

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

**STERLING VENTURES' RESPONSE IN
OPPOSITION TO KENTUCKY UTILITIES COMPANY'S
AND LOUISVILLE GAS AND ELECTRIC COMPANY'S
PETITION FOR CONFIDENTIAL TREATMENT**

Kentucky Utilities Company and Louisville Gas and Electric Company (the "Companies") have filed numerous Petitions seeking confidential protection of the capital costs, operating and maintenance costs, data and information inserted into electronic workbooks used to calculate the present value revenue requirements ("PVRR") of alternatives for the construction of the Ghent and Trimble County Landfill projects. In addition, the Companies' Petitions seek confidentiality of the results of the PVRR analysis of those projects and the alternative proposed by Sterling Ventures, LLC ("Sterling") in this proceeding.

Pursuant to KAR 5:001 Section 13(d), Sterling files this Memorandum in Opposition to the Companies' Petitions, and recommends that the Kentucky Public Service Commission ("Commission" or "PSC") deny confidential treatment of this information.

MEMORANDUM IN OPPOSITION

A. The Companies have Publicly Disclosed the Capital and the Operating and Maintenance Costs of the Trimble County Landfill Project And Have Therefore Waived Their Claim To Confidential Treatment Of Those Costs.

Under 807 KAR 5:001, information that is publicly available does not qualify for confidential treatment under the Commission's Administrative Regulations. Section 13 of the Regulation provides:

(10) Material granted confidentiality that later becomes publicly available or otherwise no longer warrants confidential treatment ...

(b) The person who sought confidential protection shall inform the commission in writing if material granted confidentiality becomes publicly available.

(c) If the commission becomes aware that material granted confidentiality is publicly available or otherwise no longer qualifies for confidential treatment, it shall by order so advise the person who sought confidential protection, giving ten (10) days to respond. If that material has been disclosed by someone other than the person who requested confidential treatment, in violation of a protective agreement or commission order, the information shall not be deemed or considered to be publicly available and shall not be placed in the public record ...

In paragraph 4 of its Petitions in this case for confidential treatment of information contained in Excel Workbooks provided in response to Items 1-14 and of Sterling's Initial Request for Information, and in response to Item 18 of the Commission Staff's Initial Request for Information, the Companies state the claimed confidential information *"is not known outside of the Companies...."* This statement is not accurate with respect to the capital cost and O&M projections, and the sources of those projections used to determine the PVRR of the Trimble Landfill.

Attached as Exhibit A is a detailed disclosure of the projected capital and operating and maintenance costs that the Companies publically disclosed in connection with the original applications for a CPCN for the Ghent and Trimble County Landfill projects. Attached as Exhibit B is a detailed summary of the projected capital and O&M cost that the Companies

produced to the Corp of Engineers in the Companies Supplement to Alternatives Analysis dated December 2014.

The Companies have now claimed the same and substantially similar cost information contained in Excel Workbooks supplied in response to Sterling's First Data request 1-14 and PSC First Request for Information 1-18 is now confidential, specifically cost information detailed in the "[REDACTED]" and "[REDACTED]" worksheets of the Excel Workbooks provided. Attached as Exhibit C (CONFIDENTIAL) is the Descriptive Rows of the "[REDACTED]" and "[REDACTED]" worksheets clearly showing the same categories and descriptive information as is provided in Exhibits A and B.

The Commission has previously held that prior disclosure of the same or substantially similar information is not confidential. In Case No. 2014-00268, the Commission denied confidentiality for Total Call Mobile Inc's marketing strategies and business planning information:

The information in Attachment B, containing Movant's supplemental responses to Staffs First Request, Item 7, for which Movant requests confidential treatment, does not meet the criteria for confidential treatment under 807 KAR 5:001, Section 13(2), and KRS 61.878(1)(c). The Commission finds that the disclosure of information contained in Attachment B would not provide existing and potential competitors with an unfair competitive advantage. The totality of information in Attachment B for which Movant requests confidential treatment is identical or substantially similar to information filed in Movant's application, for which Movant has not requested confidential treatment; 1 is identical or substantially similar to information in Movant's responses to Item 4 and 5 of Staffs First Request, for which the Commission denied confidential treatment in an Order entered January 12, 2015; and is substantially similar to information filed by competing Eligible Telecommunications Carriers for which confidential treatment was not requested.¹

¹ Case No. 2014-00268, *Application of Total Call Mobile, Inc. for Limited Designation as an Eligible Telecommunications Carrier* (Ky PSC, Feb 20, 2015), Page 2.

The Exhibits referenced above clearly indicate a history of the Companies publicly disclosing detailed projected cost information with respect to capital and O&M costs of its landfill projects, as well as the potential ability to reduce those costs by projected beneficial use tonnage of CCR going to third parties.

B. Capital costs and operating and maintenance costs are not proprietary in connection with an application for a CPCN.

The commission has previously determined **“that information concerning capital costs and O&M costs are not generally recognized as confidential or proprietary when submitted in support of a request for a CPCN.”**²

There is absolutely no reason that any cost information in connection with a CPCN for a landfill project, whose cost will be recovered entirely from ratepayers using the ECR surcharge, should be confidential. A landfill project does not generate any power related revenues for the Companies. The only revenue generated by a landfill project is the additional rate base revenue generated by the cost of the project.

The capital and O&M costs of a landfill do not provide any insight whatsoever into the Companies’ cost of producing power or any price at which the Companies would buy or sell power. The only conceivable way that the disclosure of Capital and O&M costs could place the Companies in a competitive disadvantage would be if they planned to sell space in the landfill to unrelated parties – and the Companies have affirmatively stated that this is not the case.³ It

² Case No. 2014-00166, *2014 Integrated Resource Plan of Big Rivers Electric Corporation* (Ky. PSC, Aug. 26, 2014) at 16.

³ See the Companies Response to Sterling Supplement Data Request, Question 12

simply makes no sense that the Companies would be disadvantaged with respect to a competitor who knows the amount of revenue the Company is generating from increasing its ECR rate base.

In addition, landfill projects for CCR disposal are unique to each facility. For example, Duke Kentucky has proposed building a CCR landfill for its East Bend facility for a fully loaded budgeted cost of \$159 million, less than a third of the projected cost of the Trimble Landfill. It is absurd to think that by disclosing the costs of the landfills that the Companies would suffer some competitive disadvantage to Duke with respect to Duke's landfill project. Duke is clearly not going to divert any of the rate base revenue generated from the Trimble Landfill project, if approved by the Commission, and vice versa. How possibly could the details of those costs provide a competitive advantage to Duke or the Companies in the power market?

The Commission has stated that: "ratepayers have a right to know the actual cost of the power that they are purchasing, and they have a right to know the evidence upon which the Commission relied in determining the costs [] are fair just and reasonable."⁴

When the Companies originally applied for a CPCN for the Ghent and Trimble County Landfill projects, they disclosed the projected capital and O&M components of the projects in support of the requested CPCN. Those disclosed costs showed Phase I of the Trimble Landfill project costing \$94 million. The current cost of Phase I is now projected to be approximately \$501.5 million.

⁴ Order entered March 30, 2015, Case No., 2014-00292, *Application Of East Kentucky Power Cooperative, Inc. For An Order Declaring The Glasgow Landfill Gas To Energy Project To Be An Ordinary Extension Of Existing Systems In The Usual Course Of Business And A Joint Application Of Farmers Rural Electric Cooperative Corporation And East Kentucky Power Cooperative, Inc. For Approval To Enter Into A Ten Year Purchased Power Agreement And Approval Of A Special Contract*

In essence, by claiming confidentiality for the projected cost details, information and data with respect to the Trimble Landfill Project, the Companies are basically telling ratepayers that they do not have a right to see how and why the Companies' original projections for the cost of the first Phase of the Trimble Landfill project were off by over 450%. Hiding the details of enormous cost projection errors effectively limits the ability of ratepayers to question those errors at a time when it has become apparent that investor owned utilities have turned to construction projects to meet market demands for revenues.⁵

C. If the projected capital and O&M costs, return on rate base, depreciation and discount rate are not confidential, applying a non-confidential mathematical formula that calculates the projected PVRR cannot be confidential.

Attached as Exhibit D is a copy of *Coal Combustion Byproduct Plan for Ghent Station Dated June 2009*⁶ (the "Ghent CCB Plan"). On pages 24-35 of that document are the alternative projects PVRR calculations, but KU claimed confidentiality with respect to the PVRR results. Clearly, the formula for a present value calculation is not confidential. Assume, by way of example, that the Companies had a large loan, and that they publically disclosed all of the details of that loan, including the amount of the loan, interest rate, and its term. If the Companies then ran an amortization schedule using all of the publically disclosed details of the loan amount, rate, and term that were the numerical inputs for the amortization calculation, it obviously could not claim that the amortization schedule was confidential. The only way that the amortization schedule could be confidential would be if the mathematical amortization calculation itself was confidential. Clearly, that is not the case.

⁵ See Rebecca Smith, *Utilities' Profit Recipe – Spend More*, Wall St. J., April 20, 2015

⁶ See KU's 2009 Application for CPCN (Volume 2), Exhibit 3 to Charles Schram's Testimony Filed June 26, 2009.

Again, it is hard to imagine how the Companies would be at a competitive disadvantage with respect to the disclosure of the PVRR of a landfill project. Unless the Companies are selling landfill space, there can be no competitive disadvantage. What competitor could possibly divert the amount of the ECR recovery paid entirely by the ratepayers away from the Companies as a resulting of knowing the present value of the projected ECR revenue requirement?

The “ [REDACTED] ” and “ [REDACTED] ” worksheets of the Workbooks the Companies are claiming as confidential in response to Sterling’s First Data request 1-14 and the PSC’s First Request for Information 1-18 are the comparative PVRR of the Sterling proposal versus the Companies proposal to construct the Trimble Landfill.

Exhibit E is the *Coal Combustion Residuals Plan for E.W. Brown Station, Dated May 2011*⁷, that was filed as an Exhibit in the 2011 CPCN Application for the landfill project. That document, on pages 11-16, publically discloses the exact same information as was redacted as confidential on pages 24-35 of the Ghent Plan.

In its Supplemental Data Request to the Companies, Question 13, Sterling requested that the Companies identify any specific instances of a competitor obtaining an unfair competitive advantage over the Companies because of the decision not to claim confidentiality with respect to the projected cost and PVRR analysis for the Brown Landfill alternative. The Companies were unable to identify any such competitive advantage.

In addition, in their response, the Companies claimed that the Coal Combustion Residuals Plan for E.W. Brown did not contain confidential information. If all of the cost data and the PVRR calculations in the Brown plan are not confidential information, the same

⁷ Exhibit CRS-2 to Direct Testimony of Charles Schram in 2011 CPCN Application, Filed June 1, 2011

information in the Ghent plan is not confidential, and the PVRR calculation in the Excel Workbooks the Companies provided in response to Sterling's First Data request 1-14 and the PSC's First Request for Information 1-18 are also not confidential.

In paragraph 4 of its Petitions in this case with respect to information contained in Workbooks provided in response to Items 1-14 and of Sterling's Initial Request for Information, and in response to Item 18 of the Commission Staff's Initial Request for Information, the Companies state that the claimed confidential information is "*generally recognized as confidential and proprietary information in the energy industry....* " This statement is also not accurate as other investor owned utility companies disclose PVRR calculations out of the Strategist, as well as the detailed information and assumption inputted into Strategist, in connection with hearings before governing regulatory agencies.

Attached as Exhibit F is Xcel Energy's 2015 Resource Plan submitted to the Minnesota Public Utilities Commission. As can be seen from the cover letter, Xcel has elected to "excise" information and data that the Company deemed confidential. Importantly however the Company did not consider any of the information, cost and data used in the Strategist analysis of the Resource Plan, or the PVRR results (Page 85 of 102) of the various scenario outcomes, as confidential.

Similarly, attached as Exhibit G is the results of using Strategist to compare alternatives as outlined in the Direct Testimony of James F Hill,; *In The Matter Of The Application Of Public Service Company Of Colorado For Approval Of The Acquisition Of The Brush 1, 3, And 4 Generation Facilities And, In Connection Therewith, The Grant Of Certificates Of Public Convenience And Necessity If Required And The Approval Of Cost Recovery Through*

A General Rate Schedule Adjustment Proceeding No.12A-782E (See Attachment D to Walters' Pre Filed Testimony).

In their response to Question 9 (d), the Companies made the following statement with respect to the impact of the projected annual revenue requirements (2009-2018) from landfill projects calculated to determine the billing impact:

It would not be appropriate to look only at years 2009 through 2018 in determining PVRR for Phase 1 of the Ghent Landfill. PVRR should be determined using the project spend profile and life of the project being evaluated utilizing the detailed models as discussed in the testimony of David S. Sinclair. The purpose of the spreadsheet referenced in Appendix D is to calculate the estimated annual impact on Total E(m), Jurisdictional E(m), and the incremental billing factor associated with the inclusion of the projects contained in the 2009 ECR Plan in the ECR mechanism over a five-year period. The incremental billing factor was used to estimate the bill impact only for purposes of providing the Companies' customers with public notice of the proposed change in rates.

The Companies position essentially is that the correct method to determine the least cost of alternatives is to look at the projected PVRR for the life of the project, not the project impact on billing rates for a limited number of years of the proposed alternative. However, the Companies clearly do not want to show ratepayers the projected cost of the project based on its PVRR.

Again, the Commission's position is that: "ratepayers have a right to know the actual cost of the power that they are purchasing, and they have a right to know the evidence upon which the Commission relied in determining the costs [] are fair just and reasonable."⁸

⁸ Order entered March 30, 2015, Case No., 2014-00292, *Application Of East Kentucky Power Cooperative, Inc. For An Order Declaring The Glasgow Landfill Gas To Energy Project To Be An Ordinary Extension Of Existing Systems In The Usual Course Of Business And A Joint*

D Disclosure of Contract Information and pricing would have the effect of decreasing, not increasing, the ability of the Companies to obtain favorable pricing and contract terms that would benefit ratepayers.

In paragraph 4 of its Petitions in this case for confidential treatment of beneficial use contracts and barge contract information with third parties provided in response to Items 1-17 (i), 1-21, 1-23 and 1-29 of Sterling's Initial Request for Information, and in response to Item 8 (b)(2) of the Commission Staff's Initial Request for Information. The Companies state that the disclosure of the claimed confidential information "*would hinder the Companies' ability to obtain the best contract terms in negotiating with other entities....* "

This argument is the same argument that the Companies made in Case No. 97-197 when claiming that the disclosure of coal contract prices and terms, or that barge transportation contracts, would allow suppliers to manipulate prices with the result of higher prices for coal and transportation.⁹ Companies have been publically disclosing the price of coal by customer and barge contract pricing and terms for 15 years, and the Companies' claims of negative effects on the ability to obtain competitive pricing and terms for coal purchases and barge transportation pricing have proved unfounded.

The reason there has been no evidence of competitive disadvantage is the realities of the marketplace. As the Commission in Case No. 97-197 correctly observed, "public disclosure of such information is just as likely to have the effect of decreasing coal prices to utilities when one

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⁹ See Case No. 97-197, *In the Matter of Petition of Kentucky Utilities Company for Confidential Protection for Certain Information contained in Barge Transportation and Coal Contracts.* (Kentucky Public Service Commission, March 18, 1998)

coal supplier may wish to undersell another in order to obtain a long term contract with a utility.”¹⁰

In Case No. 95-270, LG&E requested confidential protection of a contract with TCI/TKR to use LG&E’s utility poles for hanging fiber and cable. In determining that confidential protection was not warranted, the Commission held as follows:

The petition filed by LG&E does not identify any competitor who would benefit from the information, nor does it establish how the information could be used by competitors to LG&E’s disadvantage. Instead, LG&E maintains that the information should be protected because disclosure will impair its ability to negotiate the most favorable terms with other prospective communications service providers for the same or similar service that it has agreed to provide TCI/TKR under the agreement. This is not a basis for protection recognized by the statute and the petition cannot be granted on these grounds.

CONCLUSION

The Companies clear preference is to keep the projected cost components of projects, and the overall project costs based on the project’s PVRP, secret from the public. However, under the governing statute, the details of, and method for determining, the projected cost of an ECR landfill project should be publicly available unless that information meets a specific exception set forth in law.

KRS §61.871 specifically provides:

The General Assembly finds and declares that the basic policy of KRS 61.870 to 61.884 is that free and open examination of public records is in the public interest and the exceptions provided for by KRS 61.878 or otherwise provided by law shall be strictly construed, even though such examination may cause inconvenience or embarrassment to public officials or others.

¹⁰ *Id.* at 4.

Other than blanket, generic statements that competitive disadvantage will result from disclosure, the Companies' Petitions failed to sufficiently explain how much of the information that the Company wishes to maintain as confidential falls within a specific exception set forth under KRS §61.878. When confronted with the disclosure of the cost and PVRR of the E.W Brown landfill project, the Companies admitted that there has been no known adverse effect from that disclosure.

In addition, the Company's long standing claims that disclosure of contract pricing and terms will result in higher prices and unfavorable terms has been discredited by 15 years of the disclosure of coal prices by vendor and barge contract pricing and terms.

Accordingly, Sterling requests that the Commission order that (i) all cost information relating to the Ghent and Trimble Landfill Projects, (ii) the PVRR calculations used to identify the least cost alternative with respect to those projects, and (iii) beneficial used contracts and terms that effect the cost of those projects, be made public for purposes of this proceeding, including but not limited to the following:

1. All project cost data and cost information included in the "[REDACTED]", "[REDACTED]" and other worksheets in the Excel workbooks provided in response to SV 1-14 and Staff 1-14, including any amendments to, or derivative of, those workbooks, including but not limited to the following Excel files:

[REDACTED]

2. The PVRR of the considered alternatives as reflected in the “Summary” and “Detail” worksheets and other worksheets in the following Excel workbooks, and the data inputs of tax and book depreciation, and capital.

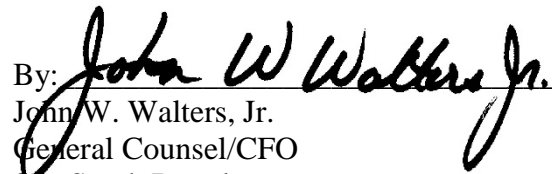


3. All project cost data and cost information and PVRR analysis included in the worksheets in the Excel workbooks provided in response to SV 1-17d - CONFIDENTIAL Attachment to SV1-17d (2012SVAnalysis).xlsx.

4. Copies of Beneficial Use contracts, pricing and terms in response to Staff 1-8(b)(2) and SV 1-17(i) (confidential barge source) SV 1-21, SV 1-23, SV 1-29 and SV 2-5(c).

5. Cost detail in response to SV 2-5(g) and h.

Respectfully submitted,
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