

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
)

ATTORNEY GENERAL'S OBJECTION TO BULLITT UTILITIES'
MOTION TO FILE A REPLY

The Attorney General of the Commonwealth of Kentucky, by and through his Office of Rate Intervention, hereby objects to the Motion of Chapter 7 Bankruptcy Trustee Robert W. Keats, on behalf of Bullitt Utilities, Inc. (Bullitt Utilities), for leave to file a reply in support of its response to the legal issues identified in the Commission's December 29, 2016 Order and moves the Commission to strike the reply submitted by Bullitt Utilities.

In support of his objection, the Attorney General notes that the Trustee's proposed Reply offers no new information or support that could not have been provided in his initial brief. The Commission's December 29, 2016 Order instructed the Trustee to file a brief supporting his position that state law permits the Trustee to request a surcharge rate from the Commission.¹ Specifically, the Commission instructed the Trustee to "*at a minimum*, address Bullitt Utilities' status as a "utility" (as per KRS 278.01 0(3)(f)), Bullitt Utilities' legal authority to file a tariff with the Commission, and Bullitt Utilities' interest in the rates collected from, and obligations with respect to the service rendered to, the customers of the Hunters Hollow collection system under

¹ Case No. 2016-00401, Order (Ky. PSC December 29, 2016) at 22.

state law.”² Implicit in the Commission’s Order is any discussion of how the Bankruptcy Code or Bankruptcy Court’s Orders affect state law. Since the Trustee’s brief described the position that the Bankruptcy Court’s Orders allow him to circumvent provisions of the state law, it was appropriate for the Attorney General and the City of Hillview to refute that position through discussion of the relationship between state law and the Bankruptcy Court’s Orders. If the Trustee felt the transcript of the Bankruptcy Court’s hearing discussing the Trustee’s *legal title* to the “surcharge claim” provided support to his argument, he had the opportunity to provide that support in his initial brief. The Responses filed by the Attorney General and the City of Hillview confined themselves to the record created by the Trustee’s Brief and Application for surcharge, which also referenced the Bankruptcy Orders and Bullitt Utilities’ previous cases before the Commission. Neither Response provided information not previously available to the Trustee. The Exhibits provided by the Attorney General contained documents to which the Trustee had equal access to, on a subject raised by the Trustee in his Application.³ The Trustee’s assertion that the Attorney General and the City of Hillview’s Responses went outside the scope of the Commission’s Order is therefore baseless.

As a result, the Trustee’s position that no party will be prejudiced by allowing Bullitt Utilities to file a Reply is also incorrect. The Trustee’s proposed reply is filled with conclusory statements and frequently conflates allegations with facts. The Trustee’s attempt to have the last word in this matter provides no additional clarity to the Commission and departs from the intent of the Commission’s December 29, 2016 Order. Additionally, the Trustee’s reference to 807 KAR

² *Id.* (emphasis added).

³ *See* Case No. 2016-00401, Application (Ky. PSC November 30, 2016) at 13. (wherein Trustee states, “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**.”). The Trustee included other proofs of claim filed with the Bankruptcy Court but omitted those filed as exhibits by the Attorney General.

5:001 Section 5(3) does not apply in this particular situation. Section 5 deals with motion practice, specifically addressing requests for relief not made in an application, petition, or written request.⁴ Bullitt Utilities' Brief and the interveners' Responses were filed according to a Commission Order, not in response to a motion by Bullitt Utilities and therefore the situation does not fall within the plain meaning of Section 5.

WHEREFORE, for the foregoing reasons, the Attorney General believes that this issue is ripe for submission to the Commission, and respectfully requests that the Commission deny Bullitt Utilities' Motion to file a Reply and strike the proposed Reply from the record.

Respectfully submitted,

ANDY BESHEAR
ATTORNEY GENERAL



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⁴ 807 KAR 5:001 Section 5(1).