

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

IN THE MATTER OF:

ELECTRONIC APPLICATION OF BULLITT
UTILITIES, INC. FOR A SURCHARGE

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CASE NO. 2016-00401

**REPLY OF BU IN SUPPORT OF ITS RESPONSE TO THE LEGAL
ISSUES IDENTIFIED IN THE COMMISSION’S DECEMBER 29, 2016 ORDER**

Bullitt Utilities, Inc. (“BU”), by Robert W. Keats, Chapter 7 Trustee for BU (the “Trustee”), files this Reply in Support of its Response to the Legal Issues identified in the Commission’s December 29, 2016 Order (the “Order”), as allowed by 807 KAR 5:001 Section 5(3), and to address the Responses filed by the Attorney General (the “AG”) and the City of Hillview. Neither the AG nor Hillview recognize the relationship of the Bankruptcy Court (“BK Court”) Orders to the Franklin Circuit Court (the “FCC”) Receivership Case Order. In the case of the AG this omission is surprising given the lengthy exchange between counsel and the BK Court on the issue. The relationship of the BK Court Orders and the FCC Receivership Case Order is outside the Order but permeates all arguments raised by the AG and Hillview and dictates all arguments be addressed in this Reply.

I. THE CONFUSION ALLEGED BY THE AG BETWEEN THE BK COURT ORDERS AND THE FCC RECEIVERSHIP CASE ORDER DOES NOT EXIST.

The AG contends BU’s current status as a utility governed by the Commission does not fully address its ability to file the Surcharge Application. AG’s Response at 2. The AG continues:

The real confusion stems from the effect of [BU’s] ongoing Bankruptcy case on the abandonment and receivership which are governed by state law. Contrary to the Trustee’s claims, the Bankruptcy Order provides no clarity on this point. The

Bankruptcy Court offers no resolution between its ruling that the Trustee controls the chose in action (referred to as the “surcharge claim”) and its subsequent holding that the Order is not intended to alter anything regarding the Franklin Circuit Court Order establishing [the BCSD] as receiver. The conflict is particularly troubling considering the Franklin Circuit Court’s Order must follow KRS 278.021(6), which grants the receiver power to bring or defend any cause of action on behalf of the utility as the court may authorize.

Id. at 2-3.

The issue raised by the AG is outside the Order. The AG’s claim that the BK Court Orders provide no clarity on the relationship between the orders of the BK Court and the FCC is false. Ironically, the exchange between the Assistant AG, who is the signatory to the AG’s Response, and the BK Court during the September 14, 2016 Hearing demonstrate the relationship of the BK Court Orders and the FCC Receivership Case Order and shows there is no conflict between them. The AG’s current attempt to assert a conflict where none exists finds no support. The entire exchange between the AG and the BK Court is below:

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

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

THE COURT: That’s all right.

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

THE COURT: Well, I understand State law may be impacted somewhat on this. But it’s abundantly clear under Federal law, and this is -- there’s nothing murky under Federal Bankruptcy law that when there is a bankruptcy and there is a trustee and there is a chose [] [in] action, or -- You know, but for the receivership and this contract, the debtor would control everything. But the

debtor really doesn't and doesn't – All the debtor wants to do or wants to control is that chose[] [in] action. Federal law trumps State law when it comes to this. Okay? And the reason is pretty simple, is the Constitution.

MR. CHANDLER: I understand.

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

MR. CHANDLER: Continuity of service. Absolutely.

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

MR. CHANDLER: Okay. Thank you.

Bullitt Utilities Inc. 15-34000-jal, Transcript, September 14, 2016, pp. 27-28. **Exhibit A.**

Hillview contends that because the Trustee did not ask the FCC to withdraw the FCC Receivership Case Order or seek an order from the BK Court transferring possession and control of all BU's assets, the Trustee cannot file the Surcharge Application. Hillview's narrow view of the BK Court Orders is wrong and contradicted by the above exchange in the BK Court. The discussion between the AG and the BK Court confirms the Trustee controls anything related to the Surcharge Application and there is no conflict between the BK Court Orders and the FCC Receivership Case Order.

II. THE ALLOCATION OF ANY SURCHARGE PROCEEDS EXCEEDS THE ORDER.

By footnote 29 on page 9 of its Response, the AG takes issue with how any proceeds from a Surcharge are divided, and challenges the Trustee's ability to prevent certain creditors from getting any proceeds from the Surcharge. This contention exceeds the Legal Issues raised

by the Commission. BU's Surcharge Application listed the creditors intended to be repaid but conceded the ultimate distribution of any Surcharge is subject to the jurisdiction of the BK Court. Surcharge Application at 13, ¶¶ 43-44.

III. THE AG IGNORES THE CEDAR HILLS ABANDONMENT ORDER.

The AG asserts BU's status as a utility is fundamentally altered by the abandonment. The AG ignores the Commission's April 11, 2016 Order in the Cedar Hills Abandonment Case (PSC Case No. 2015-00100), attached to the Trustee's Response as Exhibit A, in which Cedar Hills "disclaimed and renounced any and all interests in the utility assets" (similar to BU), yet Cedar Hills remained a utility subject to the Commission's jurisdiction. Order at 3. The Commission imposed no limits on the ability of Cedar Hills, either on its own or through a receiver, to act as a regulated utility. Similarly, BU has the same rights now that it had before the Abandonment and Receivership Cases and the only difference is who can act for it.

The AG's conclusion that the Trustee's failure to address the "fundamental ways in which abandonment alters the status of a utility under state law" circumvents the limitations the Commission's finding of abandonment places on BU and the Trustee is wrong. AG's Response at 4. The AG's conclusion is directly contradicted by the Cedar Hills Abandonment Case Order entered less than one year ago.

Hillview argues that the Cedar Hills Abandonment Case Order does not support the Trustee because it does not expressly state Cedar Hills could request a surcharge. Hillview not only ignores the relationship of the BK Court Orders and the FCC Receivership Case Order, but the broad scope of the Cedar Hills Abandonment Case Order.

IV. THE AG INCORRECTLY CLAIMS BU CANNOT FILE A TARIFF.

The AG argues that BU has no right to file a Tariff. The AG again relies on the finding of abandonment to argue the Trustee has no right to file a Tariff because BU has no similar right.

This claim by the AG is incorrect. The AG continues that the Trustee only relies on BU's legal title for its right to file a Tariff which is false. Again, the AG does not understand that the supremacy clause eliminates any conflict between the BK Court Orders and the FCC Receivership Case Order as it relates to the Surcharge Application. The Trustee relies on BU's rights as a utility defined in the Cedar Hills Abandonment Case Order and the BK Court Orders as amplified by the discussion between the AG and the BK Court.

Erroneously, the AG links filing a Tariff with operating a utility and there is no reason the Trustee cannot file a Tariff relating to the Surcharge, while the BCSD files any Tariff needed to operate BU. The AG is simply wrong in saying that filing a Tariff only for the Surcharge "undermines the legal and practical authority of the receiver." AG's Response at 6. There is no reason the Trustee must seek relief from the FCC to alter the power granted to the BCSD as Receiver as the orders of the BK Court and the FCC are not in conflict. The recognition by the BK Court that the BCSD may manage the cash and operations of BU as ordered by the FCC does not impact the Trustee's authority to file a Tariff for the Surcharge.

V. THE AG IS WRONG ABOUT BU'S SERVICE OBLIGATION.

The AG disputes the Trustee's conclusion BU has an obligation to serve its customers, which duty is being met by the BCSD both as the Receiver and under its Agreements with BU. The Trustee's argument follows from the Cedar Hills Abandonment Case Order which the AG continues to ignore.

VI. THE BK COURT ORDERS SUPPORT BU'S ABILITY TO SEPARATE SURCHARGE PROCEEDS FROM CASH FOR OPERATIONS.

The AG's last argument tracks its argument about BU's service obligation by contending the Trustee cannot separate any money collected from the Surcharge from the other cash collected for BU and managed by the BCSD. There is no legal reason BU cannot segregate the

proceeds from any Surcharge from the other money collected for BU. The authority for BU to separate any money collected by BU from the Surcharge Application is exactly the intent of the BK Court Orders.

For the reasons above, as well as those in BU's Response to the Legal Issues identified in the Order, the Commission should accept BU's Surcharge Application.

Respectfully submitted,

/s/ Holland N. McTyeire V

Holland N. McTyeire V

James R. Irving

BINGHAM GREENEBAUM DOLL LLP

3500 National City Tower

101 South Fifth Street

Louisville, Kentucky 40202

Telephone: (502) 589-4200

Fax: (502) 587-3695

E-mail: hmctyeire@bgdlegal.com

jirving@bgdlegal.com

SPECIAL COUNSEL FOR ROBERT W. KEATS,
CHAPTER 7 TRUSTEE FOR BULLITT
UTILITIES, INC.

CERTIFICATE OF SERVICE

I certify that on February 1, 2017 an electronic version of the Reply Of BU In Support Of Its Response To The Legal Issues Identified In The Commission's December 29, 2016 Order was uploaded to the Commission's E-Filing System. A copy of the Electronic Filing Center Notification is included with the filing of this Motion with the Commission. The electronic version of the paper filing is a true and accurate copy of each paper filed in paper medium. No party has been excused from the Commission's electronic filing procedures.

/s/ Holland N. McTyeire V

SPECIAL COUNSEL FOR ROBERT W. KEATS,

CHAPTER 7 TRUSTEE FOR BULLITT

UTILITIES, INC.