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December 3, 2015

Mr. Daniel Cleveland
Energy and Environment Cabinet
Office of General Counsel
2 Hudson Hollow
Frankfort, KY 40601

Re: Ridgelea Investments Inc.

PSC STAFF OPINION 2015-014

Dear Mr. Cleveland:

The Commission acknowledges receipt of your letter dated November 16, 2015.

In your letter you state that Ridgelea Investments Inc. ("Ridgelea"), a wastewater utility, operates three package treatment plants in Franklin County, Kentucky and one plant in Grant County, Kentucky. You state that Ridgelea has advised the Franklin Circuit Court of its intent to abandon the three Franklin County plants and retain ownership and operation of the single Grant County facility. You request an opinion as to whether a regulated utility may abandon part of its utility assets pursuant to KRS 278.021.

KRS 278.021 governs the abandonment of utilities, providing in part:

- (1) If the commission, after notice and hearing, enters an order in which it finds that a utility is abandoned, the commission may bring an action in the Franklin Circuit Court for an order attaching the assets of the utility and placing those assets under the sole control and responsibility of a receiver.
- (2) For purposes of this section, a utility shall be considered abandoned if it:
 - (a) Disclaims, renounces, relinquishes, or surrenders all property interests or all rights to utility property, real or personal, necessary to provide service;

- (b) Notifies the commission of its intent to abandon the operation of the facilities used to provide service;
- (c) Fails to comply with an order of the commission in which the commission determined that the utility is not rendering adequate service, specified the actions necessary for the utility to render adequate service, and fixed a reasonable time for the utility to perform such actions, and the failure of the utility to comply with the order presents a serious and imminent threat to the health or safety of a significant portion of its customers; or
- (d) Fails to meet its financial obligations to its suppliers and is unable or unwilling to take necessary actions to correct the failure after receiving reasonable notice from the commission, and the failure poses an imminent threat to the continued availability of gas, water, electric, or sewer utility service to its customers.

KRS 278.020(5) further states:

- (5) No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.

Accordingly, pursuant to KRS 278.020(5), a utility may not abandon its facilities without prior Commission approval and authorization. The Commission may only find that a utility has been abandoned after a utility has met one or more of the criteria set forth in KRS 278.021(2). The Commission has recently stated that if "one or more of the four criteria identified in KRS 278.021(2) is met, then the Commission has no discretion and is required, pursuant to the term "shall" in the statute, to consider the utility abandoned."¹

Upon finding that a utility has satisfied the criteria for abandonment, the Commission has typically required the utility to continue operating for a short period of

¹ Case No. 2015-00290, *Bullitt Utilities, Inc.'s Notice of Surrender and Abandonment of Utility Property* at 4 (Ky. PSC Aug. 31, 2015).

time to enable the Commission to seek the appointment of a receiver in the Franklin Circuit Court.²

The Commission has not previously been presented with the question of whether KRS 278.021 permits a utility to abandon some of its facilities used to provide service. Ridgelea has also not yet submitted a request to the Commission to abandon any of its facilities and based upon the facts as presented in your letter it is unclear what would be the specific ground for the proposed abandonment request. However, there is no allegation that Ridgelea has not complied with any order of the Commission. Accordingly, the basis for abandonment would rest upon KRS 278.021(a), (b) or (d).

Subsection (a) provides for abandonment based upon renouncing "all rights to utility property, real or personal, necessary to provide service. Subsection (b) authorizes abandonment if a utility simply notifies the Commission of its intention to abandon "the operation of the facilities used to provide service" and subsection (d) permits abandonment for failure to meet financial obligations.

No subsection in KRS 278.021(2) makes specific allowance for abandoning select portions of a utility's assets. To the contrary, subsection (a) in particular clearly states that it is applicable when a utility disclaims "**all rights to utility property . . . necessary to provide service.**" (emphasis added). The specificity in the provision appears to contemplate the abandonment of all utility property and assets. This comports with KRS 278.021(1), which provides for the abandonment of a *utility* rather than a *utility's assets*.

Ridgelea collects and treats sewer for the public and is therefore a regulated utility.³ Based upon the facts as set forth in your letter and in documents that Ridgelea has previously filed with the Commission, Ridgelea operates as a single regulated entity. Ridgelea files one annual financial and statistical report pursuant to 807 KAR 5:006, Section 4.⁴ It does not file separate reports for each package treatment plant, but instead treats all facilities as being part of a single business. Likewise, Ridgelea is registered with the Kentucky Secretary of State as a single discrete business entity.⁵ This is partly contrasted with Ridgelea's tariff on file with the Commission, which

² See e.g. Case No. 2015-00091, *Cedarbrook Wastewater Treatment Plant Request to Cease Operations* (Ky. PSC Mar. 13, 2015).

³ KRS 278.010(f).

⁴ *Annual Report of Ridgelea Investments, Inc. to the Public Service Commission for the Year Ended December 31, 2014*.

⁵ Certificate of Existence, Oct. 6, 2011, <https://app.sos.ky.gov/corpscans/45/0115145-09-99999-20111006-RCE-4933451-PU.pdf> last retrieved Nov. 18, 2015.

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provides for two separate rates. In Ridgelea's most recent proceeding before the Commission for a rate adjustment, the Commission granted Ridgelea's request to increase the rates charged to its Franklin County ratepayers as well as to institute a surcharge for those customers.⁶ By virtue of that proceeding, Ridgelea has one rate for its facility in Grant County, Kentucky and a separate rate for its three Franklin County facilities.⁷ Yet, aside from its rates, Ridgelea's remaining tariff applies equally to all of its wastewater treatment facilities and customers. Therefore, Ridgelea appears to be structured and operated as a single entity.

Commission precedent clearly provides for the orderly shutdown and abandonment of utilities that satisfy KRS 278.021. The Commission has not, however, been previously asked to permit a utility to abandon its selected assets while maintaining ownership of other assets. Based upon your letter it is apparent that Ridgelea may soon file with the Commission a request to abandon. A party filing such an application carries the burden of proof to demonstrate that it meets the statutory requirements for abandonment. Without knowing all of the facts that may be presented in any future proceeding before the Commission, Commission Staff is unable to state whether Ridgelea could satisfy its burden under KRS 278.021 and meet the statutory criteria for abandonment to abandon only a portion of its assets.

Questions concerning this letter should be directed to Jonathan Beyer, Commission Counsel, at (502) 782-2581.

Sincerely,



Jeff Derouen
Executive Director

cc: John Baughman

⁶ Case No. 2009-00500, *Application of Ridgelea Investments, Inc. for Alternative Rate Adjustment* (Ky. PSC Apr. 8, 2011).

⁷ *Ridgelea Investments, Inc. Tariff*,
<http://psc.ky.gov/tariffs/Sewer/Ridgelea%20Investments,%20Inc/Tariff.pdf>.