have to explain to people who
3 don't get in here every day. I mean, understand, if you don't
4 come in here every day some of this may sound like, you know,
5 I'm saying it backwards.

6 MR. MCGHEE: Yes, Your Honor. My understanding from
7 the Franklin Circuit Court was it would not terminate the
8 receivership unless the Court explicitly directed it to. I do
9 have copies of the video if the Court would like to review it.
10 But we'll get the order shortly.

11 THE COURT: Is it Judge Graham?

12 MR. MCGHEE: Judge Wingate.

13 THE COURT: Wingate. Okay. I don't really know
14 them, I just read about them in the paper. I am confident that
15 they know more than I do about whether that receivership is the
16 right thing for BU and rate payers and the homeowners that are
17 entitled to the services. This Court is not going to tell them
18 what to do.

19 MR. MCGHEE: I believe fortunately Judge Wingate used
20 to work for the Energy and Environment Cabinet, so he has some
21 experience with this issue.

22 THE COURT: Well, he's probably going to strong
23 everybody into now settling. Now that you can stay away from
24 here.

25 MR. KEATS: Judge Wingate was quite cognizant of the

1 whole issue, Judge. And I think we just have to rely upon his
2 order. Once we get that, we'll submit a copy off to the Court.

3 THE COURT: All right. Now, Mr. Chandler, did he
4 answer your questions?

5 MR. CHANDLER: To be honest, I have more questions
6 than I do answers these days.

7 THE COURT: That's all right.

8 MR. CHANDLER: I want to apologize for being late
9 today. But I guess the Attorney General's issue was, and I
10 don't want it to be misconstrued from the beginning, the reason
11 we were asking weeks ago for it to go to Franklin Circuit is
12 because we aren't fully -- we don't know what will happen if
13 Mr. Keats as trustee, who has legal title to the assets which
14 includes that chosen action, if he shows up to the PSC asking
15 for an increase in rates whether that be a surcharge or not,
16 whether or not the current receivership and FCC where it
17 statutorily says that BCSD as receivership, is in charge of the
18 chosen actions. That's what we were hoping today for the
19 customers to get a little bit of clarity on that.

20 THE COURT: Well, I understand State law may be
21 impacted somewhat on this. But it's abundantly clear under
22 Federal law, and this is -- there's nothing murky under Federal
23 Bankruptcy law that when there is a bankruptcy and there is a
24 trustee and there is a chosen action, or -- You know, but for
25 the receivership and this contract, the debtor would control

1 everything. But the debtor really doesn't and doesn't -- All
2 the debtor wants to do or wants to control is that chosen
3 action. Federal law trumps State law when it comes to this.
4 Okay? And the reason is pretty simple, is the Constitution.

5 MR. CHANDLER: I understand.

6 THE COURT: It's ratification constitution by the
7 State is basically laws affecting bankruptcy. Federal
8 controls. Other than that, when it comes right down to the
9 real serious issues, there are some serious issues in this case
10 having to deal with regulations over water and water safety and
11 discharges --

12 MR. CHANDLER: Continuity of service. Absolutely.

13 THE COURT: This Court -- That's not me. We don't
14 get it. Okay? We might, but I don't need that kind of
15 education. There's a whole bunch of people that understand
16 that. That's what they do. So just so you know, I mean it's
17 pretty clear the Constitution, when it comes to something the
18 Federal law clearly has authority over, and it's who has title
19 to this chosen action and it is the Trustee.

20 MR. CHANDLER: Okay. Thank you.

21 THE COURT: All right? Anything else today? Now, I
22 need a new tendered order that's just trimmed down, shaped up,
23 doesn't have any fluff in it that just simply tracks that, you
24 know, so the Franklin Circuit Judge understands. This Court is
25 saying that while there may -- Excuse me.

1 The automatic stay is still in place, protecting
2 against any actions to terminate contracts of the debtor before
3 their stated term. That the Trustee -- Some kind of an
4 explanation of my order that all the Court was saying is that
5 the Trustee is entitled to assert control over the chosen
6 action in the State Court forums. Nothing fluffy. Don't put
7 any hooks in it. I just want to make sure that when you all
8 take it back and out of deference run it by him so that -- But
9 no hooks. It's just simple. Make sure the Franklin Circuit
10 Judge and PSC understands that this Court is in every way
11 except those points, is deferring to those forums. Okay?

12 MR. KEATS: Thank you, Your Honor.

13 THE COURT: You all got that? You understand?

14 MR. MCGHEE: Yes, Your Honor.

15 THE COURT: Okay. So sorry it took so long. Did I
16 tell you there were drills going on -- there's drills. There's
17 men on ladders and there's wire all over out here.

18 MR. IRVING: And Your Honor, I just did have one
19 question. As regard to FCC's ruling on the pending motion to
20 terminate the receivership, you're saying that that can proceed
21 for the FCC?

22 THE COURT: Yes. Because the receivership is a
23 custodial. That would be -- I mean, it's conceivable that
24 under 543 this Court could decide the same thing under the
25 custodianship. But the Court is not -- It's just so much

1 better to go to Franklin Circuit Court because frankly they
2 understand -- they can actually put pressure on the parties to
3 maybe come together.

4 The reason why the stay -- And to the extent that
5 there's any construction the stay would be modified to allow
6 the Franklin Circuit Court to hear that. Because I think what
7 I heard is that there was a question as to whether or not they
8 had control of the cash coming in to pay debt. And that's
9 probably why they want to terminate it. If you thought you
10 weren't getting paid that's not right. The receiver is
11 entitled to continue to be -- modify the stay.

12 Say the Court modifies the stay to allow the Franklin
13 Circuit Court to hear issues arising out of the receivership
14 order so that, you know, BCSD can air its, whatever, its
15 controversies. Again, don't go off the beam. But the point is
16 I think the Franklin Circuit Court, if there's an issue and
17 BCSD is getting enough money or hasn't been able to -- it needs
18 the right to hear that. Okay?

19 MR. IRVING: Thank you, Your Honor.

20 THE COURT: Tender me an order that you all can't
21 disagree on, that's just plain vanilla. Okay?

22 MR. KEATS: Okay, Judge.

23 THE COURT: All right. You all have a great day.

24 MR. KEATS: Thank you.

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I, Susan Walsh, court approved transcriber, certify that the foregoing is a correct transcript from the official digital audio recording of the proceedings in the above-entitled matter.

/S/ SUSAN WALSH

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