

### FAX TRANSMISSION

**PRIDDY, ISENBERG, MILLER & MEADE**  
 800 Republic Building  
 429 W. Muhammad Ali Blvd.  
 Louisville, Kentucky 40202  
 TEL. (502) 587-8600  
 FAX (502) 569-2744

RECEIVED  
 KENTUCKY STATE BOARD ON  
 OCT 07 2005  
 ELECTRIC GENERATION AND  
 TRANSMISSION SERVICE

DESTINATION

SENDER

Susan Hutcherson -

DON MEADE

FACSIMILE # 502 564 3460

RE: Siting Bd 2005-00152

DATE: 10/7/05

ATTN: \_\_\_\_\_

TOTAL # OF PAGES \_\_\_\_\_  
(including this one)

\*\*\*\*\*

The information contained in this telefax is attorney/client privileged and confidential, intended for the use of the individual or entity named above. If the reader of this message is not the person to whom it is being sent (or the employee or agent responsible to deliver it to that person) do not circulate, copy or distribute this message. If you have received this communication in error, please notify us by collect telephone and return the original message to us at the above address above at our expense.

Original forwarded via:

First Class Mail

Overnight Express Mail

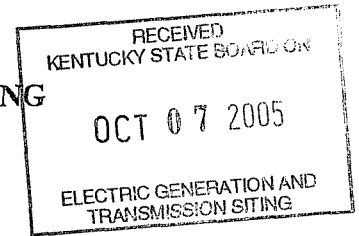
Originals not forwarded

COMMENTS: Per our conversation, I understand

that the Siting Board will accept a fax filing  
of our brief, which has been returned from Express Mail  
for insufficient postage. We will again express  
mail our original and 10 copies this same date.

Thank you,  
Don Meade

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

**INTERVENORS', IBEW/TRADES COUNCIL,  
BRIEF IN SUPPORT OF IMPOSING CONDITIONS  
TO INSURE THAT TC2 ECONOMIC BENEFITS ARE REALIZED**

**BACKGROUND**

Intervenors have participated in the PSC case for the purpose of insuring that the economic benefit of the Trimble County construction would be enjoyed by Kentucky citizens and LG&E/KU rate payers. Intervenors sought an order from the PSC which conditioned approval of the project on certain guarantees that construction work would be performed by Kentucky workers. To that end, Intervenors advocated that without PSC supervision, LG&E would engage in contracting practices that could utilize out of state migrant labor which deprived the Commonwealth of millions of dollars of revenue, taxes, spending and economic benefit flowing from the project.

The Trades Council and IREW urged this position through several procedural phases of the case, including submitting and responding to data requests and presenting expert testimony. The PSC ultimately determined that it was without jurisdiction to consider the issue of economic impact of LG&E's application, at least under the statute governing convenience and public necessity. The PSC further concluded that the issue of economic impact/economic benefit was properly within the jurisdiction of the Siting Board, and directed the Intervenors to this forum.

The PSC Order of May 12, 2005 stated:

...[T]he Kentucky State Board of Electric Generation and Transmission Siting (Siting Board) will soon have before it a parallel application from the Illinois Municipal Electric Agency and the Indiana Municipal Power Agency ... for this same generating plant. The Siting Board has different standards and jurisdiction than does the Commission, and we believe that it is important that orders from the two sister agencies not be in direct conflict. One of the factors that the statutes require the Siting Board to consider in reaching a decision is "the economic impact of the facility upon the affected region and the state.".. In prior cases, to meet that criterion, the Siting Board has imposed conditions in its final orders such as the following from the Application of Estill County Energy Partners: ECEP shall make reasonable efforts to hire workers, vendors and contractors from the local area. (Citation omitted) In the present case, the Commission has contracted with EBC Research & Consulting to provide a review and evaluation of the site assessment reports of both the applicants in this case and the municipal agencies in the Siting Board case. That report includes the following recommendation: "LG&E should encourage its contractors to consider hiring locally qualified construction workers, where possible," (Order. p. 2, 3, Ex. 12)

The Siting Board admitted relevant portions of the PSC record. The issue now before the Board is how to harmonize the necessary approvals for TC2 such that the public interest is protected from contracting practices that would undermine the stated economic benefit of the construction of the TC2 plant.

**I. THIS BOARD HAS AN OBLIGATION TO THE CITIZENS OF KENTUCKY TO INSURE THAT PROJECTED ECONOMIC BENEFITS ARE REALIZED BY APPROPRIATE CONTRACTING PRACTICES THAT UTILIZE LOCAL LABOR.**

The PSC exacts no accountability, through any of its statutory proceedings, for insuring that the economic impact of major utility construction projects benefit Kentucky workers. Companies exploit this loophole to gain approval of their projects, then pursue contracting strategies that undermine Kentucky workers, and their unions, by allowing construction to be performed *through the importation* of out of state workers, employed at sub-standard wages and benefits. This corporate strategy robs the Commonwealth of vital economic benefits, which are subsidized out of the pockets of ratepayers. It leaves idle hundreds of Kentucky workers that rely upon major construction projects for their livelihood.

The majority of skilled trades and craft employees, with appropriate expertise in power plant construction, belong to unions in Kentucky. If construction jobs are retained for the Commonwealth, union workforces are fully employed. Where union workers are employed, wages and earning power come back into the community. Moreover, medical insurance and retirement benefits are funded, promoting the general welfare. Importation of workers undermines the local wage structure. This is demonstrated by LG&E's own consultants. Non-union employees do not enjoy benefit payments for such necessities as medical insurance and retirement.

This dilemma is best illustrated through a 2002 PSC case, The Application of Thoroughbred Generating Company LLC for a Merchant Power Plant Construction Certificate in Muhlenberg County (No. 2002-00150). (KRS 278.706(2)(j)) In its application, Thoroughbred filed a report "Thoroughbred Energy Campus: An Analysis of Economic Impacts for Kentucky," performed by KPMG LLP Economic Consulting Services, Washington, D.C. (Ex. 6-2') The report presented rosy projections of substantial economic benefits for Muhlenberg County and the 17 county surrounding area.

Projected were 914 average direct job years that would result from construction of the power plant. An estimated spending total of \$704 million for labor and materials within Muhlenberg County was made. Detailed calculations, contained in the appendix, were broken down into categories of (1) Amount Spent Within Kentucky, (2) Amount Spent Within the 17 County Community, and (3) Amount Spent Within Muhlenberg County. Table A-2 demonstrated a total of \$19,877,245 to be spent in total labor and benefits, with almost 16 million to be spent within Kentucky

The Board relied upon this economic analysis in its order approving the project:

The project, it is estimated, will create an average of \$98 million in new spending on an annual basis. Construction of the plant, scheduled to occur over a 4-½ year period, will create an average of 1500 jobs, with a maximum peak of 2900. Approximately 450

---

<sup>7</sup>Exhibit references relate to the IBEW/Trades Council Motion to Admit Relevant PSC Record, and its exhibits.

workers will be employed fulltime once the plant is operational. KPMG estimates that of the 450 fulltime workers, approximately 402 can be expected to be residents of the Commonwealth,

Approximately 3.345 billion in cumulative new spending can be expected to occur over the construction and operating life of the project. Once the plant is operational, it is expected that 11 million will be spent on an annual basis for locally provided goods and services. Coincidentally, the average operating payroll is estimated to be 11 million annually, and 4 million of that income will go to employees residing in Muhlenberg County. KPMG estimates that for every dollar spent for construction and operation, 54 cents in additional spending will be generated in the Commonwealth; 74 cents of additional income will be generated in the Commonwealth for every dollar paid in wages; and 1.7 additional jobs will be created in the Commonwealth for each worker hired. (Commission Final Order, 2002-00150) (Ex. 6-3)

It is clear that the Board relied upon representations made in the application. The Thoroughbred application summarized the impact of construction:

Construction of the Thoroughbred Generating Station will occur over a 4½ year period. The average number of workers will be approximately 1500 with the maximum at peak of 2900. *These workers will most likely be residents of the Western Kentucky area. Some workers will temporarily relocate to the area during the construction.* (Our emphasis) (Ex, 6-2, cover page)

The Thoroughbred project had a built-in loophole that made illusory the every economic analysis upon which the Board relied. Announcement of the plans for the new plant were greeted with jubilation, as indicated in a February 13, 2001 Owensboro *Messenger-Inquirer* article, "Peabody Announces Coal Plant Plans - Construction Will Bring 1000 Jobs." (Ex. 6-4) The announcement was attended by Gov. Patton, Sen. Mitch McConnell and U.S. Representative Ed Whitfield. Yet a year later the loophole was unmasked and concerns were rife in the very community that was to benefit from the project. An April 7, 2002 Owensboro *Messenger-Inquirer* article reports:

But the warm reception has chilled amid fears that Peabody is considering hiring a Texas company as the general contractor to oversee construction of the 1500 megawatt plant near Central City. Yonts [state representative Brent Yonts] and area union leaders are concerned that the Zachry Construction Corporation in San Antonio - an open, or non-union, shop - will bring in its own laborers to do much of the construction work. (Ex 6-5)

The article further reports that representatives from Zachry confirmed that it would give preference “to people who have previously worked for Zachry,” then hire locally.

An April 12, 2002 *Messenger-Inquirer* article correctly identified the issue of broken promises:

The people of Muhlenberg County have every right to expect Peabody to stick to the promises it made. **As** the plant citing process has played out, Peabody has claimed a local economic impact of 75 million annually and 3.3 billion in new spending during the life of the project. (Ex. 6-6)

In an observation that provides a mirror image to the proceedings in the LG&E case, the newspaper confronted the “dodging” the utility was doing in arguing that no decision had yet been made:

It is understandable for Peabody to say it hasn't yet made a decision, but there will come a time when that answer is no longer good enough. **At** some point the Company will need to explain its plans to the people of Muhlenberg County. (Ex. 6-6)

The controversy continued to the extent that local elected officials began passing resolutions “asking Peabody Energy to use local tradespeople to build the proposed coal fired power plant.” (Ex. 6-7) The matter reached a boiling point when 300 people turned out to a public hearing related to issuing an air quality permit, as reported by a July 26, 2002 *Messenger-Inquirer* article:

Most of the 300 people that packed the Muhlenberg North High School cafeteria wore union tee shirts or sported “Local Plant, Local Jobs” stickers to the State Division for **Air** Quality hearing. (Ex. 6-8)

The matter **commanded** the attention of Sen. Mitch McConnell, who in a July 15, 2002 letter to the President of Peabody made his position crystal clear:

It has recently come to my attention, however, that one of the lead contractors, the H.B. Zachry Construction Corporation of San Antonio, Texas, has announced its intention to hire its first workers from a pool of former employees - the vast majority of whom are Texas residents. Contrary to all common sense, the proposed hiring rules would place Kentucky workers at a significant disadvantage in competing for these new jobs located in Kentucky, **and** do nothing to relieve the already too-high unemployment rates. *I urge you in*

*the strongest terms to insure that local residents receive top priority as job applicants for all positions, both within the new Peabody Energy Plant and throughout construction and operation contractors. I never would have offered my support for this project had I know that job applicants from Kentucky would be given second class status. (Emphasis in original) (Ex. 6-9)<sup>2</sup>*

The same scenario is already playing out in the TC2 case. A March 2, 2005 article from the *Trimble Banner* reported 300 local residents attended a town meeting over the issue of whether the project was going to utilize Kentucky labor. The newspaper reports the statements of Joe Wise, Director of the Greater Louisville Building and Construction Trades Council:

Wise said that 4 years ago LG&E took the stance that they wanted local workers on their jobs and said that they would require contractors to bring in local workers for each project. However, he said it didn't quite work that way. Wise said at the time LG&E began a project to install FTR scrubbers at the Trimble Plant and that workers came from Florida, Texas, Louisiana, Tennessee, South Carolina, North Carolina and Georgia.

The article also reports a statement from the Trimble County Plant Manager, Tom Crutcher: "...We're not going to dictate to people who are qualified to build that unit what their source of labor should be." (Ex. 6-10)

LG&E's contracting strategy for TC2 has been identified as "high risk to contractor, low risk to owner" and places incentives on labor cost cutting by forcing the risk upon the contractor:

Contracts are awarded early to allow adequate design and procurement time that are in advance of construction so unit cost for labor are the least predictable.<sup>3</sup>

LG&E's contracting and subcontracting strategies, as a means of profit enhancement, are well known to the PSC. Implementation of an early retirement program by LG&E resulted in a mass exodus of skilled employees, cutting its unionized labor force by 50%. The Company now relies upon subcontractors who are not obligated to pay union wages or benefit packages. This has

---

<sup>2</sup>Subsequently, Peabody put its construction plans on hold and the Thoroughbred Project was never started.

<sup>3</sup>Trimble County Unit 2 Project Approach, Vol. 1 Project Execution Plan, Executive Summary, pp. 4-14, quoted at Ex. 6, Motion to Admit Relevant PSC Documents.

created issues of concern and investigation by this Commission, particularly in regard to sufficient manpower to respond to storm related outages, LG&E's corporate strategy is clearly anti-union as it has pursued steps to erode wages and benefits in an effort to become more profitable.

The same strategy is at play in LG&E's resistance to providing assurances that the economic benefit of TC2 is enjoyed by Kentucky workers. LG&E will exploit my PSC or Siting Board indifference to the issue and pursue its historical contracting practices, which offer no protection to assure that Kentucky workers and citizens enjoy the economic benefits. The irony is that these same workers will be forced to underwrite *this* strategy when LG&E incorporates the TC2 costs into the rate base.

**XI. LG&E HAS DEMONSTRATED IRRESPONSIBLE CONTRACTING PRACTICES IN THE COMMISSION APPROVED SCR WORK PERFORMED AT TRIMBLE COUNTY.**

The bait-and-switch tactics, so vividly portrayed in the Peabody project, were implemented through the contracting practices of LG&E on the Trimble County SCR project. Construction proposals were presented to LG&E in Case No. 2000-112, *Application of Kentucky Utilities Company and LG&E for Certificate of Public Convenience and Necessity to Construct Selective Catalytic Reduction Control Technologies*. One of the bids was from Flour for construction of scrubbers at Trimble County, Brown 3, Ghent 1 and Ghent 2. The proposal highlighted the ability of this contractor to draw upon their own workforce:

Contractor has over 20,000 craft resources in its craft employee data base. We have maintained a successful presence from coast to coast and have existing craft resources in your region. In addition, Contractor's organization continuously tracks over 4000 craft employees with fossil plant experience for temporary/outage work. (Ex. 6, Motion to Admit Relevant Records)

The proposal goes on to state, "During the last 10 years, over 105,000 employee requisitions have been filled for journeymen, helpers and laborers." The Contractor proposal also specified the project would be built non-union.



This proposal was in stark contrast to the one from the second bidding Contractor which made the following commitment:

To effectively meet the resource demands associated with constructing 13 SCRs over the next four years, Contractor has always placed a strong emphasis on communicating with labor. Contractor is committed to utilizing union labor and many of our management personnel sit on influential committees that determine policy for apprentice programs, safety, training, etc. (Ex. 6)

The proposal goes on to identify local labor pool resources: “The combined total labor pool is approximately 600 and we feel confident that these resources can support our requirements.” The proposal makes the following observation regarding local labor resources. “These labor organizations actively participate in common arc, safety and drug testing programs to maintain a reliable and cost effective workforce.” (Ex. 6)

LG&E was faced with a choice of selecting a contractor that would import a major portion of its labor, versus a contractor that was fully committed to utilizing local employees. LG&E chose the proposal of Flour. The SCR project was staffed by 70% imported laborers, leaving many skilled Kentucky craftsmen idle while the work was being performed over several years.

The impact of LG&E’s choice was revealed through an unexpected source. The BBC Report to the Siting Board, in this case, states, under *Supplemental Investigations and Interviews* (p. 30, 31):

LG&E indicated that construction workers during past construction projects at the site commuted from Louisville, LaGrange, Carrollton and Madison, Indiana. The study team learned more about the historical construction workers experience at the Trimble County site during its interview with LG&E officials on March 28. The most similar construction experience occurred during the 2000 to 2002 period when the SCR was built at the same time that a number of the combustion turbines were also under construction. A total of 900 construction workers were on-site at peak during that time. Workers performed 10 hour shifts, 6 days a week; approximately 30% of the workers were existing residents of the Louisville-Cincinnati region. *An estimated 70% moved into the region for the duration of their activity at the project.* (Our emphasis)

The imminent reality of a similar debacle looms large on the horizon of the TC2 project. LG&E has made no formal or contractual commitments to change its contracting practices.

**III. THE PUBLIC SERVICE COMMISSION HAS ESTABLISHED PRECEDENT WITH LG&E ON THE ISSUE OF INSURING THAT ECONOMIC IMPACT BE SECURED FOR THE BENEFIT OF THE STATE.**

As demonstrated in the Commission's approval of the LG&E/KU - PowerGen merger, the Commission has interpreted the public interest to include economic development and impact. The Commission proposed and PowerGen accepted a stipulation that the LG&E corporate headquarters would be maintained in Louisville for ten years. There can be no more direct example of the nexus between economic impact **and** the public interest.

The Commission dealt very specifically with the issue of corporate headquarters. When the Commission found LG&E's assurances vague and non-committal, it imposed an unequivocal condition, to be accepted by the Companies, on merger approval:

The Applicants' testimony clearly demonstrated the importance of keeping these headquarters in Kentucky. For this reason the Commission was very concerned that the Applicants were unwilling to tie this commitment to a term of years. When asked about the term of this commitment, the Applicants would say only that "in the absence of unforeseen circumstances," the headquarters will remain here "for the foreseeable future." The Commission finds unacceptable such a vague, indefinite commitment with respect to this most important aspect of public interest. PowerGen has already committed to maintain **and** support for a period of 10 years the relationship between LG&E and KU with the communities that each serves. If the Applicants are unwilling to provide a similar long-term commitment to maintain their corporate headquarters in Kentucky, the merger is not consistent with the public interest. Therefore, the merger will be approved only upon the condition that the Applicants commit to maintain for at least 10 years the LG&E Energy, LG&E, **and** KU headquarters in Louisville and Lexington and PowerGen's United States headquarters in Louisville, Kentucky. This commitment must be absolute and unequivocal. (Case No. 2000-095)

Similar problems of vagueness exist with LG&E's present level of commitment to utilize local labor. The TC2 RFP contains three standards that LG&E represents as addressing the issue of local labor:

1. The bidders shall provide a list of all possible union and non-union subcontractors to be used, and the list, as agreed upon between the owner and the bidders, will be incorporated into the agreement as an exhibit.

2. The contractor shall maximize the use of local direct hire union and non-union contractors.
3. The contractor shall define and utilize processes to maximize the use of local union, non-union, MBE, and WBE labor, goods and services in developing the construction and labor plan.<sup>4</sup>

To understand the credibility of these commitments, they must be compared to similar commitments that were contained in the SCR Alliance Agreement which was used for the work by Flour previously at Trimble County. This also contained three commitments:

1. No work will be subcontracted without utilizing a bidder from a mutually agreed upon list.
2. The bidders' list **will** be jointly developed by Flour and LG&E, and included local union and non-union subcontractors.
3. "Whenever practical, economical and reasonable, alliance contractor will utilize local labor sources, including disadvantaged persons, in performance of the work."<sup>5</sup>

The LG&E-SCR commitments resulted in 70% of the construction labor force being imported by Flour from out of state. John Voyles testified that there were no penalties assessed against Flour for its implementation of this language. He further testified that the Company monitored Flour's performance under this language for the SCR work.

Mr. Voyles similarly testified that LG&E was committed to the use of local labor, would monitor the hiring practices of the EPC contractor for TC2, and would see that the language was enforced. Yet he offered no specifics as to how this would be accomplished. LG&E has set no goals, standards and dictated no mechanism to insure that local labor sources are fully utilized, as a condition to the contractor's use of labor from beyond the local area. In this regard, LG&E's representations are as vague and meaningless as they were for the performance of the SCR work.

The Commission made specific findings regarding the economic benefits related to merger and retention of the corporate headquarters in Kentucky:

---

<sup>4</sup>LG&E Response, IBEW/Trades Council Data Request No. 3

<sup>5</sup>LG&E Data Response, IBEW/Trades Council Request No. 2

The Commission finds that retaining these headquarters in Kentucky is indeed significant. Having corporate officers and senior management working and living in the communities served by LG&E and MU helps ensure E.ON that service quality remains at superior levels and *economic development in Kentucky is given a top priority*. (Order, May 15, 2000) (Our emphasis)

The Commission made specific findings under the heading “Economic/Community Development”: “Economic development and investment in the communities served by LG&E and KU are of paramount importance to the public interest and these communities extend far beyond the urban centers of Louisville and Lexington.” (Order, p. 33) The Commission went on to impose monitoring to determine whether the merged companies were keeping their commitments to promote economic development in the Commonwealth. LG&E/KU must annually file a report demonstrating total expenditures for economic development activities, and a report detailing economic development efforts within respective service areas. (Order, p. 33)

This Board must insist upon specific performance of covenants regarding the use of local labor sources. This specific performance must be a condition for approval of the merchant portion of the plant. As the guardian of the public interest, for the undertaking of such an economically mammoth project as TC2, this Board must exercise the same level of authority in demanding performance, from LG&E and its partner utilities, as the PSC did in protecting the public interest in the merger cases, by insuring that the corporate headquarters, and its jobs, remained in Kentucky for the foreseeable future.

**IV. TO SECURE PROJECTED ECONOMIC BENEFIT, THIS BOARD IS UNDER A DUTY TO PROTECT KENTUCKY CITIZENS FROM THE CORROSIVE EFFECTS OF LG&E’S LEAST COST CONTRACTING STRATEGY.**

The LG&E philosophy regarding its obligation to use Kentucky workers found perfect expression in its response to Intervenors’ Data Request No. 3:

As regulated utilities, KU and LG&E have an affirmative duty, under Kentucky law, to pursue resource needs under a least cost strategy, and the preference for use of Kentucky workers must be evaluated in connection with that duty to pursue a least cost strategy.

The evidence unequivocally demonstrates that LG&E's pursuit of its least cost strategy has unacceptable negative impacts on economic development opportunities for Kentucky workers and citizens. The least cost strategy has led LG&E to eliminate its unionized workforce by 75% since Trimble County 1 was built. It has led LG&E to utilize contracting strategies that export millions of dollars in payroll to out of state workers. It has led to the development of contracting strategies that undermine local construction wage rates by the importation of cheap labor. It has led to decisions that deny workers essential health care and retirement benefits, in the interest of improving corporate profits and executive salaries. Although a regulated utility, the failure of oversight agencies to regulate these business practices has led to pernicious and objectionable final results.

The LG&E contracting strategy has a corrosive effect upon the local economy, depressing construction wages and establishing a standard of non-payment of health insurance and pension benefits. The LG&E standard undercuts bona fide local contractors and employers who are willing to pay fair labor rates, medical insurance and pension benefits. It places them in an uncompetitive position, dragging the entire economic standard downward. This is amply demonstrated by the Burns & McDonald study utilized by LG&E in developing its contracting practices. This study, *Trimble County Unit 2 Project Approach, Vol. 1 Execution Plan*, estimated project costs based upon values of a merit-shop approach. LG&E concedes that the project cost estimates were projected on a 100% utilization of merit shop construction workers. (Intervenors PSC Data Request to LG&E, No. 9) LG&E's intention to build the project non-union has been clearly stated in the direct testimony of John Voyles, filed before this Board:

- Q. Would the use of a project labor agreement help to fully utilize Kentucky workers on the TC2 project?
- A. No. The use of a PLA in and of itself will not help fully utilize Kentucky workers, A PLA would only assist in the utilization of union workers in Kentucky and as a result, it would discriminate unfairly against the large contingent of local workers that are non-union and the local contractors in the region that employ merit shop labor. (p. 5)

The Company has devoted itself to a least cost strategy that embraces the payment of substandard wages and benefits. Yet its partner utilities presented the testimony of Dr. Paul Coomes based upon payment of union scale wages and benefits.

LG&E partners, Illinois and Indiana Municipal Power Agencies, sought to **justify** the economic benefit of construction labor payroll by utilizing a combined wage and benefit rate of \$51.00 per hour. On cross examination, Dr. Coomes conceded that this rate was higher than any combined labor/benefit rate utilized by the Burns & McDonald study, including labor rates. Dr. Coomes also assumed payment of health insurance and pension contribution benefits to all construction payroll workers. (Coomes Direct Testimony, **Ex. 2**, Siting Board filing by Indiana and Illinois Municipal Agencies, **p. 2**) Yet these wage and benefit assumptions bear little relation to the actual costs relied upon by LG&E to plan the project.

Dr. Coomes significantly revised his numbers based upon assumptions consistent **with** the Burns & McDonald recommendations, IBEW/Trades Council propounded data requests to Dr. Coomes that required alternate calculations based upon the projection that the project **be** built non-union, and its chart of wage and benefit rates between merit shop and union employees. Using these new assumptions, Dr. Coomes **found** a reduction in labor wage payroll of between 36 and 88 million less than originally projected. (Illinois and Indiana Municipal Responses to Intervenors Data Request No. 1) Taking the recalculation further, Dr. Coomes estimated the impact of not paying medical and pension benefits on the overall construction payroll, a further labor cost reduction of between 57 and 101 million dollars. (Illinois and Indiana Municipal Responses to Intervenors Data Request No. 2) These revised calculations demonstrate that **if** the project is realized according to Burns & McDonald cost estimates, the economic impact to local workers will be reduced by a minimum of 93 million, or a maximum of 189 million. This is a dramatic illustration of the destructive economic effects of contracting practices that undermine wages and benefits of local workers.

Although these economic benefit reductions are major, they pale in comparison to the alteration of Dr. Coomes fundamental assumption - that construction payroll goes to local workers, residents and business because it stays in the geographic area. Dr. Coomes conceded that his work was based on an assumption founded in the U.S. Bureau of Economic Analysis data that “indicates that on net only 0.5% of labor and proprietor earnings in the Louisville Economic Area are paid to those living outside the area.” (Illinois and Indiana Municipal Responses to Intervenor’s Data Request No. 4) When asked to recalculate economic benefit based on an assumption of 70% of the construction workforce residing outside the geographic area, he was unable to do so. He conceded that if a majority of workers resided outside the Louisville region, they would spend their pay in their home communities - “This would lower the true value of the economic multipliers for the construction job.” (Illinois and Indiana Municipal Responses to Intervenor’s Data Request No. 4)

This Board must not allow LG&E to engage in classic bait-and-switch tactics. On the one hand, its partner utilities Rave projected positive economic benefit for Kentucky, in the building of the merchant portion of the plant, based upon wildly inflated wage rates and benefits, while LG&E has made no significant commitment to insist that local geographic area labor is utilized, that appropriate benefits are paid or that area standard wage rates are honored. All evidence points to a contracting strategy which is not designed to implement the economic benefits offered to justify the project. LG&E has relied upon cost estimates that utilize 100% non-union wage rates, which do not carry a benefit package of medical and pension benefits. It has demonstrated a past practice of utilizing low cost contractors which import migrant labor into the region to perform the work. It has stated to this Board and the PSC that its commitment to utilize local labor is secondary to its commitment to pursue a least cost strategy.

There is nothing in the corporate culture, recent past practices or contractual commitments of LG&E to insure that it will not repeat the contracting disaster that deprived Kentucky workers of significant economic benefit, as was done in the SCR project. The LG&E Corporate mentality

was starkly portrayed in the testimony of John Voyles. He conceded that the Trimble County plant was originally built utilizing union labor, through LG&E's own employees. He further conceded that LG&E was under the same statutory least-cost obligation, then, as it is today. He testified that the Company sought and received PSC rate approval on construction wages for the original Trimble County 2, without objection regarding the labor costs.

Yet since Trimble County was built, he testified that LG&E has abolished all of its construction crews, resulting in the loss of 2000 union jobs. He further acknowledged that LG&E's union workforce, once numbering between 1200 and 1300 workers, has been reduced to approximately 600 union jobs. His pre-filed testimony demonstrates an aversion to the use of the same union labor that built Trimble County, making the argument that LG&E is statutorily obligated to utilize cheap, even migrant, labor that does not include payments for medical pension benefits.

The record of this case verifies that LG&E's corporate practices are virulently anti-union. Under the mantra of least-cost-strategy, the Company has embarked on a course that sacrifices construction wages and benefits to corporate profit and executive compensation. The Company has even turned its back on its own community by allowing the exportation of millions in construction payroll to out of state workers.

The IBEW/Trades Council recognizes that this Board is empowered to secure, for the citizens of the Commonwealth, the projected economic benefits upon which the application for a merchant plant permit is based. To do so requires this Board to take a firm position and exercise regulatory oversight during the construction phase.

**V. THE SITING BOARD SHOULD FOLLOW THE PRECEDENT SET BY THE PSC IN THE LG&E-POWERGEN MERGER AND SECURE THE ECONOMIC BENEFIT OF THE MERCHANT BOWER PROJECT FOR THE LOCAL GEOGRAPHIC AREA.**

In its order approving the LG&E/PowerGen merger (Case No. 2000-095), the PSC imposed numerous conditions. Not only was the corporate headquarters required to remain in



Louisville for a term of 10 years, but the Commission imposed requirements regarding the maintenance of charitable and community financial support, the requirement of a proactive stance on developing economic opportunities in Kentucky, stipulations regarding the make-up of LG&E's Board of Directors, and the diversion of management talent. The Commission imposed ongoing reporting and oversight requirements upon the merged utility. This included protections against the utility being used as a dumping ground for employees or assets of failed or troubled affiliate ventures, Annual expenditures for economic development activities were required. PowerGen and LG&E were required to semi-annually "provide reports on the actual casts of the LG&E Energy acquisition..." (Order, Summary of Findings No. 16) Numerous other reporting and disclosure requirements were imposed, to insure transparency and the ability for the public, and the Commission, to observe both the impact of the merger and compliance of the merged company with conditions imposed by the Commission.

A similar approach *is* required for approval of this one billion **dollar** project. The Siting Board must act prospectively to safeguard the interests of the Commonwealth in obtaining the economic benefits of the project. The next time these issues will be revisited will be a decade from now in the TC2 rate case. By then, most of the key figures - Commission, Siting Board, Intervenors and LG&E management - will no longer be involved. The construction payroll will have been expended, by then, in the distant past. LG&E, and its partners, implementation of the projected economic benefits will be a moot point. The data necessary to evaluate compliance, related to the EPC contractors use of construction labor, may be lost or unretrievable. **If** this Board is to recognize the significance of this issue, its orders must require that the economic benefits be implemented now.

The most practical way to insure utilization of local area labor resources is for LG&E to enter into a project labor agreement with the Building Trades. Such an agreement could insure that workers are first drawn from the geographic area which is intended to benefit from the economic impact of TC2. As Larry Roberts testified, all aspects of such a PLA are negotiable. In the current

competitive environment in which the Building Trades Council must secure work, virtually every aspect of the arrangement, regarding wages, benefits, work rules are subject to negotiation. Mr. Roberts also testified that mechanisms could be negotiated to make provision for non-union workers having opportunities to work on the project. It is not uncommon for union and non-union labor to work side by side on major construction.

Gayle Mayo, of Indiana Municipal Power Agency, testified that her company has used project labor agreements for utility construction in Indiana. Her agency has no objection to the use of a PLA on the TC2 project. Although the Illinois Municipal Electric Agency has never used a PLA for utility construction, Mr. Childers testified his agency had no objection to its utilization on the TC2 project. Mr. Roberts' testimony addressed the Spurlock Generating Station with Eastern Kentucky Power, a 500 million dollar project that was recently completed under a PEA and other local projects, including the UPS expansion hub and Churchill Downs construction projects which were executed under project labor agreements. PLAs have been utilized with Cinergy, EKP, TVA and utilities in Western Kentucky. A PLA is being utilized for the installation of scrubbers at Clifty Creek in Indiana. (Roberts' Testimony, p. 2, 3)

Since the majority of skilled construction craft workers belong to the affiliate unions of the Greater Louisville Building and Construction Trades Council, a PLA would help secure an expert workforce for the effective construction of TC2. A PLA is one device which would secure the economic benefit of the TC2 construction payroll for the local area. This Board is urged to take the bold step of directing LG&E, and its merchant power partners, to require the EPC to negotiate a PLA for the construction of TC2.

In the alternative, this Board must, at a minimum, require LG&E and its merchant partners to utilize and exhaust labor resources from the local geographic area. Intervenors urge that the following conditions be imposed:

1. The EPC contractor must be contractually required to hire local area labor. Local area labor should be defined as workers residing in the Louisville Economic Area, which is the area defined by a 60 mile radius from the project. This area would

include the area identified by Dr. Coomes for the projection of economic benefits of the merchant plant project.

2. If the EPC contractor cannot fulfill its requirements with local area workers, it must contractually be required to offer the work to Kentucky residents **outside** the Louisville economic area. Solicitation for these workers should include, but **not** be limited to, certified mail contact to the Kentucky State Building Trades Council, so that it **may** notify and coordinate labor resources through its affiliate councils and craft unions.
3. The EPC contractor should be **contractually** obligated to provide medical insurance and retirement benefit contributions for all construction workers. These benefits should be paid within the range of values relied upon by Dr. Coomes' testimony of economic benefits.
4. The EPC contractor should be contractually required to exhaust the **resources** of local area workers, and workers drawn from Kentucky, before hiring **non-Kentucky** workers from outside the Louisville Economic Area.
5. The Board should require a quarterly filing by LG&E that records the efforts made to advertise, recruit, secure and hire workers from the Louisville economic area and Kentucky at large. The report should include the residence of all construction workers employed on the project. The Board should require certification, by the EPC contractor, that it has met its contractual obligation to **utilize** local area workers, before it imports construction workers from outside the Louisville Economic Area and Kentucky.

Steps such as these are consistent with the precedent set by the PSC in imposing conditions to merger, and requiring regular reports to insure public transparency and compliance. To allow this merchant application to pass, with approval, on the *weak* commitments currently offered by LG&E, is to abandon the issue of economic benefit and leave Intervenors, as well as the rate payers and citizens of the Commonwealth, without a form or remedy to address corporate abuses by an otherwise regulated utility. Such a result must be seen as unacceptable and inconsistent with this Board's statutory duty.

Respectfully submitted,

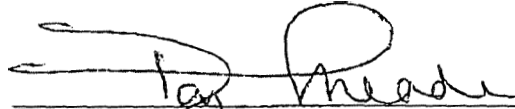
PRIDDY, ISENBERG, MILLER & MEADE, PLLC



Don Meade  
800 Republic Bldg.  
400 W. Market Street, Suite 1100  
Louisville, KY 40202  
(502) 587-8600  
**Counsel for IBEW, Local 2100 and  
Greater Louisville Building and Construction  
Trades Council**

**CERTIFICATE OF SERVICE**

It is hereby certified that on the 6<sup>th</sup> day of October, 2005, an original **and** 10 copies of the foregoing motion was mailed to the Siting Board, P. O. Box 615, 211 Sower Blvd., Frankfort, KY 40602-0615, and a true copy thereof was mailed to the attached service list.

  
Don Meade

**SERVICE LIST**

Ronald D. Earl  
Illinois Municipal Electric Agency  
919 South Spring Street  
Springfield, IL 62704

Troy A. Fodor  
913 S. Sixth Street  
Springfield, IL 62703

J. Gregory Cornett  
1700 PNC Plaza  
500 W. Jefferson Street  
Louisville, KY 40202-2874

Elizabeth L. Cocanougher  
220 W. Main Street  
P. O. Box 32010  
Louisville, KY 40232

Rajeshwar G. Rae  
Indiana Municipal Power Agency  
1 1610 North College Avenue  
Carmel, IN 46032

Randy K. Stevens  
County Judge/Executive  
Trimble County Courthouse  
123 Church Street  
P. O. Box 251  
Bedford, KY 40006-0251

LaJuana S. Wilcher  
KY Division of Energy  
Fifth Floor, Capital Plaza Tower  
Frankfort, KY 40601

John N. Hughes  
124 W. Todd Street  
Frankfort, KY 40601

Daniel A. Lane  
Indiana Municipal Power Agency  
1 1610 North College Avenue  
Carmel, IN 46032

Douglas L. Jeavons  
BBC Research & Consulting  
3773 Cherry Creek North Dr., Ste. 850  
Denver, CO 80209-0448

Robert M. Watt. III  
Stoll, Keenon & Park  
300 W. Vine Street, Ste. 2100  
Lexington, KY 40507-1801

William A. Prouix  
1030 Martini Lane  
Bedford, KY 40006-8712

J. R. Wilhite  
Economic Development Cabinet  
Old Capital Annex  
300 West Broadway, 2<sup>nd</sup> Floor  
Frankfort, KY 40601