

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

**In The Matter Of the Investigation of Kentucky :  
Utilities Company's and Louisville Gas and Electric : Case No. 2015-00194  
Company's Respective Need for and Cost of :  
Multiphase Landfills at the Trimble County and :  
Ghent Generating Stations. :**

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**POST-HEARING BRIEF OF  
KENTUCKY INDUSTRIAL UTILITY CUSTOMERS, INC.**

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Kentucky Industrial Utility Customers, Inc. ("KIUC") submits this Brief in support of its recommendations to the Kentucky Public Service Commission ("Commission") in the above-captioned proceeding. The members of KIUC who are participating in this proceeding are: AAK, USA K2, LLC, Carbide Industries LLC, Cemex, Clopay Plastic Products Company, Corning Incorporated, Dow Corning Corporation, E.I. duPont de Nemours and Company, Lexmark International, Inc., WestRock MWV, LLC, North American Stainless and Toyota Motor Manufacturing Kentucky, Inc. These companies purchase electricity from Kentucky Utilities Company and Louisville Gas & Electric Company (collectively, "the Companies").

On June 16, 2015, in light of a series of recent developments,<sup>1</sup> the Commission opened this proceeding to investigate the issues surrounding the Companies' Certificates of Public Convenience and Necessity ("CPCN") to construct landfills at the Ghent and Trimble County Generating Stations granted by the Commission on December 23, 2009.<sup>2</sup> KIUC's recommendations with respect to how the Commission should resolve these issues are set forth below.

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<sup>1</sup> These developments include the cross-examination testimony of the Companies' Chief Operating Officer in Case Nos. 2014-00371 and 2014-00372 regarding the status of the Trimble County Landfill, a Complaint filed by Sterling Ventures, LLC at the Commission on May 20, 2015 asking the Commission to revoke the Companies' CPCNs with respect to the Trimble County Landfill and limit the Companies' recovery of costs related to the Ghent Landfill, and the Companies' May 22, 2015 Joint Application requesting a Declaratory Order from the Commission affirming that the Companies have authority to construct all four phases of the Trimble County Landfill and to recover those costs from customers.

<sup>2</sup> Case Nos. 2009-00197 and 2009-00198, Order (Dec. 23, 2009).

## ARGUMENT

### **I. The Commission Should Allow The Companies To Build The Trimble County CCR Treatment Facility and Landfill Because That CCR Disposal Option Is Less Costly For Customers Than Pursuing The Alternative Options Proposed By Sterling Ventures.**

The Commission should not revoke the Companies' CPCN authority to build the Trimble County CCR treatment facility and landfill ("Trimble County Landfill") as Sterling Ventures, LLC ("Sterling Ventures") requests. The evidence in this case reflects that construction of the Trimble County Landfill is still the least-cost option for disposing of the coal combustion residuals ("CCR") resulting from the operation of the Trimble County Generating Station.<sup>3</sup>

Sterling Ventures' proposed CCR disposal alternatives are significantly more costly and riskier than constructing the Trimble County Landfill. The Companies analyzed Sterling Ventures' first CCR disposal proposal - developing a CCR barge off-loading facility close to Sterling Ventures' mine and using a pipe conveyor to move CCR to that mine - multiple times. The 30-year analysis of that proposal conducted by the Companies in February 2015 reflected that the present value revenue requirement ("PVRR") of the Sterling Ventures proposal would be \$116 million to \$163 million higher than the PVRR of the Trimble County Landfill option.<sup>4</sup> And the updated PVRR analysis provided by the Companies in their July 2, 2015 Response to Commission Staff Initial Request for Information No. 1-18 reflected that the PVRR of the Sterling Ventures proposal remained \$49 million to \$55 million higher than the PVRR of the Trimble County Landfill option.<sup>5</sup> These results make sense given that: 1) the fixed operations and maintenance ("O&M") costs of the Sterling Ventures proposal are more than double the fixed O&M costs of the Trimble County Landfill option;<sup>6</sup> 2) the variable O&M costs of the Sterling Ventures proposal are more than seven times the variable O&M costs of the Trimble County Landfill option;<sup>7</sup> and 3) the Sterling Ventures proposal requires a greater amount of capital by 2018 than the Trimble County Landfill option.<sup>8</sup>

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<sup>3</sup> Rebuttal Testimony of David S. Sinclair, Case No. 2015-00194 (September 10, 2015) ("Sinclair Rebuttal") at 17:11-16.

<sup>4</sup> Direct Testimony of David S. Sinclair, Case No. 2015-00194 (August 6, 2015) ("Sinclair Direct") at 7:17-8:2.

<sup>5</sup> Companies Response to the Commission Staff Initial Request for Information, Case No. 2015-00194, Question No. 18 (July 16, 2015); Sinclair Direct at 9:10-10:3.

<sup>6</sup> Sinclair Direct at 14:14-16.

<sup>7</sup> Sinclair Direct at 15:3-7.

<sup>8</sup> Sinclair Direct at 13:11-14.

Moreover, in conducting the PVRR analyses cited above, the Companies made several assumptions favorable to the Sterling Ventures proposal. The Companies assumed that Sterling Ventures' mine would have adequate disposal capacity for the entire study life, that there would be no environmental constraints on Sterling Ventures' ability to dispose of CCR, and that Sterling Ventures' mine would remain open and in business through 2044.<sup>9</sup> Given these generous assumptions, the Companies left several significant risks associated with the Sterling Ventures proposal unquantified. Had the Companies chosen to quantify those risks in its analyses, the PVRR of the Sterling Ventures' proposal would have increased and the Trimble County Landfill option would have appeared even more attractive.

For instance, one substantial cost of the Sterling Ventures proposal that is not reflected in the Companies' PVRR analyses is the \$135 million cost of a contingency storage plan necessary to address the risks associated that proposal.<sup>10</sup> Companies witness Sinclair discussed the effect of including that additional cost in its PVRR analyses at the hearing:

*Q: So if you added the \$135 [million] as a back-up plan into the equation, [the Companies'] proposal looks that much better?*

*A: The [Trimble County] onsite alternative looks better, yes.<sup>11</sup>*

Companies witness Sinclair also acknowledged that if the Trimble County Generating Station ultimately produces more megawatt hours of electricity than was assumed for purposes of the PVRR analyses, then the attractiveness of the Trimble County landfill option only increases since it has lower variable O&M costs than the Sterling Ventures proposal.

*Q: ...The Sterling option has a higher variable O&M costs so as Trimble County 1 and 2 generate more megawatt hours, the Sterling proposal becomes proportionally worse because... more megawatt hours, more CCR, high variable O&M...the Sterling proposal looks worse?*

*A: Likewise with respect to less beneficial use as well.<sup>12</sup>*

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<sup>9</sup> Sinclair Direct at 12:15-19.

<sup>10</sup> Sterling Exhibit 13 at 10.

<sup>11</sup> Tr. (September 15, 2015) at 13:27:03.

<sup>12</sup> Tr. (September 15, 2015) at 13:29:23.

With respect to Sterling Ventures' second proposal – trucking large quantities of CCR from a barge site in Warsaw, Kentucky to the Sterling Ventures mine for decades – the Companies demonstrated that such an approach would be more costly than the Trimble County Landfill option and would be even riskier than Sterling Ventures' first proposal. The Companies' 30-year analysis reflected that the PVRR of the Warsaw dock alternative would be \$3 million to \$23 million higher than the PVRR of the Trimble County Landfill option.<sup>13</sup> And the Companies' 66-year analysis reflected that the PVRR of the Warsaw dock alternative would be \$10 million to \$35 million higher than the PVRR of the Trimble County Landfill option.<sup>14</sup> These analyses were based upon the same assumptions discussed above, which again favor Sterling Ventures by leaving several significant risks unquantified.<sup>15</sup>

The Warsaw dock alternative is also “*fraught with difficulties that likely make it impracticable.*”<sup>16</sup> As discussed at the hearing, the Warsaw dock alternative requires 14 trucks to make 12 trips along U.S. Route 42 per day, for a total of 168 trips each day for multiple decades.<sup>17</sup> This means that a CCR disposal truck would pass each of the schools, business, homes, etc. along US Route 42 approximately every two minutes each day.<sup>18</sup> The magnitude of truck trips required by the Warsaw dock alternative would lead to increased traffic along Route 42, raising the risks of accidents, and would amplify the amount of diesel fumes emitted along that route. Hence, neither of the CCR disposal options presented by Sterling Ventures represents a suitable or less costly alternative to proceeding with construction of the Trimble County Landfill.

## **II. Revoking the Companies' CPCN Authority Would Introduce Inordinate Legal and Financial Risks.**

Revoking the Companies' CPCN authority to construct the Trimble County Landfill would drastically increase the legal and financial risks associated with the Companies' CCR disposal. As an initial matter, the record in this case is devoid of information related to the financial health of Sterling Ventures. It is therefore highly uncertain whether Sterling Ventures has the financial wherewithal to deliver on a decades-long contract

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<sup>13</sup> Sinclair Rebuttal at 12:14-13:3.

<sup>14</sup> Sinclair Rebuttal at 12:4-11; The 66-year analysis corrected improper assumptions made in Sterling Ventures' analyses. Sinclair Rebuttal at 10:14-11:10 and 11:11-20.

<sup>15</sup> Sinclair Rebuttal at 14:6-12.

<sup>16</sup> Sinclair Direct at 16:6-7.

<sup>17</sup> Tr. (September 15, 2015) at 15:11:21.

<sup>18</sup> Tr. (September 15, 2015) at 15:11:21 (11.3 hours/336 truck passings).

with the Companies. The lack of financial information provided by Sterling Ventures (perhaps more aptly named “Stealth” Ventures) in this case was discussed at the hearing:

*Q: Do you know...what [Sterling’s] creditworthiness is?*

*A: I’m aware through this case in the past we’ve asked for financial data and that’s not been forthcoming.*

*Q: So how would you enter into a \$270 million contract, and it’s going to escalate at 3% so it’s going to be a lot more than that...over 30 years with somebody you don’t know anything about?*

*A: That would be a challenge.*<sup>19</sup>

The Companies also noted that assuming that Sterling Venture’s mine would be in business for forty years was “*a proposition that is far from certain for a mine that has operated just over 11 years and is completely dependent upon future market conditions.*”<sup>20</sup> Accordingly, it would be unreasonable for the Commission to revoke the Companies’ CPCN authority and effectively force the Companies to negotiate with Sterling Ventures – an unknown and potentially unstable counterparty.

Even if Sterling Ventures could remain solvent during the entire length of a potential CCR disposal contract with the Companies, the Sterling Ventures proposals are accompanied by significant operational risks. As the Companies explained “*...the CCR treatment facility in the [first] Sterling alternative does not have enough CCR disposal capacity to account for multi-week outages of barge loading or unloading facilities, multi-week outages of locks, disruptions at Sterling’s site, or the unavailability of river transport due to flooding.*”<sup>21</sup> Regarding the second alternative, the Companies stated that “*moving the location of the barge-unloading facility into the town of Warsaw and moving the CCR via truck rather than a pipe conveyor would likely increase the risks [of insufficient disposal capacity] ....*”<sup>22</sup>

Additionally, it is still highly uncertain whether the Sterling Ventures alternatives would comply with relevant environmental laws and whether its CCR disposal would meet the U.S. EPA’s “beneficial use” requirements. The Companies testified that “*...the U.S. Environmental Protection Agency’s recently finalized*

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<sup>19</sup> Tr. (September 15, 2015) at 13: 34:51/

<sup>20</sup> Sinclair Direct at 5:18-21.

<sup>21</sup> Sinclair Direct at 12:7-10.

<sup>22</sup> Sinclair Rebuttal at 14:4-6.

CCR rule will compromise Sterling's ability to dispose of CCR in its mine, and certainty to do so at the costs Sterling has quoted to the Companies to date."<sup>23</sup> Sterling Ventures witness Walters repeatedly conceded that such legal uncertainty exists, expressly admitting that Sterling Ventures would not continue to pursue its CCR disposal alternatives if met with opposition from either Kentucky state officials or representatives of the Sierra Club:

*Q: Given the testimony that we've heard in this case from both parties and what you just said about if Sterling Ventures is told no this won't be beneficial use we don't want any part of it, does...the testimony that you've heard in this matter give you any pause about going forward with your request?*

*A: Well, again I think the first issue we have to deal with is if the Division of Waste Management says "we're not going to give you a permit," we're not going forward..."<sup>24</sup>*

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*A: We have already met with the Sierra Club and made it very clear to them if they say that they are against this and they would prefer the CCR to go into the landfill, we're out."<sup>25</sup>*

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*A: I'm saying if the State says 'no,' we're out. If the Sierra Club says "no, you do this, we will sue you," we're out."<sup>26</sup>*

Decisions on whether and how the Sterling Ventures alternatives comply with relevant environmental laws will not be made until far after the Companies' requested October deadline for a decision in this case. Thus, revoking the Companies' CPCN authority and effectively leaving the Companies' with no other option than to negotiate with Sterling Ventures would represent a significant legal gamble on the part of the Commission. And an unsuccessful gamble on the Sterling Ventures' proposals could result in substantial waste as well as sunk capital, as the Companies discussed:

*What Sterling proposes is therefore novel and far riskier than any of the Companies' current beneficial-reuse arrangements, namely that the Companies should invest millions of dollars in a Warsaw barge-unloading facility that would become useless to the Companies if Sterling did not perform under a hypothetical disposal contract or if other lower cost beneficial use opportunities were to arise in the future."<sup>27</sup>*

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*Q: Not only would you not get the benefit of the bargain if it turned out that [Sterling] couldn't perform, you would have a significant amount of capital tied up in this thing. You'd have a conveyor belt leading to nowhere, wouldn't you have?*

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<sup>23</sup> Sinclair Direct at 5:12-15.

<sup>24</sup> Tr. (September 15, 2015) at 16:23:12.

<sup>25</sup> Tr. (September 15, 2015) at 16:40:14.

<sup>26</sup> Tr. (September 15, 2015) at 16:42:54.

<sup>27</sup> Sinclair Rebuttal at 14:20-15:3.

*A: Correct, and I think the other thing, too, is, forgetting the financial issues for a second, again not knowing what the terms of the contract might be when you get to that level of detail of a contract, is let's say we were presented with another beneficial reuse opportunity which would be much less expensive than paying them \$16 dollars so we would have the similar kind of sunk capital, but we wouldn't be utilizing it.*<sup>28</sup>

Further, revoking the Companies' CPCN authority merely in order to explore other CCR disposal options is not a reasonable approach at this time since delays in the Trimble County Landfill construction process could result in substantially reduced production or temporary shutdown of the Trimble County units. As the Companies explained, "[t]he CCR rule will prohibit the Companies from using the existing bottom ash pond to dispose of CCR by April 2019...Essentially, without the timely construction of the CCR treatment facility and phase 1 of the landfill, it is highly unlikely that the Companies would be able to operate Unit 1 and the ability to reliably operate Unit 2 becomes questionable."<sup>29</sup> The Trimble County units are among the most efficient coal units, with Trimble County Unit 2 representing one of the most efficient units in the United States.<sup>30</sup> Limiting the operation of those units would therefore be costly to customers. The Companies estimated that the cost of shutting down Trimble County Unit 1 and limiting the operation of Trimble County Unit 2 would be \$85 million for the 12 months beginning May 1, 2019 and significant costs would continue until adequate CCR disposal was available.<sup>31</sup> Further, even if the Trimble County CCR treatment facility was completed on time, delaying Phase I of the Trimble County Landfill construction for just one year, which could also limit the operation of the Trimble County units, would cost customers from \$17 million to approximately \$27 million, depending upon the assumptions used.<sup>32</sup>

It is not hard to surmise why Sterling Ventures seeks to revoke the Companies' CPCN authority to construct the Trimble County Landfill. Sterling Ventures stands to benefit greatly if the Commission does so. The Companies' September 24, 2015 Post-Hearing Data Response states that "...the nominal value of a 30-year contract [to Sterling Ventures] ranges from \$288 million to \$303 million depending on generation levels. With no beneficial use, the nominal value of a 30-year contract [to Sterling Ventures] ranges from \$441 million to

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<sup>28</sup> Tr. (September 15, 2015) at 13:37:24.

<sup>29</sup> Sinclair Direct at 16:11-12 and 17:10-12.

<sup>30</sup> Tr. (September 15, 2015) at 13:40:13; Sinclair Direct at 11:3-4.

<sup>31</sup> Sinclair Direct at 17:15-19.

<sup>32</sup> Sinclair Direct at 20:9-11.

\$456 million.”<sup>33</sup> And if the Companies’ CPCN is revoked, they will have little bargaining leverage in negotiating a final contract with Sterling Ventures. But the Commission should not reject what is still the least-cost alternative to CCR disposal for the Trimble County Generating Station merely in order to give Sterling Ventures an option to provide lucrative CCR disposal to the Companies if it wishes to do so.

### CONCLUSION

WHEREFORE, the Commission should allow the Companies to proceed with the construction of the Trimble County Landfill.

Respectfully submitted,



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<sup>33</sup> Companies’ Post-Hearing Data Response, Case No. 2015-00194, Question No. 10 (September 24, 2015).