

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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JAN 11 2016

In the Matter of:

PUBLIC SERVICE
COMMISSION

APPLICATION OF BULLITT COUNTY SANITATION)
DISTRICT AS RECEIVER FOR THE ASSETS OF)
BULLITT UTILITIES, INC. FOR A CERTIFICATE OF) 2014-00255
CONVENIENCE AND PUBLIC NECESSITY AND)
SURCHARGE FOR THE SAME)

ATTORNEY GENERAL AND BULLITT COUNTY SANITATION DISTRICT'S JOINT
RESPONSE TO FILINGS OF U.S. BANKRUPTCY TRUSTEE

Comes now the Attorney General of the Commonwealth of Kentucky ("AG"), by and through his Office of Rate Intervention, and Bullitt County Sanitation District, by and through the Bullitt County Attorney, and hereby moves the Commission to deny the Bankruptcy Trustee of Bullitt Utilities, Inc.'s ("Trustee") Motion for Intervention, and the Trustee's Application for Reconsideration/Rehearing of Motion to Dismiss the Application for Surcharge.

ARGUMENT

1. The Trustee's Motion to Intervene is Untimely.

The Attorney General is the only party entitled by statute to intervene in matters before the Public Service Commission "to represent and be heard on behalf of consumers' interests; and to be made a real party in interest ... whenever deemed necessary and advisable in the consumers' interest by the Attorney General."¹ In this proceeding, the Attorney General has sought and been granted intervention by Order of the Commission entered March 6, 2015. Intervention by all others is permissive and within the sound discretion of the Commission, and must be filed

¹ KRS 367.150(8).

timely.² The Commission previously ordered that Requests for Intervention shall be timely filed if filed by March 13, 2015.³

The Trustee's Motion should be denied as untimely, as the Procedural Schedule entered by the Commission established a deadline for Requests for Intervention as of March 13, 2015, and the Trustee's Motion was clearly filed after that deadline, having been filed on January 5, 2016.⁴ The Trustee has not established any good cause for the delay in filing, nor has the Trustee requested any extension or alteration of the procedural schedule. Therefore, the Trustee has failed to provide grounds for the Commission to grant intervention, and the request must be denied.

2. *The Trustee's Motion Fails Under the Statutory Requirements for Intervention.*

The Trustee has not alleged an interest in the matter that would provide a basis for the Commission to grant intervention. A person seeking permissive intervention by the Commission "must have an interest in the 'rates' or 'service' of a utility, since those are the only two subjects under the jurisdiction of the [Commission]."⁵ Longstanding Commission precedent requires a potential intervenor to show that they are a customer of the utility in question, and thus have an interest in the rates or service of the utility.⁶ Here, the stated interest of the Trustee is to "protect the assets of the estate."⁷ Protecting assets of an estate is not a basis upon which the

² Case No. 2013-00148, *In the Matter of: Application of Atmos Energy Corporation For An Adjustment in Rates and Tariff Modifications*, Order at 4, September 3, 2013; see also 807 KAR 5:001 Section 4(11)(b).

³ *Id.*

⁴ Case No. 2014-00255, *Application of Bullitt County Sanitation District as Receiver for the Assets of Bullitt Utilities, Inc. for a Certificate of Convenience and Necessity and Surcharge for Same*, Motion of U.S. Bankruptcy Trustee for Intervention, page 1, January 5, 2016.

⁵ *EnviroPower, LLC v. Public Service Com'n of Kentucky*, No. 2005-CA-001792-MR, 2007 WL 289328 (Ky. Ct. App. 2007), unpublished opinion, citing KRS 278.040(2).

⁶ Case No. 2009-00197, *Application of Kentucky Utilities Company for a Certificate of Public Convenience and Necessity and Approval of Its 2009 Compliance Plan for Recovery by Environmental Surcharge*, and Case No. 2009-00198, *Application of Louisville Gas and Electric Company for a Certificate of Public Convenience and Necessity and Approval of Its 2009 Compliance Plan for Recovery by Environmental Surcharge* (Ky. PSC Oct. 30, 2009).

⁷ Case No. 2014-00255, Motion of U.S. Bankruptcy Trustee for Intervention, page 1, January 5, 2016.

Commission may grant a party intervention. Noticeably absent from the Trustee's Motion is any assertion that he is a customer of the utility, or has an interest in the rates or service of the utility, either of which would have constituted a basis for granting intervention. Absent an interest in the rates or service of the utility, the Trustee's Motion to Intervene must be denied.

3. *The Trustee's Motion Fails Under the Regulatory Requirements for Intervention.*

The relevant regulation at 807 KAR 5:001, Section 4(11)(b) states "The Commission shall grant a person leave to intervene if the Commission finds that he has made a timely motion for intervention and... his intervention is likely to present issues or to develop facts that assist the Commission in fully considering the matter without unduly complicating or disrupting the proceedings." As demonstrated above, the Trustee's Motion is not timely. Moreover, the Trustee's intervention is certain to unduly complicate and disrupt the proceedings. The stated purpose for the Trustee's intervention is to seek reversal of the Commission's decision granting the unanimous Joint Motion to Dismiss filed by the only two parties of record in the case.⁸ The Joint Motion to Dismiss was filed by both the Attorney General and BCSD, which the Commission acknowledged is the real party in interest.⁹ The Motion was filed by two parties represented by experienced and competent representation, after discussion with Commission Staff. Allowing an uninterested party to intervene after final disposition and unanimous dismissal of the case would surely cause undue complication and disruption.

⁸ Case No. 2014-00255, Application of the Interim Chapter 7 Trustee for Bullitt Utilities Inc., Under KRS 278.400 for Rehearing of Order Granting Joint Motion to Dismiss Application for a Surcharge, January 4, 2016; Supplemental Motion of the United States Bankruptcy Trustee for Reconsideration/Rehearing of Motion to Dismiss Bullitt Utilities Application for Surcharge, January 5, 2016.

⁹ Case No. 2014-00255, Order at 4, December 15, 2015.

4. The Request for a Rehearing Does Not Satisfy the Requirements of KRS 278.400.

A request for rehearing may be made by a party to the proceedings, after which new evidence may be provided that could not have reasonably been offered in the original hearing.¹⁰ KRS 278.400 is the improper statute for the Trustee to rely on, as no hearing was held in this instance. The parties mutually agreed and moved for dismissal of the action on well-founded grounds, and the Commission granted the request, based on the arguments the parties presented. As no hearing in the case was held, KRS278.400 is not the proper statute under which to seek relief, and the request for rehearing must be denied.

5. A Request for Reconsideration May only be Made by a Party to the Proceeding.

To allow a non-party to request reconsideration of the Commission's Order in a proceeding would violate the administrative process whereby parties must seek and receive permission to intervene before making any substantive requests of either the Commission or other parties. The Trustee is not a party and does not have grounds from which the Commission may grant him party status. Therefore, his request for reconsideration must be denied.

WHEREFORE, the Attorney General and Bullitt County Sanitation District respectfully request that the Commission consider the factual and legal arguments provided herein, and deny the Trustee's Motion for Intervention and Request for a Rehearing/Reconsideration.

¹⁰ KRS 278.400 States, "After a determination has been made by the Commission in any hearing, any party to the proceedings may, within twenty (2) days after service of the order, apply for a hearing"

Respectfully submitted,

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Certificate of Service and Filing

Counsel certifies that an original and ten photocopies of the foregoing were served and filed by hand delivery to Jeff Derouen, Executive Director, Public Service Commission, 211 Sower Boulevard, Frankfort, Kentucky 40601; counsel further states that true and accurate copies of the foregoing were mailed via First Class U.S. Mail, postage pre-paid, to:

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this 11th day of January, 2016



Assistant Attorney General