

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

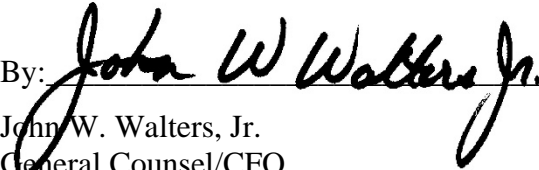
In the Matter of:

INVESTIGATION OF KENTUCKY UTILITIES)	
COMPANY'S AND LOUISVILLE GAS &)	
ELECTRIC COMPANY'S RESPECTIVE NEED)	CASE NO. 2015-00194
FOR AND COST OF MULTIPHASE)	
LANDFILLS AT THE TRIMBLE COUNTY AND)	
GHENT GENERATING STATIONS)	

RESPONSE TO DATA REQUEST OF
STAFF OF THE KENTUCKY PUBLIC SERVICE COMMISSION

Sterling Ventures, LLC hereby responds to the Data Request of the Staff of the Public Service Commission dated July 2, 2015 in accordance with the Commission's Order of Procedure entered in this matter.

Respectfully submitted,
Sterling Ventures, LLC

By: 
John W. Walters, Jr.
General Counsel/CFO
376 South Broadway
Lexington, KY 40508
Phone: (859) 259-9600
johnwalters@sterlingventures.com

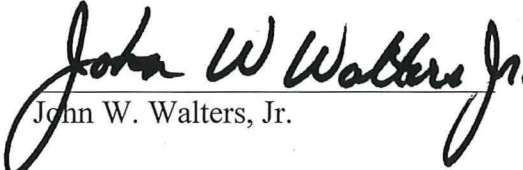
Dennis G. Howard II
Howard & Farley, PLLC
Attorneys at Law
455 S. 4th Street, Suite 1250
Louisville, KY 40202
Phone: (502) 473-6464
Cell: (859) 536-0000
Fax: (502) 473-6462
dennis@howardfarley.com

Dated: July 16, 2015

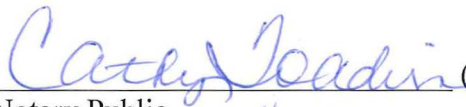
VERIFICATION

COMMONWEALTH OF KENTUCKY)
) SS:
COUNTY OF FAYETTE)

The undersigned, John W. Walters, Jr., being duly sworn, deposes and states that he is the CFO of Sterling Ventures, LLC, that he has personal knowledge of the matters set forth in the responses for which he has identified as the witness, and the answers contained therein are true and accurate to the best of his knowledge, information and belief formed after a reasonable inquiry.


John W. Walters, Jr.

Subscribed and sworn to before me, a Notary Public in and before said County and State, this 16th day of July, 2015.

 (SEAL)
Notary Public #524812

My Commission Expires:

1/31/19

STERLING VENTURES, LLC

CASE NO. 2015-00194

**Response to Data Request of Staff of the
Kentucky Public Service Commission
Dated July 2, 2015**

Question No. 1

Responding Witness: John Walters

Q-1 Refer to the Sterling Ventures Formal Complaint ("Complaint"), page 9, paragraph 25. Provide a copy of the referenced December 12, 2011 electronic mail sent by Scott Straight of Kentucky Utilities Company.

A-1 See attached.



STERLING
VENTURES

John Walters <johnwalters@sterlingventures.com>

RE: Ghent Landfill Beneficial Reuse Opportunity

1 message

Straight, Scott <Scott.Straight@lge-ku.com>

Tue, Dec 13, 2011 at 8:31 AM

To: John Walters <johnwalters@sterlingventures.com>

Cc: "Pfeiffer, Caryl" <Caryl.Pfeiffer@lge-ku.com>, "Voyles, John" <John.Voyles@lge-ku.com>, "charles.schram@lge-ku.com" <charles.schram@lge-ku.com>, "Joyce, Jeff" <Jeff.Joyce@lge-ku.com>, "Heun, Jeff" <Jeff.Heun@lge-ku.com>, "Bowling, Ralph" <Ralph.Bowling@lge-ku.com>

Mr. Walters,

As we have discussed over the phone, this potential opportunity you have presented would not eliminate the need to construct the infrastructure required to process the by-products at Ghent, nor would it eliminate the construction of the landfill infrastructure. Instead, it potentially could have merit in a few years to defer the next phased expansion of the landfill.

The next phase of the landfill is years away; therefore, I'm transferring any future evaluation of this proposal to Mr. Jeff Joyce, Ghent's General Manager.

As the station General Manager, Mr. Joyce will take the lead on any consideration of changes to the future operation of that facility. If needed, Mr. Joyce will request involvement from my department or Caryl Pfeiffer's Corporate Fuels and By-Products department.

Sincerely,

Scott Straight

Director, Project Engineering

LG&E and KU Energy, LLC

(502) 627-2701

scott.straight@lge-ku.com

From: John Walters [mailto:johnwalters@sterlingventures.com]

Sent: Saturday, December 10, 2011 5:06 PM

To: Heun, Jeff

Cc: Straight, Scott; Pfeiffer, Caryl; Voyles, John; charles.schram@lge-ku.com; Joyce, Jeff

Subject: Ghent Landfill Beneficial Reuse Opportunity

Jeff

I understand from Scott Straight that you are evaluating the comparative PVRR cost projections for the beneficial reuse of Ghent's gypsum at Sterling Ventures' underground limestone mine. I am continuing to make minor adjustments to the comparative projections as we learn more information. Attached is the latest PVRR cost comparison.

In PSC Case No. 2009-00197, Charles Schram submitted, as part of his testimony, the PVRR analysis table that the Company would use to evaluate new beneficial reuse opportunities that could minimize disposal cost by delaying or eliminating construction of future phases. I have added three worksheets (KU PVRR Project 30, PVRR SV Option1 and PVRR SV Option2) to the attached excel file. Those worksheets (also attached as pdfs) convert my original PVRR comparison worksheet to the format that Mr. Schram indicated would be used in this situation. I apologize for not providing the beneficial reuse savings projections in this format earlier.

As I have indicated in prior emails, the comparative PVRR projections are based on certain assumptions about the timing of the remaining \$160 million construction costs of Phases 2 and 3 of the landfill. I have based my capital cost timing assumptions, and the O&M costs, on the retirement studies analysis in KU's recent Environmental Surcharge case. We would welcome the opportunity to meet with you about refining, correcting and updating the construction timing and cost assumptions in the attached.

I am also attaching, for your review, the Form 7059 for that we filed in July 2010, and a copy of the resulting Beneficial Reuse Special Waste Permit for Ghent's gypsum the we received in November, 2010.

Hopefully, our existing Beneficial Reuse Permit can provide a timely alternative that can delay or eliminate near and long term landfill construction costs and equipment purchases at Ghent, and result in significant savings for KU and its' customers.

Could you possibly confirm receipt of this email, and also let me know when you believe your preliminary analysis will be completed?

I look forward to hearing from you.

John Walters

--

John W. Walters, Jr.

Sterling Ventures, LLC

376 South Broadway

Lexington, KY 40508

Phone (859) 259-9600

Fax (859) 259-9601

johnwalters@sterlingventures.com

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STERLING VENTURES, LLC
CASE NO. 2015-00194

Response to Data Request of Staff of the
Kentucky Public Service Commission
Dated July 2, 2015

Question No. 2

Responding Witness: John Walters

Q-2 Refer to the Complaint, page 17, which states: "In addition, according to KDWM, it would require only a permit modification to the Sterling Ventures Special Waste Facility permit in order to allow for storage of CCR generated at the Trimble County Generating Station."

- a. State if Sterling Ventures has obtained this permit modification. If Sterling Ventures has not obtained the permit modification, explain why it has not done so, and state when Sterling Ventures anticipates being able to obtain the modification.
- b. State whether this statement is accurate in light of the final rule on Disposal of Coal Combustion Residuals ("CCR") from Electric Utilities, 80 Fed . Reg.(Apr. 17, 2015) (amending 40 CFR Parts 257 and 261) ("CCR Rule")
- c. Explain if there is a date when the existing special wastes permit becomes null and void .

A-2 a. Sterling has not yet obtained this Permit. Based upon discussions with the KDWM, in order to obtain the Permit, Sterling would need the toxicity characteristic leaching procedure (TCLP) and/or the Synthetic Precipitation Leach Procedure (SPLP) test results for Trimble County CCR in order to obtain the amended Permit allowing Trimble CCR to be beneficially reused in the mine. As KU/LG&E has not provided Sterling the opportunity to meet or obtain any information with respect to Sterling's proposal, KDWM suggested that Sterling wait until KU/LG&E filed an amended application for the Trimble Landfill permit with the KDWM, and then obtain the TCLP and the SPLP in an open records act request of that file.

Sterling learned that KU/LG&E had filed its revised permit application the in the first week of July, and requested a copy of the file in an open records act request on July 8, 2015. A copy of the file was received on July 14, 2015. Sterling plans to file the amendment with Trimble County's CCR TCLP and SPCP analyses the week of July 20, 2015.

b. Sterling's had discussion with KDWM staff about the ability to obtain a modification to beneficially reuse Trimble County's CCR both before and after the effective date of the new CCR regulations. It was staff's position that the CCR regulations as finally adopted would not prohibit Sterling from amending its existing permit to allow Sterling to beneficially reuse Trimble County's CCR, barring a material change to the TCLP and/or SPLP as originally filed.

c. No. The Beneficial Reuse Permit is issued for the life of the facility.



STERLING
VENTURES

John Walters <johnwalters@sterlingventures.com>

Information Request

1 message

John Walters <johnwalters@sterlingventures.com>

Wed, Jul 8, 2015 at 11:11 AM

To: DEP.KORA@ky.gov

Please find attached a Request to Inspect Public Records. Should there be any questions regarding this request, please call me at 859-621-3990.

John Walters

John W. Walters, Jr.
Sterling Ventures, LLC
376 South Broadway
Lexington, KY 40508
Phone (859) 259-9600
Fax (859) 259-9601

johnwalters@sterlingventures.com

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COMMONWEALTH OF KENTUCKY

REQUEST TO INSPECT PUBLIC RECORDS
RE: KRS CH.61

Energy and Environment Cabinet **REQUEST**
Department of Environmental Protection
TO: Division of Waste Mahagement
Name of State Agency

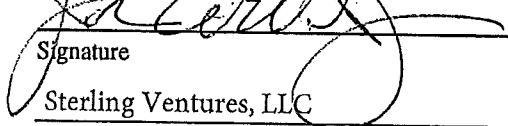
DATE: July 8, 2015

Public files in Regional Offices are not necessarily complete. Complete public files may be examined at the appropriate central office in Frankfort, Ky.

1. I request to inspect the following document(s): LG&E/KU Application for Permit to Construct a Coal Combustion Residuals landfill - AI-4054. APE 2014-0001 Graybar. Please contact Todd Hendricks in Division of Waste Management regarding this Request. July 2015 application.

2. Number of copies of each document requested @ 10¢ a page: 1

3. Enclosed \$ _____ Check Money Order Cash

4. 
Signature
Sterling Ventures, LLC
Company

376 South Broadway, Lexington, KY 40508 859-621-3990
Address Phone johnwalters@sterlingventures.com

5. Is requested information from a database or geographic information system: Yes No

6. For commercial use: Yes No

7. If the answer to questions 5 & 6 is yes, the commercial purpose for which the requested information shall be used to: File modification to existing Registered Permit-By-Rule for Beneficial Reuse of Special Waste.

I hereby certify that the information set forth in item 7 is true and correct to the best of my knowledge


Signature

DISPOSITION

8. The following disposition was made of the above request: _____

9. _____
Signature of Custodian Amount Received
_____ Agency _____ Date

STERLING
VENTURES

John Walters <johnwalters@sterlingventures.com>

Secure Message Is Waiting From The Commonwealth of Kentucky MOVEit System

1 message

Fisher, Tina <Tina.Fisher@ky.gov>
To: johnwalters@sterlingventures.com

Tue, Jul 14, 2015 at 11:20 AM



New Secure Message Notification From The Commonwealth of Kentucky MOVEit System

Welcome to the Commonwealth of Kentucky MOVEit System! A new secure message has been posted for you.

From: Fisher, Tina
Subject: AI#4054 APE20140001

Your account information is as follows:

Username: johnwalters@sterlingventures.com

Password: 

Please use the following URL and the above account information to view this secure message and/or compose a secure reply to it.

<https://ftp.ky.gov/human.aspx?OrgID=8628&Arg12=message&Arg06=208917729>

If you do not know the sender of this message, are unsure of why you are receiving this message or need assistance, please contact Commonwealth Service Desk at 502-564-7576 / CommonwealthServiceDesk@ky.gov . Please reference MOVEit/FTP and the Commonwealth Server Team.

NOTE: Representatives From The Commonwealth Of Kentucky Will NEVER Request Your Password!**REMINDER: You Should NEVER Divulge Your Password To Anyone For Any Reason!**Regards,
Commonwealth of Kentucky FTP Notification Service

CASE NO. 2015-00194

**Response to Data Request of Staff of the
Kentucky Public Service Commission**

Dated July 2, 2015

Question No. 3

Responding Witness: John Walters

Q-3 State whether and how the CCR Rule impacts Sterling Ventures' proposal to dispose of CCR in its mine.

A-3 The new CCR rule does not affect Sterling's proposal to beneficially reuse (verses dispose of) CCR from either Ghent or Trimble County Generating stations. It is important to remember that the new CCR regulations impose new conditions and requirements for disposal of CCR in CCR landfills (essentially dry, lined facilities), and in CCR impoundments (wet unlined ponds). As a result, LG&E and KU must now comply with new rules affecting their existing CCR disposal facilities and new rules with respect to new facilities (i.e. the proposed Trimble County Landfill). However, Sterling's is proposing to beneficially use CCR in its mine, not dispose of the material in the mine. Beneficial use is not covered by the new CCR rules, except to provide criteria that distinguish beneficial use from disposal. Since Sterling is beneficially using the CCR in its underground mine, the new CCR rules impacting disposal do not apply to Sterling.

CASE NO. 2015-00194

**Response to Data Request of Staff of the
Kentucky Public Service Commission**

Dated July 2, 2015

Question No. 4

Responding Witness: John Walters

Q-4 State whether Sterling Ventures has conducted any evaluation or analysis regarding the impact of the CCR Rule on its proposal to dispose of CCR in its mine. If yes, provide a copy of the evaluation or analysis.

A-4 See above and response to Question 9 below.

CASE NO. 2015-00194

**Response to Data Request of Staff of the
Kentucky Public Service Commission**

Dated July 2, 2015

Question No. 5

Responding Witness: John Walters

Q-5 Describe Sterling Ventures' experience with CCR disposal in general and, in specific, its experience with disposing of CCR in its limestone mine.

A-5 Sterling has no direct experience with handling CCR. However, CCR is a bulk material and Sterling has 15 years of experience with moving, placing and transporting limestone by conveyor, truck and heavy equipment. The concepts of transporting and placing CCR in Sterling's mine are essentially the same as moving and transporting limestone out of Sterling's mine.

Attached is information the Companies provided to the Kentucky Division of Waste Management, Solid Waste Branch, detailing equipment that is necessary to operate the movement of materials to and in the proposed Trimble Landfill ("Attachment 13"). Other than concrete trucks and Tree Clearing Shears and mulching equipment (which are unnecessary as Sterling will not be striping vegetation to place material in the mine), Sterling's management and employees have extensive experience using the same bulk material handling equipment the Companies provided in Attachment 13.

ATTACHMENT 13

Equipment to Construct, Operate, and Maintain Special Waste Landfill Trimble County Generating Station Landfill

The following equipment is expected to be used to construct, operate, and maintain the Special Waste Landfill Facility.

- Backhoes;
- Dozers;
- Scrapers;
- Excavators;
- Off-Road Haul Trucks;
- Fixed Body and Articulated Dump Trucks;
- Dump Trucks;
- Passenger Vehicles (Such As Pickup Trucks);
- Hoe Rams;
- Front End Loaders;
- Rollers and Compactors;
- Water Trucks;
- Concrete Trucks;
- Motor Graders;
- Skid Steer Loaders;
- Telehandler Loaders;
- Fuel and Maintenance Trucks;
- Tree Clearing Shears and Mulching Equipment;
- Low-Boy Tractor/Trailer;
- General Handtools; and
- Mower.

CASE NO. 2015-00194

**Response to Data Request of Staff of the
Kentucky Public Service Commission**

Dated July 2, 2015

Question No. 6

Responding Witness: John Walters

Q-6 State whether Sterling Ventures is aware of any other entity that is disposing CCR in a limestone mine located below the water table, and, if so, provide details concerning the location and scope of the CCR disposal.

A-6 Sterling is unaware of any other disposal of CCR in any underground limestone mine. The question of Sterling's limestone mine being "located under the water table" is relevant only if the state determined that there was a risk of any leachate from Sterling's mine entering the groundwater in a manner that posed a risk to human health or the environment. Sterling's mine is a dry mine. As indicated in response to question 4 above, KDWM has visited Sterling mine in connection with Sterling's original application for its Beneficial Reuse Permit, and confirmed that CCR placed in the mine would have no adverse impact on human health or the environment, given its geologic location between 250 and 600 feet underground.

The Companies have proposed what Sterling believes to be the largest and most expensive CCR landfill ever constructed by a utility. Underground limestone mines are the exception, not the rule with respect to limestone extraction. Most extraction is by quarrying operations. As a result, the unique opportunity to use the mine is based upon the immense cost of the Trimble landfill, and its proximity to Sterling's underground mine.

According to filings in by LG&E in Case No. 2009-00198, LG&E entered into discussion with Louisville Underground, an underground limestone mine in Louisville, Kentucky to place CCR from Cane Run in the mine. Louisville Underground was apparently the least cost alternative of those considered at the time. However, LG&E considered a take or pay provision commercially unreasonable, and for that and other reasons, no contract was ever executed. John Walters, Sterling's CFO spoke with the owner of the Louisville Underground as part of its investigation of the viability of the proposal to beneficially use Ghent's gypsum about the take or pay provision and the contract negotiations. According to Louisville Undergrounds owner, it was going to be necessary for the Company to make a substantial investment in infrastructure and/or equipment to place CCR in the mine, and it was commercially unreasonable for LG&E to impose a contract with no binding obligation to place any amount of CCR in the mine. As a result, the construction of the Cane Run landfill became the preferred alternative. (See attached).



an e-on company

Mr. Jeff DeRouen
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40602

RECEIVED

NOV 17 2009

PUBLIC SERVICE
COMMISSION

**Louisville Gas and
Electric Company**
State Regulation and Rates
220 West Main Street
PO Box 32010
Louisville, Kentucky 40232
www.eon-us.com

November 17, 2009

Robert M. Conroy
Director - Rates
T 502-627-3324
F 502-627-3213
robert.conroy@eon-us.com

**RE: *THE APPLICATION OF LOUISVILLE GAS AND ELECTRIC
COMPANY FOR CERTIFICATE OF PUBLIC CONVENIENCE
AND NECESSITY AND APPROVAL OF ITS 2009 COMPLIANCE
PLAN FOR RECOVERY BY ENVIRONMENTAL SURCHARGE
CASE NO. 2009-00198***

Dear Mr. DeRouen:

Please find enclosed and accept for filing the original and eight (8) copies of the public version of the Post-Hearing Data Response of Louisville Gas and Electric Company ("LG&E") to Data Request made by the Commission Staff during the Hearing on November 3, 2009, in the above-referenced matter.

The commercially sensitive and confidential information redacted from the public version of the response is the same information previously submitted by LG&E under seal with the Commission pursuant to the its June 26, 2009 Petition for Confidential Protection. Pursuant to that Petition, the confidential version of the Post-Hearing Data Response with the confidential information highlighted is being provided and filed in a sealed envelope marked "Confidential."

Should you have any questions concerning the enclosed, please contact me at your convenience.

Sincerely,

Robert M. Conroy

Enclosures
cc: Parties of Record

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF LOUISVILLE GAS AND)	
ELECTRIC COMPANY FOR A CERTIFICATE)	
OF PUBLIC CONVENIENCE AND NECESSITY)	CASE NO.
AND APPROVAL OF ITS 2009 COMPLIANCE)	2009-00198
PLAN FOR RECOVERY BY ENVIRONMENTAL)	
SURCHARGE)	


RESPONSE OF
LOUISVILLE GAS AND ELECTRIC COMPANY
TO
POST HEARING DATA REQUEST OF COMMISSION STAFF
DATED NOVEMBER 3, 2009
(Public Version-Confidential Information Redacted)

FILED: November 17, 2009

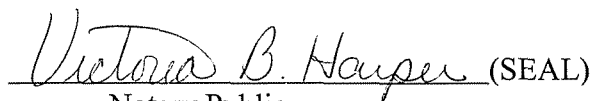
VERIFICATION

STATE OF KENTUCKY)
) SS:
COUNTY OF JEFFERSON)

The undersigned, **Charles R. Schram**, being duly sworn, deposes and says that he is Director, Energy Planning Analysis & Forecasting E.ON U.S. Services Inc., that he has personal knowledge of the matters set forth in the responses for which he is identified as the witness, and the answers contained therein are true and correct to the best of his information, knowledge and belief.


Charles R. Schram

Subscribed and sworn to before me, a Notary Public in and before said County and State, this 13th day of November, 2009.


Notary Public

My Commission Expires:

Sept 20, 2010

LOUISVILLE GAS AND ELECTRIC COMPANY

**Response to Post Hearing Data Request of Commission Staff
Dated November 3, 2009
(Public Version-Confidential Information Redacted)**

Case No. 2009-00198

Question No. 1

Witness: Charles R. Schram

- Q-1. In reference to the beneficial reuse opportunity with Louisville Underground, please provide the evaluation performed to determine the economics of on-site versus off-site storage of coal combustion byproducts at the Cane Run station.
- A-1. The analysis is contained in the Direct Testimony of Charles R. Schram, in Exhibit CRS-1, Section 6, and includes a review of the economics of on-site versus off-site storage of coal combustion byproducts (CCP) at the Cane Run station. The analysis concluded that the Louisville Underground opportunity was least cost if the unit cost of disposal was priced below [REDACTED] per cubic yard (on a 2009 PVRR basis), which represents the cost of disposal in the Cane Run landfill proposed as "Alternative 10".¹

In addition to the on-site Cane Run landfill and the Louisville Underground beneficial reuse opportunity, the analysis also reviewed the economics of off-site disposal in a third party landfill. The evaluation concluded that the cost of off-site landfill disposal was over 80% greater than disposal in an on-site landfill at Cane Run.

Subsequent to LG&E's June 26, 2009 ECR filing, ongoing discussions and negotiations with Merlu regarding Louisville Underground resulted in a higher disposal cost and created significant commercial risks which were not contemplated in the original economic analysis. The following terms and conditions led to LG&E's decision to decline the Louisville Underground beneficial reuse opportunity under the current proposal by Merlu:

¹ Certain information is redacted from this data response due to its commercially sensitive and confidential nature. The redacted information is the same information previously submitted to the Commission in this proceeding under seal pursuant to LG&E's June 26, 2009 Petition for Confidential Protection. Under separate cover, LG&E is submitting this data response without the redaction of confidential information and pursuant to the pending June 26, 2009 Petition for Confidential Protection.

(Public Version – Confidential Information Redacted)

- **The pricing and terms for the Louisville Underground opportunity changed significantly since the June 26, 2009 ECR filing.**

In addition to a 10% increase in disposal fees, Louisville Underground limited the agreement to 10 years instead of the 20-year term evaluated in the original analysis, reducing the volume of CCP from 6 million cubic yards (MCY) to 3.7 MCY. The remaining volume of Cane Run's CCP produced during the 20-year analysis term would need to be stored in a Cane Run landfill, accelerating the construction requirements for the landfill. The Louisville Underground opportunity was no longer least cost on this basis, as shown in Table 1 below.

- **Cancellation provisions which included payment to Louisville Underground of up to \$1.3 million (\$650,000 per year for up to two years).**

A "take-or-pay" provision of this type was not acceptable to LG&E. Any new environmental regulations which result in material reductions to Cane Run's planned capacity factor will reduce the production of CCP and could trigger payments to Louisville Underground. In addition, a prolonged outage at Cane Run could result in the amount of CCP production to be below the minimum take and result in payments to Louisville Underground. Extraction of the CCP from the Cane Run landfill under such circumstances to fulfill the proposed take-or-pay obligation is prohibitively expensive due the functions of the landfill.

- **Louisville Underground's unwillingness to ensure separation of LG&E's CCP from third party materials in the structural fill application.**

Louisville Underground would not ensure the separation of LG&E's CCP from other material. The type and quality of third party material which potentially could be commingled with LG&E's CCP is unknown. Any future removal and separation of CCP from other materials would be difficult and costly. This condition of the proposal would create potentially significant liability risk to LG&E and its customers.

LG&E performed an analysis including the higher disposal cost at Louisville Underground and the effect of the 10-year reduction in the term of the agreement. Using Louisville Underground's higher disposal fee of [REDACTED] per cubic yard (up from [REDACTED] per cubic yard as noted in Exhibit CRS-1 Section 5.2, and the result of an increase from [REDACTED] per ton to [REDACTED] per ton) combined with the construction of a landfill beginning in 2019 results in a total disposal cost of

(Public Version – Confidential Information Redacted)

█ per cubic yard as detailed in Table 1 below. This exceeds the cost of disposal in the proposed on-site Cane Run landfill (Alternative 10). Therefore, with this analysis and the risks inherent in the commercial terms and conditions discussed above LG&E determined that pursuing the beneficial reuse opportunity with Louisville Underground was not economical at this time.

Table 1.

	Cane Run Landfill (Alt 10)	Lou Underground (original 20-yr term)	Lou Underground (10-yr term and Phases 1-2 of Alt 10)
PVRR (\$millions)			
Capital	█	█	█
O&M	█	█	█
Total	█	█	█
Capacity (MCY)	5.8	6.0	5.8
Unit Cost (2009 PVRR \$/CY)	█	█	█

CASE NO. 2015-00194

**Response to Data Request of Staff of the
Kentucky Public Service Commission**

Dated July 2, 2015

Question No. 7

Responding Witness: John Walters

Q-7 Provide the location(s) of the limestone mine pictured in the documents labeled Exhibit 6C as provided at the June 19, 2015 Informal Conference.

A-7 The pictures present at the June 19, 2015 were pulled from the internet to generically show what an underground room and pillar limestone mine looked like. However, attached are actual pictures taken in Sterling's mine to show examples of the areas in the mine where Sterling is proposing to place the Trimble County CCR.



SW-3



CASE NO. 2015-00194

**Response to Data Request of Staff of the
Kentucky Public Service Commission**

Dated July 2, 2015

Question No. 8

Responding Witness: John Walters

Q-8 Explain whether Sterling Ventures has ever considered or proposed the use of the limestone mines for another type of commercial use.

A-8 Sterling has considered obtaining permits to use Class B biosolids and construction debris as other commercial methods to eliminate air voids in abandoned areas of the mine.

CASE NO. 2015-00194

**Response to Data Request of Staff of the
Kentucky Public Service Commission**

Dated July 2, 2015

Question No. 9

Responding Witness: John Walters

Q-9 Refer to the Executive Summary, at page 2 of the handout entitled "Evaluation of Trimble County Coal Combustion Residual Storage Options-2015" from the June 19, 2015 Informal Conference. Louisville Gas and Electric Company and Kentucky Utilities Company state that based on their understanding of the CCR Rule, the Sterling Ventures mine site would not likely be permitted to store CCRs. State whether Sterling Ventures agrees with this statement and, if not, explain the reasons for the disagreement.

A-9 Sterling disagrees with KU and LG&E's assessment of the impact of the new CCR regulations on the ability of Sterling to beneficially use CCR in its underground mine.

In connection with Sterling's original Application for the Beneficial Reuse Permit in 2010, Todd Hendricks, KDSW's geologist, and Robin Green, KDSW's Permit Administration Supervisor, visited Sterling's mine and confirmed that CCR placed in the mine would have no contact with surface water, no contact with ground water, no contact with soils, no fugitive dust emissions and no leachate to monitor.

Sterling has had a number of phone conversations with Mr. Hendricks since the publication of the EPA final CCR regulation and also meet with Ms. Greene and Mr. Hendricks in June of this year to confirm that KDWM believed that the new CCR regulations would not affect Sterling's ability to beneficially reuse CCR in its limestone mine.

As shown in the following analysis of the new regulations, the proposed use of CCR in the underground mine meets the conditions to qualify as beneficial use outlined in the new CCR regulations (40 CFR §257.53.)

(1) *The CCR must provide a functional benefit.*

Eliminating air voids in the mine provides the functional benefit of effectively and efficiently directing air to working areas of the mine.

(2) *The CCR must substitute for the use of a virgin material, conserving natural resources that would otherwise need to be obtained through practices, such as extraction.*

The CCR substitutes for concrete, steel and other materials used to construct air stoppings in the mine, as well as substantially reducing the amount of electricity required to run ventilation fans to move air in the mine, thereby reducing the environmental consequences of additional electric generation.

(3) The use of the CCR must meet relevant product specifications, regulatory standards or design standards when available, and when such standards are not available, the CCR is not used in excess quantities.

There are no product specifications relevant to Sterling's beneficial use of CCR. Sterling's requirement to maintain an active mining operation prevents excess quantities of CCR beyond what is necessary to fill voids in mined out, abandoned areas of the mine.

(4) When unencapsulated use of CCR involving placement on the land of 12,400 tons or more in non-roadway applications, the user must demonstrate and keep records, and provide such documentation upon request, that environmental releases to groundwater, surface water, soil and air are comparable to or lower than those from analogous products made without CCR, or that environmental releases to groundwater, surface water, soil and air will be at or below relevant regulatory and health-based benchmarks for human and ecological receptors during use.

Given the geology of the mine and the strata between the surface and the mining levels, once the CCR is placed in the mine, there will be no environmental contact possible with groundwater, surface water, soil or air.

With respect to the first beneficial use criteria above - functional benefit - the preamble of the new CCR regulations as published in the Federal Register provides that: "To the extent that a state regulatory program has determined that a particular use provides a functional benefit, this may serve as evidence that this criteria has been met."¹

In addition, with respect to the second beneficial reuse criteria above, the preamble also notes that: "Here as well, potential users of CCR may choose to rely on a state determination to provide evidence that this criterion has been met."²

The obvious intent of the EPA was to have the applicable state regulatory agencies be a critical component of the determination of qualifying beneficial reuse. KDSW assured Sterling that the new CCR regulations would have no effect on Sterling's Beneficial Reuse Permit.

Courts will defer to the state drafting the terms of an environmental permit in resolving questions of ambiguity. *Natural Res. Def. Council, Inc. v. Texaco Ref. & Mktg., Inc.*, 20 F. Supp. 2d 700, 709 (D. Del. 1998) ("In construing a permit provision, the Court should defer to the interpretation of the agency charged with enforcement of the terms."); *see also Cal. Pub. Interest Research Grp. v. Shell Oil Co.*, 840 F. Supp. 712, 716 (N.D. Cal. 1993) (An NPDES permit "is a legally enforceable rule drafted by a regulatory agency. As such, it is akin to any agency regulation or rule.") and *California Pub. Interest Research Group v. Shell Oil Co.*, 840 F. Supp. 712, 716 (N.D. Cal. 1993) ("In construing NPDES permits, courts often defer to the agency that

¹ *Federal Register*/Vol. 80, No. 74 / Friday, April 17, 2015 / Rules and Regulations at 21349.

² *Id.*

drafted the permit, consistent with established rules of statutory construction that give deference to agency interpretations where they are reasonable.”).

The above cases deal with permits issued by states with authorization under the National Pollutant Discharge Elimination System (NPDES) permit program, which controls water pollution by regulating point sources that discharge pollutants into waters of the United States. The NPDES program’s purpose, authorization and enforcement structure is substantially similar to that created by the EPA under the new CCR regulations.

Given that the new CCR regulations specifically look to the states issuing beneficial use permits as evidence of compliance with the beneficial use requirements, and the courts defer to a state’s technical expertise and interpretations of permit conditions, Sterling is confident in a KDWM determination that Sterling’s can modify its existing beneficial Reuse Permit to allow the beneficial use of CCR from Trimble County.