

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

ORDER

Ridgelea Investments, Inc. (“Ridgelea”) owns and operates three sanitary sewer systems serving the Meadowbrook, Edgewood, and Farmgate subdivisions in Franklin County, Kentucky, and one sanitary sewer system serving the Grantland Estates subdivision in Grant County, Kentucky. Ridgelea serves approximately 349 customers.¹

On February 29, 2016, Ridgelea filed a Notice of Surrender and Abandonment of Utility Property (“Notice of Abandonment”). In its Notice of Abandonment, Ridgelea states that it intends to abandon the operation of its three wastewater treatment plants in Franklin County “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 the Commonwealth of Kentucky from degradation.”² Ridgelea proposes to continue to operate its wastewater treatment plant in Grant County and does not seek to abandon its utility property that serves its customers in Grant County. In the event the Commission rejects its request to abandon only the plants in Franklin County, Ridgelea requests “in the alternate” that its application be treated as a request

¹ *Annual Report of Ridgelea to the Public Service Commission of Kentucky for the Calendar Year Ended December 31, 2014* at 9 and 25.

² Notice of Abandonment at 1.

pursuant to KRS 278.020(6) to transfer the plant in Grant County to Perfecto Properties, LLC (“Perfecto Properties”).

In its Notice of Abandonment, Ridgelea states that it keeps separate records and accounts for each of its four wastewater treatment systems. Ridgelea further states that it charges one rate for customers of its three systems in Franklin County and a different rate for customers of its system in Grant County.

Ridgelea is a for-profit sewer utility. As it provides sewage service to the public for compensation, Ridgelea is a utility subject to the Commission’s jurisdiction and regulation.³

By Order entered March 11, 2016, the Commission found that an investigation in this matter should be conducted to examine Ridgelea’s request to abandon its facilities in Franklin County. The Commission ordered Ridgelea to continue to operate its utility facilities pending a decision by the Commission adjudicating Ridgelea’s request to abandon or transfer its facilities. The Commission also scheduled an informal conference, which was held on March 29, 2016. Commission Staff served requests for information on Ridgelea on April 4, 2016, and Ridgelea filed responses to the requests on April 21, 2016.

On May 3, 2016, following due public notice, the Commission conducted a formal hearing on Ridgelea’s application. At the hearing, Charles Hungler, president and shareholder of Ridgelea, testified that Ridgelea intended to abandon the facilities in Franklin County because the revenue generated by operation of the systems was not sufficient to cover the cost to operate the systems or to make necessary repairs at the

³ KRS 278.010(3)(f); KRS 278.040.

plants.⁴ Mr. Hungler stated that Ridgelea is subject to a civil action pending in the Franklin Circuit Court to enforce an Agreed Order between Ridgelea and the Kentucky Cabinet for Energy and Environment Cabinet (“Cabinet”) that requires Ridgelea to take corrective action at its three wastewater treatment plants in Franklin County to bring them into compliance with environmental laws and regulations.⁵ Counsel for Ridgelea stated that the Franklin Circuit Court has entered an Opinion and Order granting the Cabinet’s motion for summary judgment.⁶ A copy of the Opinion and Order, in which the Court found Ridgelea to be in violation of the Agreed Order with the Cabinet and ordered Ridgelea to comply with its terms, was entered into the record as PSC – Exhibit 1.⁷ Mr. Hungler testified that the Franklin Circuit Court ordered the civil enforcement action held in abeyance pending a ruling by the Commission on Ridgelea’s application in this case.⁸ Ridgelea filed a copy of the Court’s order holding the enforcement action in abeyance pursuant to a post-hearing data request.⁹

Mr. Hungler further testified that Ridgelea has been in discussions with representatives of the Franklin County government and the Farmdale Sanitation District (“Farmdale District”), in whose territory the Franklin County systems are located, and that those representatives have verbally confirmed that Farmdale District is willing to act

⁴ Video Recording of the May 3, 2016 Hearing (“May 3, 2015 VR”) at 09:16:15–09:17:00 and 09:19:45–09:19:52.

⁵ *Id.* at 09:16:42–09:22:40.

⁶ *Id.* at 09:17:18–09:17:26.

⁷ Notice of Filing of Documents

⁸ May 3, 2015 VR at 09:20:00–09:20:14.

⁹ Response to the Public Service Commission’s Request for Supplemental Information.

as a receiver of the treatment plants.¹⁰ Mr. Hungler stated that Ridgelea would be willing, in lieu of abandonment, to transfer the systems in Franklin County to Farmdale District for nominal consideration.¹¹ Mr. Hungler testified that Ridgelea did not include the sewer system in Grant County in its request to abandon, and that the system was in better shape than the three systems in Franklin County and was reasonably profitable.¹²

Alan Alsip, the chairman of the board of Farmdale District, and Huston Wells, Franklin County Judge Executive, stated in the public comment section of the hearing¹³ that Farmdale District was willing to act as receiver of the facilities in Franklin County.¹⁴

Ridgelea did not present any evidence at the hearing in support of its alternative request for authorization to transfer its system in Grant County to another entity owned by Mr. Hungler, Perfecto Properties.

On May 3, 2016, a letter from the Kentucky Division of Water (“DOW”) concerning Ridgelea’s abandonment application was filed in the record in this case. In the letter, DOW states that it has been in discussions with local Franklin County officials and representatives of Farmdale District regarding the transfer of the facilities in Franklin County to Farmdale District, and that there may be a funding mechanism through the Kentucky Infrastructure Authority (“KIA”) to provide capital to Farmdale District for the rehabilitation of the Franklin County treatment plants and their collection

¹⁰ May 3, 2015 VR at 09:32:22–09:32:58.

¹¹ *Id.* at 09:30:10–09:30:25.

¹² *Id.* at 09:10:30–09:10:45.

¹³ Neither Farmdale District nor the Franklin County Fiscal Court filed a motion to intervene.

¹⁴ May 3, 2015 VR at 09:06:00–09:06:20 and 09:07:40–09:08:38.

systems. DOW further states that a transfer of operations of these plants to Farmdale District is in the best interest of human health and the environment, and that DOW supports the transfer whether by abandonment or sale. DOW, however, states that it “is troubled by the potential precedent that might be set by [a Commission] order allowing a private utility to effectively dislodge itself of poor performing assets but allowing it to retain control of its one ‘reasonably profitable’” asset. Allowing a transfer of only the poor-performing assets would, according to DOW, be inequitable and result in a transfer of the cost of necessary repairs to the broader public. Finally, DOW suggests that the Commission either require Ridgelea to abandon its facility in Grant County or further investigate the abandonment of that facility.

On May 5, 2016, Commission Staff held an informal conference with representatives of Ridgelea, Farmdale District, the Franklin County government, and DOW to discuss the possibility of an outright transfer of the facilities in Franklin County to Farmdale District, which would avoid the legal issue of determining whether Ridgelea has the right to abandon its Franklin County assets but retain ownership of the system in Grant County.¹⁵ Representatives of Franklin County expressed concerns about Farmdale District taking ownership of the facilities in Franklin County rather than operating the facilities as receiver due to potential liability arising from environmental compliance issues and a pending enforcement action against Ridgelea.¹⁶

On May 18, 2016, Ridgelea filed its Response to the Public Service Commission’s Request for Supplemental Information in which it provided information requested by Commission Staff at the hearing: On May 27, 2016, Ridgelea filed a

¹⁵ Memorandum dated May 13, 2016, for Informal Conference of May 5, 2016.

¹⁶ *Id.* at 2.

Status Report with the Commission stating that following discussions with Franklin County and Farmdale District officials, the owners of Ridgelea had determined to proceed with the application to abandon Ridgelea's three sewer facilities in Franklin County rather than to pursue a voluntary transfer to Farmdale District.

Abandonment

KRS 278.020(6) provides that "[n]o 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." KRS 278.021(2) sets forth the criteria for finding that a utility is considered abandoned:

- (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.

The Commission has previously held 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.”¹⁷

If the Commission 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.”¹⁸

Ridgelea has given notice to the Commission of its intent to abandon its operation of the three systems in Franklin County, but not its one system in Grant County. If a utility is authorized under the statute to abandon some but not all of its utility assets, the criterion for abandonment in KRS 278.021(2)(b) would be met for the facilities in Franklin County. This case thus turns on the legal issue of whether a jurisdictional utility may abandon less than all of its utility facilities and assets.

The Commission is unaware of any case in which the Commission has addressed whether KRS 278.021 permits a utility to abandon some of its facilities used to provide service, but retain others. The statute does not make specific allowance for

¹⁷ Case No. 2015-00290, *Bullitt Utilities, Inc.’s Notice of Surrender and Abandonment of Utility Property* (Ky. PSC Aug. 31, 2015), Order at 4. The Commission notes that subsequent to the filing of Ridgelea’s application to abandon its Franklin County waste water facilities, KRS 278.021 was amended, effective April 8, 2016, to provide that: “Nothing contained in this section shall be construed as requiring the commission to approve an application made pursuant to KRS 278.020(6) for authority to abandon a utility or other assets of a utility or to cease the provision of utility service.” KRS 278.021(9).

¹⁸ KRS 278.021(1).

abandonment of only select portions of a utility's assets. To the contrary, KRS 278.021(2)(a) in particular clearly states that it is applicable when a utility disclaims "all rights to utility property, real or personal, necessary to provide service." The specificity in the provision contemplates the abandonment of all utility property and assets. This comports with KRS 278.021(1), which references the abandonment of "a utility" rather than particular assets of a utility.

The Commission finds that Ridgelea is treated and operates as a single regulated entity, even though Ridgelea has one rate for its three systems in Franklin County and a different rate for its system in Grant County. Ridgelea files one annual financial and statistical report pursuant to 807 KAR 5:006, Section 4.¹⁹ 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.²⁰ Ridgelea files a single income tax return that includes revenues generated by all four of its sewer systems.²¹

Based on the foregoing, the Commission finds that under KRS 278.021, Ridgelea cannot abandon the three sewer systems in Franklin County if it retains ownership of its system in Grant County. Authorizing a utility to abandon unprofitable facilities while it retains profitable ones would be contrary to the plain meaning of KRS 278.021 and would not be in the public interest. Based on Ridgelea's intent to continue operating the

¹⁹ *Annual Report of Ridgelea Investments, Inc. to the Public Service Commission for the Year Ended December 31, 2014.*

²⁰ Certificate of Existence, Oct. 6, 2011, <https://app.sos.ky.gov/corpscans/45/0115145-09-99999-20111006-RCE-4933451-PU.pdf>, last accessed July 15, 2016.

²¹ Ridgelea's Response to the Public Service Commission's Request for Supplemental Information.

system in Grant County, the Commission has no authority under KRS 278.021 to declare that system abandoned. The Commission therefore finds that Ridgelea's application for approval to abandon its three sewer systems in Franklin County while retaining ownership of its sewer system in Grant County should be denied, and that Ridgelea should continue to operate the systems in Franklin County.

Transfer of Ownership

Under KRS 278.020(6), the Commission shall grant approval of a request to transfer ownership of a utility "if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service." Further, pursuant to KRS 278.020(7), in order to approve a proposed acquisition of a utility, the Commission must find that the acquisition is in accordance with law, for a proper purpose, and is consistent with the public interest.

In this case, Ridgelea did not present evidence at the hearing²² regarding whether Perfecto Properties, the entity to which it proposed to transfer its system in Grant County, has the financial, technical, and managerial abilities to provide reasonable service to the customers of the system in Grant County. Therefore, the Commission finds that Ridgelea did not make the requisite showing under KRS 278.020(6) for approval of the transfer request. However, even if Ridgelea had met its burden under KRS 278.020(6), the Commission finds that Perfecto Properties' acquisition of Ridgelea's profitable operations solely for the purpose of permitting abandonment of its unprofitable operations would not be for a proper purpose or

²² The owner of Ridgelea, Charles Hungler, did testify at the hearing that he also owns a company called Perfect-A-Waste, which he described as a wastewater systems maintenance company with 35 years of experience. According to the Ohio Secretary of State's website, Perfecto Properties and Perfect-A-Waste Sewage Equipment, LLC, are separate companies.

consistent with the public interest as required under KRS 278.020(7). For these reasons, the Commission finds that Ridgelea's alternative request to transfer its Grant County system to Perfecto Properties should be denied.

IT IS THEREFORE ORDERED that:

1. Ridgelea's request for the Commission to find that Ridgelea has abandoned its sewer facilities serving the Meadowbrook, Edgewood, and Farmgate subdivisions in Franklin County, Kentucky, is denied.

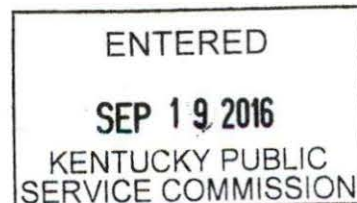
2. Ridgelea's alternative request for the Commission to authorize Ridgelea to transfer its sewer facilities serving the Grantland Estates subdivision in Grant County, Kentucky, to Perfecto Properties is denied.

3. Ridgelea shall continue to operate its utility facilities unless and until the Commission issues an Order authorizing Ridgelea to abandon or transfer its facilities.

4. The Executive Director shall forward a copy of this Order to the Kentucky Division of Water, the Office of the Attorney General, the Franklin County Judge/Executive, the Farmdale Sanitation District and the Grant County Judge/Executive.

5. This case is closed and removed from the Commission's docket.

By the Commission



ATTEST:

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