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BEFORE THE PUBLIC SERVICE COMMISSION

JUN 3 2016

PUBLIC SERVICE
COMMISSION

In the Matter of:

RIDGELEA INVESTMENTS, INC.'S NOTICE OF)
SURRENDER AND ABANDONMENT OF) Case No. 2016-00106
UTILITY PROPERTY NAMELY THREE (3) FRANKLIN)
COUNTY WASTEWATER TREATMENT PLANTS)

**MEMORANDUM IN SUPPORT OF RIDGELEA'S NOTICE TO ABANDON
THREE (3) OF ITS FOUR (4) WASTEWATER TREATMENT PLANS ("WWTPS")**

INTRODUCTION

This is an action by Ridgelea Investments, Inc., ("Ridgelea") to abandon three (3) of its four (4) Wastewater Treatment Plants ("WWTPs") pursuant to KRS 278.021.

PERTINENT FACTS

Ridgelea is an Ohio Corporation whose principal place of business is 2106 West North Bend Road, Cincinnati, Ohio. It owns the Grantland WWTP in Grant County, which is near Cincinnati, Ohio, and three (3) WWTPs in Franklin County, Kentucky, which serve the Edgewood, Farmgate and Meadowview subdivisions. Ridgelea is a corporation solely owned by Charles Hungler, Jr., and his wife Karen Hungler. Its principal place of business is approximately 90 miles from the WWTPs in Franklin County, Kentucky, but only a short distance from the Grantland WWTP. Its certified operator who serves all four (4) WWTPs is Terry Hungler who resides in Kenton County, Kentucky. The Notice to Abandon, executed by Charles Hungler Jr., and his testimony at the hearing in this case support his allegations that the Franklin County WWTP's cannot meet their financial obligations to suppliers and cannot adequately provide service to its customers because the income from customer / rate payers is inadequate.

The three (3) Franklin County WWTPs are the subject of pending litigation in the Franklin Circuit Court seeking to hold the corporation and its owners in contempt for failing to timely initiate I & I studies at the Franklin County plants for violations of environmental statutes and regulations. There are no pending environmental actions in the Franklin Circuit Court or

NOV's against Grantland WWTP. If the Notice to Abandon is approved by the Commission, the Franklin Circuit Court will appoint a receiver pursuant to KRS 278.021. A unique circumstance exists in this case because the Farmdale Sanitation District, which was established by the Franklin County Fiscal Court, has given notice it will agree to act as receiver for the three (3) Franklin County WWTPs if they are abandoned by order of the Commission. The Farmdale Sanitation District will not agree to serve as receiver for Grantland, because it is approximately 90 miles away from the Farmdale Sanitation District's principal place of business. In spite of the clear evidence to support the Commission authorizing Ridgelea to abandon its three (3) WWTPs, another legal issue has been raised which is the subject of this Memorandum.

LEGAL ISSUE

Does KRS 278.021 give the Public Service Commission the authority to enter an Order authorizing Ridgelea to abandon the three (3) Franklin County WWTPs, but not the Grant County WWTP even though all four (4) are owned by Ridgelea?

ARGUMENT

Ridgelea is a corporation which owns four (4) WWTPs. Each plant has separate customers, separate expenses, and separate physical facilities. Ridgelea may be a utility within the meaning of KRS 278.010(3) which states in pertinent part: "(3) 'Utility' means any person...who manages any facility used for or to be used for or in connection with...(f) the collection, transmission or treatment of sewage..." (Emphasis added). But each WWTP is also a "utility" within the meaning of KRS 278.010(3). There is no rational basis to conclude otherwise with the specific facts before the Commission in this case. No potential, problematic precedent will be established by the Commission concluding Ridgelea may abandon only its Franklin County WWTPs.

Although there is no legal authority to guide the Commission in this case, there are practical, persuasive considerations. For example, the typical, rural wastewater treatment plant like the Franklin County WWTPs, was constructed as part of a residential subdivision development for the sole purpose of providing sewage treatment for the lot owners in the subdivision. No rural WWTP was ever constructed independently for the purpose of operating as a free-standing, income-producing business. Usually, a closely held corporation is formed for the

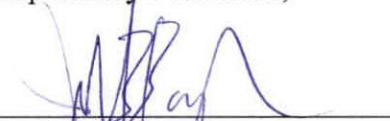
purpose of a subdivision development, which also holds legal title to the WWTP which serves the subdivision. Periodically a developer / WWTP owner will substantially complete a subdivision development, move away, become infirm or otherwise become unable to operate the wastewater treatment plant. In some instances, the developer will own one or more unsold, subdivision lots and perhaps rental property in the same corporate name as the WWTP. If such a developer met the legal standards to abandon the utility, it would make no sense to require him to abandon independent real estate owned by the same corporation. The same analogy applies in this case. The owner of Ridgelea should be allowed to select the WWTPs which meet the requirements of KRS 278.021, without including other property owned by the corporation which is unrelated to the WWTPs it seeks to abandon.

Nothing in KRS 278.021 prohibits the separation of WWTPs for the purpose of allowing their abandonment of some, but not all of them. The Commission should use common sense in ruling on this issue. There is no adverse party or adverse result to Ridgelea's request.

CONCLUSION

For the forgoing reasons, Ridgelea respectfully requests the Commission to grant its request to abandon its three (3) Franklin County WWTPs, while retaining its Grant County WWTP.

Respectfully Submitted,



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