

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)	CASE NO. 2005-00152
OF A 750 MEGAWATT ADDITION TO)	
THE EXISTING TRIMBLE COUNTY)	
GENERATING FACILITY IN)	
TRIMBLE COUNTY, KENTUCKY)	

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O R D E R

PROCEDURAL HISTORY

The Illinois Municipal Electric Agency (“IMEA”) and the Indiana Municipal Power Agency (“IMPA”) (collectively “Joint Applicants”) filed an application for a certificate to construct a merchant electric generating facility with the Board on May 11, 2005. The Joint Applicants are participating with Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”) (collectively “Companies”) as partners in the construction of a 750 MW nominal net super-critical pulverized coal generating unit (“TC2”) on the site of the existing Trimble County Generating Station (“TC1”).¹ The application is required pursuant to KRS 278.704 because the Joint Applicants will sell

¹ Joint Applicants collectively own an undivided 25 percent interest (IMEA 12.12 percent and IMPA 12.88 percent) in the existing Trimble Station and, pursuant to their respective Trimble County Unit 1 Participating Agreements with LG&E, they are exercising their respective rights to participate in the development and ownership of TC2. Application, Section 1.1, at 5.

their respective portions of the generating capacity from TC2 to customers in Indiana and Illinois. A companion case was filed on December 17, 2004 with the Public Service Commission of Kentucky (“PSC”) by the Companies for a Certificate of Public Convenience and Necessity to construct TC2.²

The Board initially accepted the application as administratively complete on May 31, 2005. The finding of administrative completeness was rescinded by Order dated July 19, 2005, because inadequate notice was provided to landowners pursuant to KRS 278.706(2)(c)(1). On July 25, 2005, the Board issued a letter stating that the Joint Applicants had cured the deficiency and that the application was administratively complete.

On April 21, 2005, the Board filed the report of its consultant, BBC Research and Consulting (“BBC”), which evaluated the Site Assessment Report (“SAR”) that had been filed as part of the application.

On May 27, 2005, LG&E filed a motion for full intervention, which was granted on June 9, 2005. On July 14, 2005, the International Brotherhood of Electrical Workers, Local 2110, and the Greater Louisville Building and Construction Trades Council (jointly “IBEW/Trades Council”) filed a motion for full intervention, which was granted on August 2, 2005. A local public hearing was held in Bedford, Kentucky on July 6, 2005.

On August 29, 2005, IBEW/Trades Council filed a motion to supplement the record with various documents from PSC Case No. 2004-00507.³ The Joint Applicants

² Case No. 2004-00507, Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate for the Expansion of the Trimble County Generating Station.

³ *Id.*

made a similar motion regarding other documents in that case. Both motions were granted from the bench at the evidentiary hearing in the case.

The evidentiary hearing on the merits of the application was held on September 19, 2005, at the PSC in Frankfort, Kentucky. The Joint Applicants presented three witnesses: L. Gayle Mayo, Executive Vice President and Chief Operating Officer for IMPA; Robert Childers, Director of Finance and Business for IMEA; and Paul Coomes, Ph.D. in economics, University of Louisville. IBEW/Trades Council presented Larry Roberts, Director for the Kentucky State Building and Construction Trades Council. The Companies presented John Voyles, Vice President of Regulated Generation.

BACKGROUND

IMEA is a body politic and corporate, municipal corporation and unit of local government of the State of Illinois.⁴ Its primary purpose is the acquisition and sale of wholesale power and energy to its member municipalities that own and operate their own municipal electric distribution systems.⁵ IMEA currently consists of 40 members, 29 of which have executed long-term power supply agreements to purchase their full-requirements power supply from IMEA.⁶ In addition to power supply, IMEA provides engineering, lobbying, load retention, and economic development services to its members.⁷

⁴ Application, Section 1.1.

⁵ *Id.*

⁶ *Id.*

⁷ Direct Testimony of Robert W. Childers at 2.

IMPA is a joint action agency formed pursuant to Indiana statute by municipally owned electric utilities in Indiana. IMPA is a body politic and corporate and political subdivision of the State of Indiana.⁸ It currently has 40 members. IMPA members purchase their power supply solely through IMPA.⁹ IMEA and IMPA collectively own an undivided 25 percent interest in the existing TC1 unit.¹⁰ Pursuant to their respective TC1 Participation Agreements with LG&E, IMEA and IMPA have exercised their respective rights to participate in the development and ownership of the next coal-fired base load unit, TC2.¹¹ IMEA and IMPA will use their respective portions of TC2 to provide wholesale power to their respective member communities pursuant to long-term contracts.¹² None of the power owned by Joint Applicants and generated at TC1 will be sold at retail to Kentucky customers.¹³

The Joint Applicants have entered into a Participation Agreement with the Companies to participate as tenants-in-common in the ownership of TC2.¹⁴ Specifically, IMEA will own an undivided 12.12 percent interest, and IMPA will own an undivided 12.88 percent interest, in TC2.¹⁵ IMEA and IMPA have the same ownership interests in

⁸ Application, Section 1.1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

TC1, and the terms of the Participation Agreement are comparable to those of the TC1 Participation Agreements.¹⁶ As a result of their respective ownership interests, IMEA and IMPA will share in the development, construction, and operations costs of the proposed facility and will have a right to a proportionate share of the facility's generating capacity.¹⁷

Because Joint Applicants will sell their share of the TC2 output to wholesale customers in Illinois and Indiana, their 25 percent ownership interest in the facility qualifies as a merchant plant under KRS 278.700 *et seq.* As such, Joint Applicants need this Board's approval for the construction of the facility. As the majority owners, the Companies obtained the required Certificate of Public Convenience and Necessity for the construction of the facility from the PSC on November 1, 2005 in Case No. 2004-00507.¹⁸

STATUTORY REQUIREMENTS

Introduction

Pursuant to KRS 278.704(1), no person shall commence to construct a merchant electrical generating facility until that person has applied for and obtained a construction certificate for the proposed facility from the Board. KRS 278.710(1) directs the Board to consider the following criteria in rendering its decision: impact on scenic surroundings; property values; adjacent property; surrounding roads; anticipated noise levels; economic impact on the affected region and state; existence of other generation facilities; local planning and zoning requirements; potential impact on the electricity transmission system; compliance with statutory setback requirements; efficacy of

¹⁶ *Id.*

¹⁷ Direct Testimony of L. Gayle Mayo at 5.

¹⁸ KRS 278.020.

proposed mitigation measures; and history of environmental compliance. In addition, the Board may consider the policy of the General Assembly to encourage the use of coal as a principal fuel for electricity generation. KRS 278.710(2). Moreover, KRS 278.708(6) authorizes the Board to condition a construction certificate upon the implementation of any mitigation measures that the Board finds appropriate. This Order will consider separately each of these statutory requirements and related mitigation measures.

Impact on Scenic Surroundings, Property Values, Adjacent Property, and Surrounding Roads

KRS 278.710(1)(a) directs the Board to consider the impact of a proposed merchant plant on scenic surroundings, property values, adjacent property, and local roads before deciding whether to grant or deny a construction certificate.

TC2 is proposed to be constructed at the existing TC1 situated on the Ohio River approximately 5 miles west of Bedford, Kentucky.¹⁹ In general, Trimble County is composed predominantly of rural areas.²⁰ The areas surrounding the plant include scattered residences, agricultural land, and wooded areas.²¹

¹⁹ Review and Evaluation of Trimble County Unit 2 Site Assessment Report (“BBC Report”), Section B, at 1.

²⁰ SAR at 2.1.

²¹ *Id.*

The proposed site is bordered on the west by the Ohio River, on the north by agricultural land, and on the east by a steep, wooded hillside.²² The surrounding areas are predominantly undeveloped and are rural in nature.²³

The nearest residential community is Wisers Landing, which is approximately 3,000 feet from the proposed site.²⁴ The nearest schools are located in Bedford, approximately 5 miles from the proposed facility.

The construction of TC2 will expand the existing facilities at TC1, but will not increase the total land area of the site.²⁵ Moreover, the project's proposed facilities will not exceed 285 feet in height, which is significantly less than the height of the existing structures at the site.²⁶ Further, as planned by the Companies, and as recommended by BBC, TC2 will have a color and lighting scheme consistent with the current facility, which will minimize any visual impact of the additional structures.²⁷ Finally, as TC1 was originally designed to support two units, TC2 will utilize the existing stack for TC1. As such, there are no plans to construct a new exhaust stack. For all of these reasons, BBC's Report concluded: "Given the existing plant, TC2 is compatible with its scenic surroundings." That report further stated: "More importantly, the BBC team is confident

²² *Id*

²³ *Id.*

²⁴ BBC Report, Section B, at 1.

²⁵ Application, Exhibit B, Site Assessment Report at 3.1.1.

²⁶ *Id.*; BBC Report, Section C, at 14.

²⁷ BBC Report, Section B, at 4; Transcript of Evidence ("TE") at 71.

that the addition of TC2 to the existing Trimble County Station will not have any measurable effect on local property values.”

With regard to impacts on local roads, the roads surrounding TC1 are primarily rural, two-lane roads that could be affected by increased construction traffic. While those roads were able to handle traffic relating to the past construction projects at TC1 relatively well, BBC recommended a number of steps to be taken to mitigate potential negative impact on those roads in connection with the construction of TC2.²⁸ Specifically, BBC recommended that: local workers, who are more likely to be familiar with local roads, be hired to the extent possible; construction traffic be directed away from routes most likely to be affected by increased traffic; plant officials communicate with local officials regarding timing of work hours to avoid peak commuting and school traffic; plant officials communicate with local officials regarding timing of ammonia deliveries; efforts be undertaken to improve contractor compliance with local traffic laws; and traffic issues be monitored during construction and action taken as needed.²⁹ The Companies and the Joint Applicants agreed to implement all of those recommended mitigation measures.³⁰ The Board believes that these proposed mitigation strategies will address any negative impact the project may have on surrounding roads.

Anticipated Noise Levels

KRS 278.710(1)(b) requires the Board to consider the anticipated noise levels expected to result from the construction and operation of the proposed facility. Noise

²⁸ BBC Report, Section C, at 31.

²⁹ *Id.* at 34.

³⁰ TE at 19, 71-73, 76-78.

levels associated with TC2 were tested and modeled in the SAR, which concluded that “no significant impacts” to sound are expected from either construction or operation of TC2.³¹ BBC agreed, finding that noise levels associated with TC2 “are unlikely to create a significant incremental effect over current noise levels at the plant site.”³² BBC also found that its recommended mitigation measures relating to traffic issues, which the Joint Applicants and Companies have agreed to follow, should help alleviate noise related to construction traffic.³³

At the local public hearing, some concern was voiced regarding noise associated with steam blows. BBC has noted that the frequency of steam blows at TC1 does “not appear to be excessive.”³⁴ However, BBC recommends that silencers be installed to dampen the noise related to steam blows, and the Joint Applicants and Companies agreed to that mitigation.³⁵ In addition, BBC recommended that the Companies “might also consider” utilizing a telephone warning system to notify nearby landowners of planned steam blows.³⁶ The Companies and Joint Applicants also agreed to consider the feasibility of such a system.³⁷

³¹ SAR at 5.7.

³² BBC Report, Section C, at 27.

³³ *Id.*; TE at 19, 71-73, 76-78.

³⁴ *Id.*

³⁵ TE at 73-75; Response of LG&E and KU to Board Staff’s Post-Hearing Data Request dated September 19, 2005.

³⁶ BBC Report, Section C, at 27. LG&E presently notifies landowners through notices in the local newspaper. *Id.*

³⁷ TE at 74.

Based on the evidence and the commitments of the Companies and the Joint Applicants, the Board finds that the mitigation proposals relating to noise abatement are adequate to meet the statutory standard.

Economic Impact on the Affected Region and the State

KRS 278.710(1)(c) requires the Board to consider the economic impact that the proposed facility will have upon the affected region and the state.

The Joint Applicants' expert witness, Dr. Paul A. Coomes, testified that a number of economic benefits can be expected to occur as a result of the merchant portion of TC2. First, Dr. Coomes explained that the contractual arrangements with IMEA and IMPA led to the proposal to construct a larger unit, resulting in economies of scale that will allow the unit to be built at an average per kilowatt cost lower than it would have been had a smaller unit been constructed.³⁸ As a result, electricity rates in Kentucky will be lower "than they would otherwise be, thus stimulating further industrial development in the state, and keeping the cost of living lower for all customers."³⁹ Second, Dr. Coomes estimated that the construction phase will generate regionally a total of 1,540 job-years and \$97.8 million in payrolls, and that operation of the unit will generate 29 new jobs and \$840,000 in payrolls.⁴⁰ Finally, Dr. Coomes testified that the merchant portion of TC2 would generate an estimated \$662,000 in sales tax receipts to Kentucky

³⁸ Paul A. Coomes, *Estimates of Regional Economic and Fiscal Impacts of the Proposed Trimble County Electricity Generating Plant*, May 4, 2005 ("Coomes Report"), at 1.

³⁹ Coomes Report at 3.

⁴⁰ *Id.* at 1.

associated with construction activities and \$614,000 annually in state and local property taxes.⁴¹

At issue in this proceeding is IBEW/Trades Council's fear that construction of the project might be performed by itinerate out-of-state workers, effectively exporting the major economic benefit of the project.⁴² IBEW/Trades Council argue that the Joint Applicants should be held accountable in their hiring practices to ensure that the economic impact of this construction project benefits Kentucky workers.⁴³ Further, IBEW/Trades Council advocate the use of a project labor agreement by the Joint Applicants that would require the TC2 contractor to use local union crafts for the construction of the facility or, in the alternative, that the Joint Applicants utilize and exhaust labor resources from the local geographic area in the construction of the facility.⁴⁴

The Joint Applicants assert that they are not in a position to impose or enforce any conditions or restrictions concerning hiring practices on the Companies. They state that the Participation Agreement, Section 5.5, gives the Companies (and not the Joint Applicants) the decision-making authority over the construction of the facility.⁴⁵

⁴¹ *Id.* at 7-8. The merchant portion of the plant is estimated to add over \$218,000 per year to the Trimble County property tax base. *Id.* at 7.

⁴² IBEW/Trades Council's motion to intervene at 3.

⁴³ IBEW/Trades Council's Brief in Support of Imposing Conditions to Insure That TC2 Economic Benefits Are Realized at 3.

⁴⁴ *Id.* at 19-20.

⁴⁵ Application, Exhibit A; Post-Hearing Brief of the Joint Applicants Illinois Municipal Electric Agency and the Indiana Municipal Power Agency at 19.

Notwithstanding this assertion, the Joint Applicants agree that every effort should be made to use local labor, including qualified workers from Trimble County, but they believe that the focus should be on qualified workers, quality workmanship, and timely, cost-effective completion of the project.⁴⁶

The evidence in this case suggests that the execution of a project labor agreement requiring union labor at this stage would include work rules that could increase labor costs and, consequently, construction costs on the TC2 project.⁴⁷ Dr. Coomes testified that pursuit of a least-cost strategy is important to the state from an economic perspective.⁴⁸ Dr. Coomes further testified that paying more than needed for labor could result in utility rate increases that might negate the benefit realized from hiring local workers.⁴⁹

The evidence in the record shows that a request for proposals issued by the Companies to Engineering, Procurement and Construction (“EPC”) contract bidders stated that the successful EPC bidder shall maximize the use of local direct-hire union

⁴⁶ TE at 82-84; IMEA/IMPA Post-Hearing Brief at 19.

⁴⁷ Direct Testimony of John Voyles at 5-6.

⁴⁸ TE at 128-29.

⁴⁹ *Id.*

and non-union contractors, and define and utilize processes to maximize the use of local union and non-union, MBE,⁵⁰ and WBE⁵¹ labor, goods and services.⁵² In addition, the record shows that both of the final short-listed EPC bidders have agreed to a first preference for Trimble County residents, and then for Kentucky residents, for TC2 construction jobs.⁵³

Mr. Voyles testified that, if the proposed project receives all necessary approvals, the Companies, with the support of the Joint Applicants, will go forward with a construction job recruitment process that allows all qualified local workers (both union and non-union) to be considered for available construction jobs.⁵⁴ Mr. Voyles stated that the process will include several outreach programs that will actively seek qualified local workers, including advertising in the local media and the utilization of on-site recruitment and training offices, the Kentucky Department of Employment Services, and local vocational and community college training services.⁵⁵

The Board is hopeful that the TC2 project will result in economic growth for the Trimble County area. However, the Board believes that any positive economic impact resulting from this project greatly depends on the extent to which the Companies and

⁵⁰ Minority Business Enterprise.

⁵¹ Women Business Enterprise.

⁵² LG&E and KU Response to the IBEW/Trades Council Data Request to Intervenor No. 3.

⁵³ TE at 46, 60. That preference, and the above-cited language from the Request For Proposal, is significantly stronger than the requirements for local labor on previous LG&E construction projects. *Id.* at 38-39.

⁵⁴ Direct Testimony of John Voyles at 5.

⁵⁵ *Id.*; TE at 81-82.

the Joint Applicants employ local workers and utilize local resources, including MBEs and WBEs. Thus, 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 whenever practical and possible and finds these hiring effort commitments to be consistent with prior Orders of this Board.⁵⁶ In an effort to monitor the economic impact of this project and the Joint Applicants' and Companies' performance of these commitments, the Board finds that the Joint Applicants must submit an annual project economic impact report to this Board which should indicate the degree of utilization of local workers and local resources, including MBEs and WBEs.

Existence of Other Generation Facilities

KRS 278.710(1)(d) provides that the Board must consider whether a merchant plant is proposed for a site upon which facilities capable of generating 10 MW or more of electricity are already located. Here, the proposed TC2 is to be built where the existing TC1 unit is operating.⁵⁷ For that reason, the proposed project is entitled to the statutory preference afforded by KRS 278.710(1)(d).

⁵⁶ E.g., Case No. 2002-00149, The Application of Kentucky Mountain Power, LLC / EnviroPower, LLC for a Merchant Power Plant Construction Certificate in Knott County, Kentucky Near Talcum, (Ky. PSC Sep. 5, 2002), at 10; and Case No. 2002-00312, The Application of Kentucky Pioneer Energy, LLC for a Construction Certificate Pursuant to KRS 278.704(1) to Construct a Merchant Electric Generating Facility, (Ky. PSC Nov. 10, 2003), at 15-16.

⁵⁷ SAR at 3.1.1.

Local Planning and Zoning Requirements

In deciding whether to grant or deny a construction permit, KRS 278.710(1)(e) directs the Board to consider whether the proposed facility will meet all the local planning and zoning requirements that existed on the date the application was filed. The Joint Applicants have demonstrated that Trimble County has no local planning and zoning regulations;⁵⁸ therefore, the Board does not need to consider the issue of Joint Applicants' compliance with local zoning laws in rendering its decision.

Potential Impact on the Electricity Transmission System

Before the Board may grant a merchant plant construction certificate, KRS 278.710(1)(f) requires the Board to consider whether the additional load imposed upon the electricity transmission system by the proposed facility will adversely affect the reliability of service for retail customers of electric utilities regulated by the PSC.

The Midwest Independent Transmission System Operator, Inc. conducted a number of studies to evaluate any possible constraints on the transmission system that might result from the integration of TC2 (including that 75 percent portion to be owned by the Companies) into the transmission system.⁵⁹ Those studies identified the need for additional transmission facilities in Trimble, Franklin, Anderson, Woodford, Jefferson, Bullitt, Meade, and Hardin counties as a result of the 75 percent of TC2 to be owned by the Companies, but identified no transmission upgrades needed in Kentucky as a result of the 25 percent of the project that is the subject of this proceeding, other than the

⁵⁸ Application, Exhibit H.

⁵⁹ *Id.* at Exhibit J.

required physical interconnection of the plant into the transmission system.⁶⁰ That interconnection was recently approved by the PSC in Case No. 2005-00155.⁶¹ The remaining transmission facilities, identified to support the Companies' portion of TC2, are the subject of other proceedings before the PSC. For all of these reasons, the Board concludes that the portion of TC2, which is the subject of this proceeding, will not adversely affect the reliability of service for Kentucky customers.

Compliance with Statutory Setback Requirements

KRS 278.710(1)(g) requires the Board to consider whether the proposed facility will comply with any applicable setback requirements. TC2 will utilize the existing stack at TC1. That existing stack is located more than 1,000 feet from the nearest property boundary and more than 2,000 feet from the nearest residential boundary and thus is in compliance with the setback requirements described in KRS 278.704.⁶² There are no other setback requirements that apply to the site.⁶³ Accordingly, the Board concludes that this criterion is satisfied.

Efficacy of Proposed Mitigation Measures

KRS 278.710(1)(h) requires the Board to consider the efficacy of measures proposed to mitigate any adverse impact that the proposed facility may have on the affected region. Pursuant to this statute, the Board has reviewed and considered the

⁶⁰ *Id.*

⁶¹ Case No. 2005-00155, Application of the Louisville Gas and Electric Company For a Certificate of Public Convenience and Necessity For the Construction of Transmission Facilities in Trimble County, Kentucky, (Ky. PSC Sep. 8, 2005).

⁶² BBC Report, Section C, at 11.

⁶³ *Id.*

measures BBC has proposed to mitigate the negative impact that the TC2 project may have on the Trimble County region.

The BBC Report recommended several mitigation actions that would resolve any potential problems with the proposed construction.⁶⁴ Certain of the recommended mitigation measures, relating to use of a consistent lighting and color scheme, use of the existing stack, efforts to dampen steam blows and notify nearby landowners of planned blows, and to utilize local workers to the extent practical and possible, have already been discussed in preceding sections of this Order. In addition, BBC made the following recommendations, which have not yet been addressed:

DESCRIPTION OF THE PROPOSED FACILITY/SITE DEVELOPMENT PLAN. The following mitigation measures are recommended for this aspect of the statutory requirements:

1. As indicated in the SAR, the applicant should conduct a security assessment after construction plans are finalized. The applicant should also coordinate closely and share information with the Trimble County Sheriffs [sic] office before and during construction.

EXPECTED NOISE FROM CONSTRUCTION AND OPERATION. The following mitigation measures are recommended to address this potential issue:

5. LG&E should monitor construction-related traffic flows through Trimble County and encourage the use of routes that minimize noise and disruption for local residents - probably focusing traffic on Highway 754 and seeking to minimize additional traffic on Highway 625.

IMPACTS ON TRANSPORTATION. The following mitigation measures are recommended for this aspect of the statutory requirements:

7. The applicant should seek to direct traffic onto the least impacting routes and schedule construction shifts and

⁶⁴ BBC Report, Section D, at 1-2.

deliveries to minimize additional traffic during school bus transit periods and commuting peaks.

8. LG&E should enhance communication with local officials regarding the timing and routes for ammonia truck deliveries.

9. The applicant should encourage hauling contractors to improve their compliance with local traffic laws.

10. Throughout the construction period, LG&E should closely monitor traffic issues and concerns that arise during construction and work with local officials to take action as needed.⁶⁵

The Joint Applicants, together with the Companies, agreed to accept all of the mitigation recommendations made by BBC.⁶⁶ Specifically, both the witness for IMPA, Ms. Mayo, and the witness for IMEA, Mr. Childers, testified that their agencies acknowledge the recommendations, and Mr. Voyles, the witness for the Companies, testified that the Companies accepted all of the recommendations.⁶⁷

Based on the Joint Applicants' and the Companies' commitments to accept all of the BBC recommendations contained in their Report in Section D, pages 1-2, the Board finds that the mitigation actions are reasonable and will render the project largely compatible with its scenic surroundings.

Finally, the Board recognizes that many of the proposed plans and agreements relating to the construction of TC2 are not yet final. In an effort to assure that the project is constructed consistent with this Order, the Board finds that the Joint Applicants must submit an annual project impact report to this Board which should

⁶⁵ *Id.*

⁶⁶ TE at 19, 71-73, 76-78.

⁶⁷ TE at 19, 70.

successfully mitigate any adverse impacts caused by the inherent uncertainty of this project.

History of Environmental Compliance

KRS 278.710(1)(i) directs the Board to consider whether the applicant has a good environmental compliance history. IMPA acknowledged one minor administrative environmental violation.⁶⁸ The Joint Applicants indicated that this violation was promptly and voluntarily disclosed by IMPA and, as a result, the Environmental Protection Agency (“EPA”) waived the gravity portion of the penalty.⁶⁹ The record indicates that IMEA has never had a reportable EPA violation, and there are no pending administrative or judicial actions against either IMPA or IMEA.⁷⁰ Even though the Board is concerned that there has been one violation by IMPA, it believes that, given the scope and size of IMEA’s and IMPA’s operations, the lack of any major violations indicates their awareness of their respective responsibilities and commitments to the environment and regulatory requirements. Accordingly, the Board concludes that there is insufficient evidence in the record to deny the application based on any negative environmental history of the Joint Applicants.

OTHER FACTORS

Legislative Policy of Encouraging the Use of Coal

KRS 278.710(2) authorizes the Board to consider the policy of the General Assembly to encourage the use of coal as a principal fuel for electric generation. The

⁶⁸ Application, Exhibit M.

⁶⁹ *Id.*

⁷⁰ *Id.*

Board has considered that policy in this case and favorably points out that the technology proposed for TC2 will allow for significant fuel flexibility, including the ability to burn Kentucky coal.⁷¹

Local Property Owners' Concerns

A number of public comments expressing concerns about the existing facility, TC1, and the proposed TC2 were made at the local public hearing in this matter and again at the start of the evidentiary hearing. Mr. Voyles testified at length in his pre-filed direct testimony and on cross-examination at the hearing regarding the efforts undertaken to resolve the concerns of the public.⁷² In light of that testimony, the Board finds that the Companies have made significant good faith efforts to address the concerns of the residents in the local community. However, to assure that these commendable efforts continue, the Board will require the Joint Applicants, as part of its annual reporting obligations imposed by this Order, to continue to report any complaints received by them or the Companies from residents near the facility and the responses to address those complaints.

CONCLUSION

After carefully considering the criteria outlined in KRS Chapter 278, the Board finds that the Joint Applicants have presented sufficient evidence to obtain a certificate to construct their 25 percent interest in TC2 to be operated as a merchant facility. The Board

⁷¹ Rebuttal Testimony of John P. Malloy, PSC Case No. 2004-00507, incorporated into this proceeding by reference pursuant to the motion of IMEA and IMPA, at 5.

⁷² Direct Testimony of John Voyles at 6-9; TE at 64-68.

conditions its approval upon the implementation of all measures described in this Order and listed in Appendix A.

The Board, having reviewed the evidence presented in the record, and being otherwise sufficiently advised, HEREBY ORDERS that IMEA's and IMPA's joint application for a certificate to construct their 25 percent undivided ownership interest in TC2 in Trimble County, Kentucky is approved.

Done at Frankfort, Kentucky, this 16th day of November, 2005.

By the Board

ATTEST:

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

Executive Director
Public Service Commission
on behalf of The Kentucky State Board on
Electric Generation and Transmission Siting

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY STATE BOARD ON ELECTRIC GENERATION AND TRANSMISSION SITING IN CASE NO. 2005-00152 DATED November 16, 2005

MONITORING PROGRAM AND REPORTING REQUIREMENTS

The following monitoring program is to ensure that the facility proposed in this proceeding is constructed as ordered:

A. The Joint Applicants shall file an annual report throughout the duration of the construction of the facility. The initial report shall be filed within 1 year of the date of this Order. Subsequent reports shall be filed once each calendar year thereafter until construction of TC2 is complete.

B. The report shall be filed in the form of a letter to the Chairman of the Kentucky State Board on Electric Generation and Transmission Siting. The report shall contain the following sections:

- Overview – Joint Applicants shall provide a short narrative summary of the project's progress or any material changes that have occurred since the last report. They shall also identify the primary contractor(s) responsible for the large majority of the construction effort, if applicable.
- Implementation of Site Development Plan – Joint Applicants shall describe: (1) the implementation of access control to the site; (2) any substantive modifications to the proposed buildings, transmission lines, and other structures; and (3) any substantive modifications to the access ways or other access to the site. A map must accompany any change to the above items.

- Local Hiring and Procurement – The Joint Applicants shall describe the efforts of the Companies to encourage the use of local workers and vendors, including MBEs and WBEs. At a minimum, the report shall include a description of the efforts made by the Companies and by contractors and vendors to use local 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.
- Public Comments and Responses – The Joint Applicants shall provide a summary of any oral, telephone, e-mail or other written complaints or comments received by the Joint Applicants or the Companies from the public during the intervening period since the last report and the response to each complaint or comment.
- Specific Mitigation Conditions – The Joint Applicants' report shall provide a brief narrative response to indicate the progress, any obstacles encountered, and plans to fulfill each condition or mitigation requirement required by the Board.

C. Within 6 months after the conclusion of construction, the Joint Applicants, with the cooperation of the Companies, shall invite the Board, its staff and its consultants for a site visit, to review and ascertain that the constructed facility followed the description provided by the Joint Applicants in its site assessment report and that the mitigation conditions imposed by the Board were successfully implemented. The Joint Applicants

shall also submit, subject to appropriate confidentiality or security restrictions, “as-built” plans in the form of maps that illustrate the implementation of the Site Development Plan.

SPECIFIC CONDITIONS IMPOSED

Consistent with the terms of the Participation Agreement among the Joint Applicants and the Companies relating to the development, construction, ownership, and operation of TC2:

D. The Joint Applicants shall request that the Companies conduct a security assessment after construction plans are finalized, and coordinate and share information with the Trimble County Sheriff’s Office before and during construction.

E. The Joint Applicants shall request that the Companies use the existing stack for exhaust from both the existing TC1 unit and TC2.

F. Colors and lighting selected for the new unit shall be consistent with the existing features of TC1.

G. For planned outages and steam blows, silencers shall be installed by the Companies or the EPC contractor to dampen the resulting noise. The use of a telephone warning system, in addition to existing notification methods, to warn nearby residents of planned steam blows should be investigated and considered by the Companies.

H. Construction contractors and workers should be encouraged by the Companies to minimize the impact on local roads by using routes less traveled and by not using Highway 625.

I. Construction shifts and deliveries should be timed to minimize additional traffic during school bus transit periods and commuting peaks.

J. The Companies' communications with local officials regarding the timing and routes for ammonia truck deliveries should continue.

K. Hauling contractors should be encouraged by the Companies to improve their compliance with local traffic laws.

L. Construction-related traffic flow through Trimble County should be monitored by the Companies during the construction period, and the Joint Applicants shall request that the Companies work with local officials to take action as needed regarding any traffic issues or concerns that might arise during construction.

M. Contractors should be encouraged by the Companies to consider hiring local qualified workers, where possible, because such workers are more likely to be familiar with local roads.