

Via Hand Delivery

December 11, 2015

Jeff R. Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, Kentucky 40602-0615

RECEIVED

DEC 11 2015

PUBLIC SERVICE
COMMISSION

Re: *In The Matter Of: Application Of Bullitt Utilities, Inc., For A Certificate Of Convenience And Necessity, And Surcharge For Same, Case No. 2014-00255*

Dear Mr. Derouen:

Enclosed please find for filing with the Commission an Objection Of Veolia To Joint Motion To Dismiss Bullitt Utilities' Application For A Surcharge in the above styled matter.

Please do not hesitate to contact me if you have any questions concerning this filing.

Thank you.

Sincerely,



Holland N. McTyeire V

HNM/jh

Enclosures

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

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DEC 11 2015

IN THE MATTER OF:)

APPLICATION OF BULLITT)
UTILITIES, INC., FOR A CERTIFICATE)
OF CONVENIENCE AND NECESSITY,)
AND SURCHARGE FOR SAME)

CASE NO. 2014-00255

PUBLIC SERVICE
COMMISSION

**OBJECTION OF VEOLIA TO JOINT MOTION TO
DISMISS BULLITT UTILITIES' APPLICATION FOR A SURCHARGE**

Veolia Water Technologies, Inc. (formerly Veolia Water Solutions & Technologies North America, Inc.) ("Veolia"), through counsel, objects to the December 9, 2015 Joint Motion of the Attorney General and the Bullitt County Sanitation District (the "BCSD") to Dismiss the Surcharge Application filed by Bullitt Utilities, Inc. ("BU").

1. Veolia explained the reasons that the BCSD has no authority to withdraw BU's Surcharge Application in its November 16, 2015 letter to counsel for the BCSD attached to this Objection. Veolia received no response to its letter from the BCSD. The BCSD acknowledged at the November 9, 2015 Informal Conference, as reflected in the November 24, 2015 Informal Conference Memo, that it had not engaged in any substantive discussions with BU's vendors. Veolia is not aware of any discussions the BCSD has had with other vendors of BU since the November 9, 2015 Informal Conference.

2. The August 21, 2015 PSC Staff Opinion 2015-011 concluded that a receivership under KRS 278.021 places the assets of a utility under the control of the receiver. The receiver does not become the owner of the assets. Only BU as the owner can take any action regarding its Surcharge Application.

3. The Commission's October 16, 2015 Order substituting the BCSD as the applicant in this case does not change this result.

4. The September 23, 2015 Order in Franklin Circuit Court Civil Action 15-CI-946 appointing the BCSD as the Receiver for BU does not grant the BCSD authority to withdraw BU's Surcharge Application. For convenience, a copy of the Court's September 23, 2015 is attached to this Objection.

5. The Franklin Circuit Court does not have the authority to allow the BCSD to withdraw BU's Surcharge Application because KRS 278.021(5) requires the receiver to preserve the utilities' assets and BU's Surcharge Application is its only asset of any value. Any other part of KRS 278.021 cannot outweigh this obligation.

6. This Motion by the BCSD is evidence it is not acting in the best interests of BU but is acting in its own best interest.

For all of the reasons set forth in Veolia's Objection and its November 16, 2015 letter, BU's Surcharge Application should be allowed to proceed to conclusion.

Respectfully submitted,



Holland N. McTyeire, V
Mark S. Riddle

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COUNSEL FOR VEOLIA WATER
TECHNOLOGIES, INC.

CERTIFICATE OF SERVICE

I certify that the Objection of Veolia to Joint Motion to Dismiss Bullitt Utilities' Application for a Surcharge was mailed sufficient U.S. postage prepaid, on this 10th day of December, 2015 to:

Bullitt Utilities, Inc. d/b/a Hunters
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Louisville, KY 40205

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Bullitt County Attorney
John Woolridge
Assistant County Attorney
Robert P. Flaherty
300 South Buckman Street
P.O. Box 1446
Shepherdsville, KY 40165



COUNSEL FOR VEOLIA WATER
TECHNOLOGIES, INC.

Via E-Mail

November 16, 2015

John W. Woolridge
Robert P. Flaherty
Bullitt County Attorney
Courthouse
300 Buckman Street
P.O. Box 1446
Shepherdsville, Kentucky 40165-1446

Re: Bullitt Utilities

Dear Counsel:

As you know my firm represents Veolia. I have been advised that the Bullitt County Sanitation District (the "BCSD") as the Receiver for Bullitt Utilities, Inc. ("BU") intends to withdraw the Surcharge Application filed by BU with the Public Service Commission, Case No. 2015-00255. The BCSD has no authority to withdraw BU's Surcharge Application.

The August 21, 2015 PSC Staff Opinion 2015-011 correctly advises "a receivership is an arrangement through which the Franklin Circuit Court places the assets of a utility under the sole control and responsibility of a receiver. The receiver does not, however, become the owner of the assets or the owner of the utility." PSC Staff Opinion 2015-011, August 21, 2015, p. 6. The Commission's October 16, 2015 Order substituting the BCSD as the applicant in the Surcharge case does not change this fundamental principle.

The September 23, 2015 Order in Civil Action No. 15-CI-946 appointing the BCSD as the Receiver does not allow the BCSD to withdraw BU's Surcharge Application. Paragraph 4 of the Court's September 23, 2015 Order states "BCSD is authorized and directed to collect the rates and charges for [BU] as established and as changed from time to time by the Public Service Commission" and "to pay reasonable and necessary expenses already or hereafter incurred." Receivership Case, Civil Action No. 15-CI-946, Order, September 23, 2015, p. 2, ¶ 4.

The BCSD's plan to withdraw BU's Surcharge Application is contrary to the express authority given to it. More importantly, the Court's appointment of the BCSD as the Receiver does not give the BCSD ownership of BU and it is only BU as the owner of the utility with the corporate authority to modify the Surcharge Application.

Even if the BCSD had the authority to withdraw BU's Surcharge Application, which it does not, exercising that authority contradicts the directive to a receiver in KRS 278.021(5) "to operate the utility to preserve its assets," as BU's Surcharge Application is the only asset of any significance held by BU. Any part of KRS 278.021 which the BCSD might argue allows it the

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authority to withdraw the Surcharge Application does not outweigh the obligations imposed on it by KRS 278.021(5).

The BCSD as the Receiver for BU is not acting in the best interests of BU but, instead, is acting in its own best interest. The Surcharge Application is the best option for BU to pay some or all of its debts. If the BCSD withdraws the Surcharge Application, it is a certainty BU cannot pay its debts and such an action exposes BU, and possibly its principals, to liability.

The BCSD's conflict of interest has been apparent since the BCSD was appointed as the Receiver for BU because at least as long ago as the October 1, 2014 Informal Conference in the Investigation Case, Case No. 2014-00163, BU advised it was considering "possible actions against BCSD based on BCSD's failure to follow through with representations." Case No. 2014-00163, Informal Conference Memo, October 7, 2014, p. 2. In a recent discussion with BU's counsel, he made clear BU continues to believe a principal reason its debt to Veolia and others is so large is as a result of the BCSD's repeated breaches of its Agreements with BU.

We request that the BCSD allow the Surcharge Application to proceed to conclusion including the possibility of any appeal. Additionally, the BCSD did not post the bond to be the Receiver required by KRS 278.021(5) and which is specifically mentioned in PSC Staff Opinion 2015-011. PSC Staff Opinion 2015-011 at 6. We are not aware of any authority by which the BCSD can avoid posting a bond to be the Receiver for BU.

As aptly stated in PSC Staff Opinion 2015-011, "there could be scenarios in which a receiver might become liable for debt based on the actions of the receiver." *Id.* at 7. If the BCSD continues to act as the Receiver for BU by promoting its own interest, instead of the interest of BU, this will be one of those scenarios. This is true because withdrawal of BU's Surcharge Application violates the BCSD's duties as the Receiver, damages BU's creditors and exposes the BCSD to liability.

Veolia's contributions to protect the environment and the health and safety of BU's customers in response to the collapse of the Hunters Hollow Wastewater Treatment Plant have not been appreciated in any tangible way. Veolia did not remove its equipment and facilities before an alternative solution was available for the wastewater treatment needs of BU's customers long after it was clear that absent the surcharge BU had little or no ability to pay Veolia.

Veolia's attempts to work with all parties to develop a solution to the sewer treatment problems of BU and the BCSD to better serve the citizens of Bullitt County in exchange for payment of some or all of the debt owed by BU have been ignored.

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As a result, Veolia will pursue all available legal remedies to collect the monies which are owed to it.

Thank you.

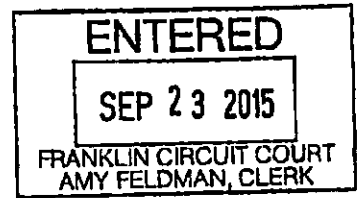
Sincerely,



Holland N. McTyeire V

HNM/jh

cc: David E. Spenard
Jonathan Beyer
John B. Park
Jennifer Black Hans
Gregory T. Dutton
Robert C. Moore
John S. Talbott



COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION II
CIVIL ACTION NO. 15-CI-946

PUBLIC SERVICE COMMISSION OF KENTUCKY

PLAINTIFF

v.

BULLITT UTILITIES, INC.;
COMMONWEALTH OF KENTUCKY, ACTING THROUGH AND BY
THE ENERGY AND ENVIRONMENT CABINET; and
BULLITT COUNTY SANITATION DISTRICT

DEFENDANTS

*** **

ORDER

This matter having come before the Court of the motion of Plaintiff, Public Service Commission of Kentucky (hereinafter, "Commission") for the attachment of assets of Defendant, Bullitt Utilities, Inc. (hereinafter, "Bullitt Utilities") and the appointment of the Bullitt County Sanitation District (hereinafter, "BCSD") as receiver with sole control and responsibility for those assets and the Court being otherwise sufficiently advised, IT IS HEREBY ORDERED AND ADJUDGED:

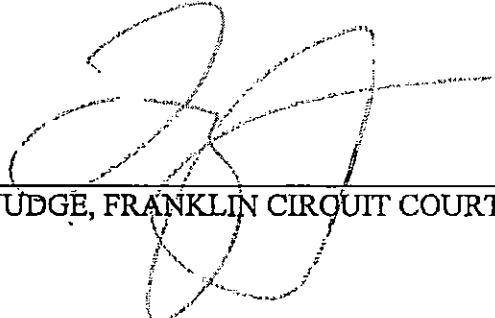
1. The Commission's Motion for the Attachment of Assets and Appointment of Receiver is granted.

2. BCSD is appointed receiver to take charge, preserve, operate, control, manage, maintain and care for Bullitt Utilities' sewage collection and treatment facilities; to collect all receivables and profits, and to exercise generally the powers conferred by this Court and such other powers as are usual and incidental to the management of a public utility providing sewage collection and treatment service to the public.

3. On the date entered below BCSD shall take possession and control of Bullitt Utilities' attached assets.

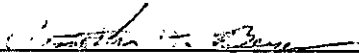
4. BCSD is authorized and directed to collect the rates and charges for Bullitt Utilities as established and as changed from time to time by the Public Service Commission; all receivables and profits; to deposit all funds coming to BCSD as receiver in a separate bank account; to employ or contract with responsible personnel; to manage and maintain the property; to contract and pay for routine items of security, maintenance, and repair; to pay to insure the attached assets if they are not adequately insured; to make repairs of an emergency nature; to cause necessary improvements to be made to the assets as the Court authorizes; to pay reasonable and necessary expenses already or hereafter incurred; to pay taxes incurred on the assets; to pay all other expenses necessary to preserve and operate the assets to negotiate and contract with local, state and federal governmental entities for funds to restore Bullitt Utilities' sewer collection and treatment facilities; and to maintain an accurate accounting of all receivables and profits collected and expenses incurred.

The 2nd day of September, 2015.



JUDGE, FRANKLIN CIRCUIT COURT

Tendered by:



JONATHAN D. BEYER
COUNSEL FOR PLAINTIFF
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