COMMONWEALTH OF KENTUCKY
BEFORE THE KENTUCKY STATE BOARD ON
ELECTRIC GENERATION AND TRANSMISSION SITING

In the Matter of:

JOINT APPLICATION OF THE ILLINOIS MUNICIPAL ELECTRIC AGENCY AND THE INDIANA MUNICIPAL POWER AGENCY FOR APPROVAL TO BE A 25% PARTNER IN THE CONSTRUCTION OF A 750 MEGAWATT ADDITION TO THE EXISTING TRIMBLE COUNTY GENERATING FACILITY IN TRIMBLE COUNTY, KENTUCKY	)	CASE NO. 2005-00152

ORDER

On February 4, 2009, IBEW Local 2100 and the Greater Louisville Building and Construction Trades Council ("Unions") filed a "Motion to Reopen for Enforcement of Order," with the Kentucky State Board on Electric Generation and Transmission Siting ("Siting Board"). On February 6, 2009, Louisville Gas and Electric Company ("LG&E") and Kentucky Utilities Company ("KU"), the Illinois Municipal Electric Agency, and Indiana Municipal Power Agency (collectively, the "Joint Owners") filed a response in opposition to the motion. For the reasons stated herein the Siting Board denies the Unions' Motion to Reopen.

Background

The above-styled case was initiated on May 11, 2005, by the filing of a joint application by the Illinois Municipal Electric Agency and Indiana Municipal Power Agency ("the Joint Applicants") for authorization to construct their 25 percent undivided ownership interest in the Trimble County power plant, unit 2 ("TC2") to be operated as a merchant facility. In a companion case before the Kentucky Public Service Commission

(Case No. 2004-00507)[1] the Commission granted LG&E and KU a certificate of public convenience and necessity to construct TC2 on November 1, 2005.[2] In its Final Order, the Commission stated that it, "strongly encourage[d] the Companies[3] to provide as many jobs as possible to Kentucky citizens."[4] However, the Commission stated that it would not require KU and LG&E to comply with the specific hiring practices that had been proposed by the Unions, which were intervenor parties in that case as well as the Siting Board case:

> The Unions have requested that the Commission require certain hiring practices. While agreeing that the benefits of such a project should accrue primarily to Kentucky citizens, we are faced with competing concerns. On the one hand, we would like to see the construction jobs for the plant filled by Kentucky workers; on the other hand, our statutory mandate is to maintain low rates for utility customers. We, therefore, do not believe the strict language the Unions have requested is appropriate.[5]

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[1] Joint Application of Louisville Gas And Electric Company and Kentucky Utilities Company for a Certificate of Public Convenience and Necessity, and a Site Compatibility Certificate, for the Expansion of the Trimble County Generating Station.

[2] The TC2 application came before both the Public Service Commission and the Siting Board due to the fact that the Illinois Municipal Electric Agency and Indiana Municipal Power Agency, which are not utilities under the Commission's jurisdiction, have a 25% joint ownership interest in the TC2 facility, thus, invoking the Siting Board's jurisdiction over merchant electric generation facilities.

[3] In its 2004-00507 Final Order the Commission referred to LG&E and KU, collectively, as "the Companies."

[4] Case No. 2004-00507 Final Order at 6.

[5] Id.

The Siting Board issued its Order approving the Joint Applicants' application in the present case, on November 16, 2005. The Order was not appealed by any party. Thus, the Order became final on December 16, 2005.

In the case before the Siting Board, the Union intervenors raised the issue of hiring local workers for the TC2 construction in the case. However, the Siting Board did not require the Joint Applicants, the Joint Owners, or their contractors to hire any particular number or percentage of local workers. Rather, in its November 16, 2005 Order, the Siting Board stated that:

> in approving this project the Board relies upon the commitments of the Joint Applicants and the Companies to hire construction and operation workers from the local population and to utilize local materials and MBEs and WBEs <u>whenever practical and possible</u> and finds these hiring effort commitments to be consistent with prior Orders of this Board.[6] (Emphasis added).

Appendix A to the November 16, 2005 Order does contain a "Monitoring Program" and "Reporting Requirements," which require the Joint Applicants to file annual reports containing the following sections: "Overview, Implementation of Site Development Plan, Local Hiring and Procurement, Public Comments and Responses and Specific Mitigation Conditions." With regard to "Local Hiring and Procurement," Appendix A specifically provides that:

> The Joint Applicants shall describe the efforts of the Companies to encourage the use of local workers and vendors, including MBEs and WBEs.[7] At a minimum, the report shall include a description of the efforts made by the Companies and by contractors and vendors to use local

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[6] Case No. 2005-00152, Final Order at 14.

[7] Minority Business Enterprise ("MBE") and Women Business Enterprise ("WBE").

> workers and local vendors, including MBEs and WBEs, to build and operate this project. The report shall also include, to the extent practicable, the Companies' informed estimate of the proportion of the construction and operational workforce that resided in the region (e.g., 50- mile radius of the plant site) prior to coming to work at the site.

The Joint Applicants timely filed annual reports in compliance with the requirements of Appendix A in November 2006, November 2007, and November 2008. Each of the three annual reports contains all of the required sections and accompanying information.

As to the "Local Hiring and Procurement" section of the annual reports, the Joint Applicant's 2006 report states that twenty-three of the forty-one craft workers KU & LG&E had hired resided within fifty miles of the plant site. In 2007, the Joint Applicants reported that about 50% of the approximate 300 craft workers hired by the companies, resided in the Louisville, Evansville and Cincinnati areas, with approximately 30% residing within fifty miles of the TC2 site. And their November 2008 report states (as does the 2007 report) that approximately 50% of the companies' workers reside in the Louisville, Evansville and Cincinnati areas, while 30% reside in the immediate, fifty-mile vicinity of the plant. In each of the annual reports, the Joint Applicants provide a table which shows the cumulative number and cumulative dollar amount of the purchases and contracts awarded to MBEs, WBEs, local vendors, and unions.

The Unions' request to reopen the case is based on their claims that the Joint Applicants have failed to hire local workers at TC2; failed to increase the TC2 workforce with local labor; and not provided proper information on their TC2 hiring and recruitment

practices.[8] Some of the Union's support for their claims is based on certain anecdotal information collected by representatives at the TC2 job site—including an estimation of the number of out-of-state license plates in the parking lot.[9]

Prior to the Siting Board taking action on the Unions' motion, a meeting was held at the Public Service Commission's Frankfort offices on March 17, 2009, which was attended by Siting Board Staff, the Unions (including representatives of Heat & Frost Insulators Local 51 and the United Association of Plumbers and Pipefitters), and the Joint Owners, with the goal that the parties might be able to resolve the labor and hiring issues through cooperative communication. However, the parties were not able to resolve the Unions' dispute in that meeting, and on March 20, 2009, the Siting Board received a letter from the Unions requesting that the Siting Board take up the Union's motion and issue a ruling.

On March 26, 2009, the Joint Owners filed a letter in response to the Unions' March 20, 2009, letter. The Joint Owners argue that they have done all that is required under the November 16, 2005, Order. The Joint Owners further argue that the statutory deadline under KRS 278.712(5) to file an appeal of the Order has long since passed.

Siting Board Jurisdiction

There is no provision in the statutory language of KRS 278.700 *et. seq.* expressly stating that the Siting Board has continuing jurisdiction to enforce its final orders.

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[8] Unions' Motion to Reopen at 1.

[9] Id. at 2-3.

However, the Siting Board has previously asserted that it has such authority.[10] In an April 20, 2006 Order in Case No. 2005-00152 (denying a motion filed by the Union intervenors to hold an informal conference to discuss concerns regarding labor contract negotiations between LG&E/KU and Bechtel), the Siting Board stated that it, "has full authority to enforce its Orders," and that, if necessary, the Board would, "take action to ensure that [its] Order is followed."[11]

Administrative agencies, including the Public Service Commission, have authority to do those things which their statutory mandates expressly require them to do. In *PSC v. Cities of Southgate, Highland Heights*, 268 S.W.2d 19, 20 (Ky. 1954), Kentucky's highest court ruled that the Commission's statutory authority includes those powers expressly granted, as well as any additional authority "implied necessarily from the statutory powers of the commission." We believe the same is true of the Siting Board's powers. Without the power to enforce its orders, the Siting Board's authority would be materially diminished in contravention of the legislative intent and history of KRS 278.700-714.

Siting Board Findings

Being satisfied that we have jurisdiction to consider the Unions' motion, the Siting Board nonetheless finds that the November 16, 2005 Final Order does not require the

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[10] Pursuant to KRS 278.702(2), the term of service of the two ad hoc members ends upon the issuance of the final order. Therefore, only the statutory Siting Board members (the three PSC commissioners, the Secretary of the Energy and Environment Cabinet and the Secretary of the Economic Development Cabinet) may participate in actions which post-date the issuance of a final order in a certificate case.

[11] Case No. 2005-00152, Order Denying Motion to Hold an Informal Conference at 3.

Joint Owners or their contractor to hire any specific number or percentage of "local" workers to construct TC2. If the Unions desired more rigorous monitoring and reporting requirements or specific hiring requirements beyond what the Siting Board required in its November 16, 2005 Order, the Unions had 30 days to file an action under KRS 278.712(5) to vacate or set aside the Order. However, that time to appeal expired on December 16, 2005. The Order is final and cannot be disturbed.

The Siting Board also finds that the annual reports filed by the Joint Applicants in 2006, 2007, and 2008 addressed all of the required items cited in Appendix A to the November 16, 2005 Order. Therefore, the Siting Board finds that nothing further is required of the Joint Owners and, as such, the Siting Board finds that the Unions' Motion to Reopen Case No. 2005-00152 should be denied.

While the Siting Board has denied the Union's motion, it is cognizant of the importance of these issues to the Unions, as outlined in their February 4, 2009 motion and March 20, 2009 letter. Therefore, the Siting Board encourages the parties to continue their discussion of these issues in an effort to resolve the Unions' concerns. The Siting Board is particularly pleased with the offer of the Joint Applicants – made in the course of the March 19, 2009 informal conference – to facilitate a meeting between the Unions and the general contractor for the project. Siting Board Staff will remain available to assist the parties if the parties agree that further meetings or conferences would help them reach a resolution.

Wherefore the Siting Board HEREBY ORDERS that the Union's February 4, 2009 Motion to Reopen for Enforcement of Order is DENIED.

By the Board

Done at Frankfort, Kentucky this 19th day of May, 2009

ATTEST:

for Jeff Derouen

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