

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

**In the Matter of:**

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

**REPLY OF KENTUCKY UTILITIES COMPANY AND  
LOUISVILLE GAS AND ELECTRIC COMPANY IN OPPOSITION TO  
STERLING VENTURES' RESPONSE IN OPPOSITION  
TO PETITIONS FOR CONFIDENTIAL TREATMENT**

On September 8, 2015, Sterling Ventures filed a Response in Opposition to Kentucky Utilities Company's and Louisville Gas and Electric Company's Petition for Confidential Treatment ("Response") with the Kentucky Public Service Commission's ("Commission"). Kentucky Utilities Company ("KU") and Louisville Gas and Electric Company ("LG&E") (collectively, the "Companies") submit this Reply in opposition to the Response of Sterling Ventures.

Sterling Ventures' Response is untimely to the extent it pertains to any of the Companies' requests for confidential protection other than those filed on September 3, 2015.<sup>1</sup> The Commission's Rules of Procedure provide that "a party may respond to a motion for confidential treatment within seven (7) days after the motion is filed with the commission."<sup>2</sup> These Rules further require that "a party to a case shall file a response to a motion no later than seven (7) days

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<sup>1</sup> See Sterling Ventures' Response in Opposition to Confidential Protection at 12-13. Sterling Ventures requests public disclosure of only one item of information identified in the Companies' Petition dated September 3, 2015 ("Cost detail in response to SV 2-5(g) and h"). All other information identified in Sterling Ventures' Response is related to the Companies' Petitions of July 16 and 17, 2015.

<sup>2</sup> 807 KAR 5:001, Section 13(2)(d).

from the date of filing of a motion.”<sup>3</sup> To the extent that the Sterling Ventures’ Response of September 8, 2015 seeks to respond to the Petitions of July 16 and 17, 2015, the submission is 41 days beyond the time period set forth in the Commission’s Rules of Procedure. Noticeably absent from the unduly late Response is any explanation for its untimely nature and any request for deviation from the Commission’s Rules of Procedure.

The unexplained delay in responding impedes the Commission’s efforts to conduct this proceeding in expeditious manner. Sterling Ventures has waited to file its Response until less than one week before the evidentiary hearing. Given that Sterling Ventures is a sophisticated commercial entity represented by counsel with nearly 30 years of experience, its delay cannot very likely be attributed to a lack of knowledge of the Commission’s Rules of Procedure or a lack of understanding of the need to comply with those Rules.

Although the Commission may decline to consider Sterling Ventures’ response on the grounds it is unduly late, the following Reply is submitted should the Commission give any further consideration to the Response.

### **Argument**

The Commission should grant the Companies’ requests for confidential protection. These requests are intended to protect the Companies and their customers from the commercial harm that may result from disclosing confidential and proprietary cost information derived from vendor contracts and pricing. The information for which protection is sought has not been publicly disclosed by the Companies, precisely because it could hinder their ability to procure the best contract terms and prices, thereby hindering their ability to provide low-cost service to their retail customers and compete in the energy market.

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<sup>3</sup> 807 KAR 5:001 Section 5(2).

**1. The Companies have not publicly disclosed information for which confidential treatment is sought.**

The Companies have not publicly disclosed the cost information contained in their responses to Item 1-14 of Sterling Ventures' Initial Request for Information ("SV 1-14") or Item 18 of the Commission Staff's Initial Request for Information ("PSC 1-18"),<sup>4</sup> or the other responses identified in their Petitions for Confidential Treatment. This highly detailed cost information includes proprietary Excel files that the Companies developed to assess vendor pricing and bids and commercially sensitive information that the Companies developed from various sources, including vendor pricing and contracts, to assess and evaluate the Ghent and Trimble County Landfills.<sup>5</sup> It is neither the same nor substantially similar to the simple tables previously disclosed by the Companies in connection with their 2009 applications to the Commission for certificates of public convenience and necessity,<sup>6</sup> and their 2014 application to the U.S. Army Corps of Engineers for a Clean Water Act Section 404 Permit.<sup>7</sup> Those tables do not contain the specific, discrete components of cost information derived directly from the Companies' vendors. It is the presence of that information in the Companies' Responses to SV 1-14 and PSC 1-18 that requires confidential protection. Moreover, the tables are not part of the proprietary Excel files that the Companies developed and provide a much lower level of detail

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<sup>4</sup> See Sterling Ventures' Response in Opposition to Confidential Protection ("SV Response") at 2-3.

<sup>5</sup> LG&E and KU's Joint Petitions for Confidential Protection (filed July 16, 2015); LG&E and KU's Joint Petition for Confidential Protection (filed July 17, 2015); LG&E and KU's Joint Petitions for Confidential Protection (filed Sept. 3, 2015).

<sup>6</sup> *In the Matter of: Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of its 2009 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2009-00197 (Ky. PSC Dec. 23, 2009); *In the Matter of Louisville Gas and Electric Company for a Certificate of Public Convenience and Necessity and Approval of its 2009 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2009-00198 (Ky. PSC Dec. 23, 2009); *In the Matter of: Application of Kentucky Utilities Company for Certificates of Public Convenience and Necessity and Approval of its 2011 Compliance Plan for Recovery by Environmental Surcharge*, Case No. 2009-00197 (Ky. PSC Dec. 15, 2011); See SV Response at 2 and Exhibit A.

<sup>7</sup> *Id.* at 2-3 and Exhibit B.

than the Companies' Responses to SV 1-14 and PSC 1-18. This difference in detail is clearly evidenced by the sheer differences in file and document size.<sup>8</sup>

Contrary to Sterling Ventures' assertion, the Companies did not publicly disclose in their *2011 Coal Combustion Residuals Plan for E.W. Brown Station* ("CCP Brown") the "exact same information" redacted as confidential in their *2009 Coal Combustion Byproduct Plan for Ghent Station* ("CCP Ghent").<sup>9</sup> The CCP Ghent contained specific, discrete components of cost information derived directly from the Companies' vendors. The CCP Brown did not. The Companies are not aware of any instances where a competitor gained, or could gain, an unfair advantage from access to that information.<sup>10</sup> For those very reasons, the Companies did not seek confidential protection for the CCP Brown.

The information for which the Companies presently seek confidential protection is derived from vendors' contracts and pricing and is inextricably intertwined with the results and inputs of the Companies' analysis. The Companies cannot simply excise cost information derived from vendor contracts and pricing to avoid disclosure of that information. Potential vendors can use the publicly disclosed results and remaining inputs to calculate the excised components. While the Companies acknowledge that utilities in Kentucky and other jurisdictions regularly publicly disclose inputs, calculations, and results relating to present value of revenue requirement calculations,<sup>11</sup> utilities have generally sought protection against public disclosure of such information when the inputs include commercially-sensitive vendor information. The Commission has recognized the potential for public disclosure by affording

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<sup>8</sup> The Companies' Response to SV 1-14 is approximately 457 pages. Their Response to PSC 1-18 is approximately 470 pages. In contrast, Sterling Ventures' Response Exhibit A is four pages in length and Exhibit B is 25 pages.

<sup>9</sup> SV Response at 7 and Exhibits D and E.

<sup>10</sup> LG&E and KU's Response to Item 13 of Sterling Ventures' Supplemental Request for Information.

<sup>11</sup> SV Response at 8.

confidential treatment when non-confidential information is so intertwined with proprietary and commercially-sensitive information in many instances.<sup>12</sup>

**2. Publicly disclosing the Companies' confidential contracts and cost information would hinder the Companies' ability to procure the best contract terms and prices, resulting in higher landfill costs and higher power-production costs.**

The Companies do not have to be in the business of selling landfill space to suffer a competitive disadvantage if confidential vendor contracts and cost information is publicly disclosed.<sup>13</sup> Vendor contracts and pricing provide insight into the Companies' cost of producing power. These contracts affect the cost of operating the Companies' landfills, which is a component of operating their generating stations and ultimately their cost of producing power. In arguing that competitive disadvantage could only occur if the Companies' planned to sell space in the landfill, Sterling Ventures ignores the hard reality that a vendor aware of a competitor's pricing will seek to maximize its own profit by providing the Companies a bid and entering a contract representing that knowledge, rather than the vendor's true best offer. If the Companies lose opportunities to enter contracts on the most favorable terms and pricing, their power-production costs will increase and their ability to supply low-cost service and compete in the energy market will be weakened.<sup>14</sup> Although the Companies have retail monopolies in their

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<sup>12</sup> See, e.g., *In the Matter of Application of: Big Rivers Electrical Corporation for a General Adjustment in Rates Supported by a Fully Forecasted Test Period*, Case No. 2013-00199, Order Regarding Confidential Treatment (Ky. PSC Nov. 25, 2013); *In the Matter of: Application of Big Rivers Electric Corporation for an Adjustment of Rates*, Case No. 2012-00535, Order Regarding Request for Confidential Treatment (Ky. PSC July 25, 2013).

<sup>13</sup> SV Response at 8.

<sup>14</sup> See, e.g., *In the Matter of: An Examination by the Public Service Commission of the Application of the Fuel Adjustment Clause of Kentucky Power Company from May 1, 1993 to October 31, 1993*, Case No. 92-492-B, Order at 5 (Nov. 30, 1995). Explaining this problem in the context of the disclosure of coal contract bids, the Commission stated:

As the disclosure of the bidding information and bid evaluation methodology will lead to higher fuel prices and thus higher electric rates, it will injure the utilities' ability to compete in the retail and wholesale electric markets. Higher energy rates will weaken their ability to compete with other electric utilities in the increasingly competitive wholesale power market. While each utility has a monopoly on retail electric service in its certified territory, it must

certified service territories, they are not protected from competition in the wholesale market, or from gas and alternative power, e.g., residential solar, in the retail market.<sup>15</sup>

The following example exemplifies the Companies' decision to seek confidential protection of cost information derived from vendor contracts and pricing. If Vendor #1 can provide the Companies much-needed widgets for \$1.50, but knows that the Companies are currently purchasing widgets from Vendor #2 for \$2.00, Vendor #1 may submit a bid to supply the widgets for \$1.75, or even \$1.99. By publicly disclosing the price paid to Vendor #2, the Companies have lost an opportunity to further reduce the cost of operating their generating stations, and their customers have lost an opportunity to benefit from that cost reduction. In light of increasing costs, the Companies' customers may consider alternative forms of energy or other energy suppliers.

Sterling Ventures' reliance on the holding of Case No. 97-197 for the proposition that disclosure will not result in competitive disadvantage is misplaced. Sterling Ventures has provided no evidence to suggest that the coal market and the beneficial-reuse market have the same characteristics. In fact, fundamental differences exist between the two industries. Most importantly, the coal market is more transparent. The Companies and coal vendors can glean pricing information from a variety of government and private industry sources and publications. Similar sources do not exist for the beneficial-reuse market. As a result, beneficial-reuse vendors place a much higher value on difficult-to-obtain information about the competitors' pricing than do coal vendors. Moreover, beneficial-reuse market has fewer competitors and far fewer and more specific opportunities to beneficially reuse coal combustion residuals. The lack of

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compete with suppliers of other forms of energy such as natural gas. Higher retail electric prices will lessen its ability to compete with these suppliers.

Order at 5.

<sup>15</sup> *Id.*

competition reduces the incentive to provide the best possible proposal, especially if a competitor's pricing is known.<sup>16</sup> Sterling Ventures has implicitly acknowledged the merit of this argument by not protesting the Companies' request to treat as confidential its bids for the Companies' business.<sup>17</sup>

Sterling Ventures' reliance upon the Commission's holding in Case No. 2014-00268 is equally misplaced.<sup>18</sup> The information for which confidential treatment was sought in that proceeding concerned marketing strategies and business planning, not discrete pricing or vendor information, and was commonly disclosed in Commission proceedings. Moreover, the Commission found that the information was general in nature, so that disclosure would not reveal the applicant's business secrets and thus provide a competitive advantage to the applicant's competitors.<sup>19</sup>

### **3. Customers are not blindly relying on the Companies to ensure vendor costs are prudently managed.**

The Companies' opposition to public disclosure of the information at issue does not equate to blind reliance on the Companies. The Attorney General by statute represents customers' interests in Commission proceedings and has done so throughout this proceeding.<sup>20</sup> He has entered into a Confidentiality Agreement with the Companies and has access to all of confidential information that the Companies have submitted in this proceeding.<sup>21</sup> Moreover, the

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<sup>16</sup> See, e.g., Case No. 92-492-B, Order at 4-5 (Nov. 30, 1995).

<sup>17</sup> See LG&E and KU's Joint Petition for Confidential Protection at 1 (Sept. 3, 2015) ("In response to PSC 2-9, the Companies are providing confidential communications and proposals submitted to the Companies by Sterling Ventures, LLC.")

<sup>18</sup> SV Response at 11.

<sup>19</sup> *In the Matter of: Request for Confidential Treatment of Information Filed with Louisville Gas and Electric Company's Cooperative License Agreement with TCI/TKR of Jefferson County, Inc.*, Case No. 95-270, Order at 2-3 (Oct. 27, 1995) ("The information contained in Attachment B does not contain specific marketing practices, but instead consists of statements of a general nature regarding business practices.").

<sup>20</sup> KRS 367.150(8)(b).

<sup>21</sup> The Companies have also provided confidential documents Kentucky Industrial Utility Customers Inc. in this proceeding under a confidentiality agreement.

Commission, which has the statutory duty to ensure fair, just and reasonable rates for the Companies' ratepayers, has access to all confidential information.<sup>22</sup>

Moreover, the Companies strive to ensure that their customers understand how energy costs are derived. They have not kept the overall project costs secret from the public.<sup>23</sup> The Companies, however, cannot be expected to publicly disclose each and every component of power-production costs. Such action would hinder their ability to procure the best contracts and pricing, would render meaningless the protections that KRS 61.878 affords, and ultimately harm their customers by allowing the Companies' vendors to use such information to circumvent procurement practices designed to obtain the lowest costs.

### **Conclusion**

The information at issue meets the criteria for confidential protection under KRS 61.878 and 807 KAR 5:001, Section 4(10). This information has not been previously disclosed to the public. Public disclosure of this information is adverse to ratepayers' interests as it will prejudice the Companies' ability to procure the best contract terms and prices and will ultimately result in higher energy costs. It is also likely to impede the Companies' ability to compete in the energy market.

**WHEREFORE**, Kentucky Utilities Company and Louisville Gas and Electric Company respectfully request the Commission grant their petitions for confidential protection and reject the request of Sterling Ventures to publically disclose the information for which protection is sought.

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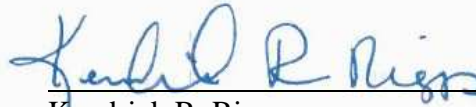
<sup>22</sup> KRS 278.030(1); KRS 278.040.

<sup>23</sup> SV Response at 11.



Dated: September 14, 2015

Respectfully submitted,



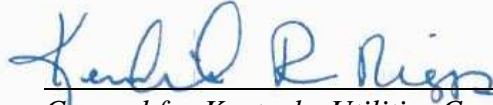
Kendrick R. Riggs  
Stoll Keenon Ogden PLLC  
2000 PNC Plaza  
500 West Jefferson Street  
Louisville, KY 40202-2828  
Telephone: (502) 333-6000  
Email: kendrick.riggs@skofirm.com

Allyson K. Sturgeon  
Senior Corporate Attorney  
LG&E and KU Energy LLC  
220 West Main Street  
Louisville, KY 40202  
Telephone: (502) 627-2088  
Email: allyson.sturgeon@lge-ku.com

*Counsel for Kentucky Utilities Company and  
Louisville Gas and Electric Company*

**CERTIFICATE OF SERVICE**

This is to certify that Kentucky Utilities Company's and Louisville Gas and Electric Company's September 14, 2015 electronic filing of the Reply in Opposition to Sterling Ventures' Response in Opposition to Petitions for Confidential Treatment is a true and accurate copy of the same document being filed in paper medium; that the electronic filing has been transmitted to the Commission on September 14, 2015; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original and one copy, in paper medium, of the Reply are being mailed by first class U.S. mail, postage prepaid, to the Commission on September 14, 2015.



*Counsel for Kentucky Utilities Company and  
Louisville Gas and Electric Company*