

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

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**PUBLIC SERVICE
COMMISSION**

In the Matter of:

RIDGELEA INVESTMENTS, INC.'S NOTICE OF)
SURRENDER AND ABANDONMENT OF) Case No. ²⁰¹⁶~~2015~~-_____
UTILITY PROPERTY NAMELY THREE (3) FRANKLIN)
COUNTY WASTEWATER TREATMENT PLANTS)

**RIDGELEA INVESTMENTS, INC'S NOTICE OF SURRENDER
AND ABANDONMENT OF UTILITY PROPERTY**

Comes Ridgelea Investments, Inc., ("Petitioner") by Counsel to give
Notice of its intention to surrender its wastewater treatment facilities in Franklin County,
Kentucky and in support of said Notice states as follows:

1) Petitioner, a Kentucky Corporation, is a "utility" which owns facilities for the treatment of sewage as defined in KRS 224.010(3)(f); three of its facilities are wastewater treatment plants ("WWTPs") in Franklin County, Kentucky serving the Meadowbrook, Edgewood and Farmgate subdivisions, all of which are in the same general area of south western Franklin County.

2) Petitioner also owns a WWTP in Grant County, Kentucky.

3) Petitioner hereby notifies the Commission it intends to abandon the operation of the Franklin County WWTPs, because it is unable to meet its financial obligations to suppliers and will therefore be unable to adequately serve its ratepayers and will be unable to protect the waters of Commonwealth of Kentucky from degradation when the Franklin County WWTPs deteriorate.

4) In support of this Petition the Commission is referred to Franklin Circuit Court Civil Action No. 14-CI-616, Energy and Environment Cabinet vs. Ridgelea Investments, Inc. That pending case, among other relief sought, asks the court to hold the Petitioner in contempt for failing to timely initiate I&I studies at Meadowbrook, Farmgate and Edgewood WWTPs and failing to complete required corrective action at said facilities. The primary defense in that action is the Petitioner's documentation of the cost of its I&I studies and documentation of the cost of corrective actions, which cannot be paid with its limited income.

5) Counsel for the Energy Environment Cabinet has raised a legal issue which must be considered by the Commission in reviewing this Petition. This issue was discussed in PSC Staff

Opinion 2015–014, dated December 3, 2015, a copy of which is attached hereto as Exhibit “A” to this Petition.

6) The Franklin County WWTPs are distinct from the Grant County WWTP in the following respects:

- a) Petitioner’s Franklin County facilities are approximately 90 miles from its principal place of business in Cincinnati, Ohio.
- b) Petitioner’s Grant County facility is a short drive from Ridgelea’s principal place of business at 2106 West North Bend Road, Cincinnati, Ohio.
- c) Ridgelea has separate rates for the Grant County facility and the Franklin County facilities; this Commission approved a rate increase and surcharge for the Franklin County facilities which did not apply to the Grant County facility.
- d) It would be difficult and illogical for a Franklin County Receiver to operate A wastewater treatment plant in Grant County Kentucky.
- e) It is necessary for the petitioner to keep separate records and accounts for each of the wastewater treatment plants which it operates. The division of its records for the respective wastewater treatment plants for the purpose of abandoning the Franklin County facilities is a relatively simple bookkeeping matter.

7) In the event the Commission enters an Order finding the Franklin County WWTPs have been abandoned as requested herein, the Petitioner anticipates the Commission will proceed under KRS 278 .021(1) by bringing an action in the Franklin Circuit Court seeking the appointment of a Receiver.

8) The Petitioner anticipates the Franklin Circuit Court will appoint a Receiver who is an individual or entity residing or doing business in Franklin County; the Petitioner has notified the Farmdale Sanitation District in Franklin County of its intention to have the property declared to be abandoned by the Public Service Commission, and counsel for the Petitioner and representatives of the Farmdale Sanitation District, and the Franklin County Fiscal Court have met to discuss the potential of the Sanitation District serving as Receiver.

WHEREFORE the Petitioner moves the Public Service Commission to enter an order which finds:

- a) The Commission has the authority to find the Petitioner has abandoned its wastewater treatment plants in Franklin County, Kentucky, but not its wastewater treatment plant in Grant County Kentucky;

- b) The Commission finds the three (3) WWTPs operated by the Petitioner in Franklin County, Kentucky are abandoned and Commission Staff is authorized to file an action in the Franklin Circuit Court seeking an Order attaching the assets of those WWTPs and placing those assets under the sole responsibility of a Receiver in accordance with KRS 278 .021;
- c) In the alternative, if the Commission concludes the WWTPs in Franklin County cannot be separated from the WWTP in Grant County, this Petition should be treated as a Petition for authority to transfer of ownership of the Grant County WWTP to Perfecto Properties, LLC, pursuant to KRS 278.020(5).

Respectfully Submitted,



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December 3, 2015

Mr. Daniel Cleveland
Energy and Environment Cabinet
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Re: Ridgelea Investments Inc.

PSC STAFF OPINION 2015-014

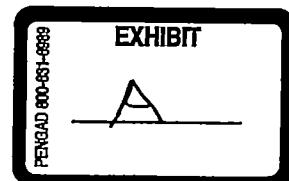
Dear Mr. Cleveland:

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;



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- (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.

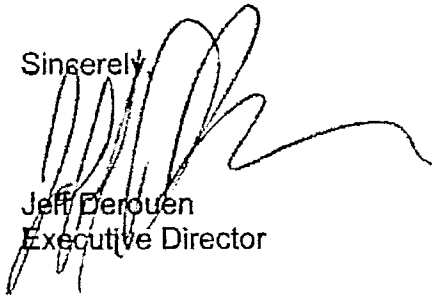
Mr. Daniel Cleveland
December 3, 2015
Page 4

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 Berouen
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>.