

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

AUG 09 2005

In the Matter of:

JOINT APPLICATION OF LOUISVILLE GAS)
AND ELECTRIC COMPANY AND KENTUCKY)
UTILITIES COMPANY FOR A CERTIFICATE)
OF PUBLIC CONVENIENCE AND NECESSITY) Case No. 2004-00507
AND A SITE COMPATIBILITY CERTIFICATE)
FOR THE EXPANSION OF THE TRIMBLE)
COUNTY GENERATING STATION)

PUBLIC SERVICE
COMMISSION

POST HEARING BRIEF OF THE ATTORNEY GENERAL

Louisville Gas and Electric Company (LG&E) and Kentucky Utilities Company (KU), collectively referred to as the Applicants or Companies, have applied for a Certificate of Convenience and Necessity to construct a 750 MW super-critical pulverized coal-fired base load unit commonly known as Trimble County 2 (TC2) to be completed in 2010. It will be built in partnership with Indiana Municipal Power Agency (IMPA) and the Illinois Municipal Electric Agency (IMEA). They will own 25% of TC2's capacity and LG&E and KU will own the remaining 75% of capacity on a 19%/81% basis, respectively. The expected capital cost for construction for the Companies' collective share of TC2 is \$800 million. In support of the Application, the companies prepared a 2004 Joint Load Forecast that projects the Companies will need new base load capacity in 2010 and a resource assessment that determined the construction of TC2 is the least cost means of achieving the necessary addition.¹ Though cost recovery is outside the scope of KRS 278.020, the Companies have announced their intention to seek cost recovery "consistent with the Commission's long standing policy of

¹ Joint Application.

including construction work in progress in base rates or pursuant to other applicable law.²

TO AVOID A REPETITION OF TRIMBLE COUNTY 1, THE CERTIFICATE OF CONVENIENCE FOR TRIMBLE COUNTY 2 SHOULD BE DENIED UNTIL SUCH TIME AS THE COMPANIES CAN PROVE THE NEED FOR ADDED POWER.

No one wants a repetition of the difficulties of Trimble County 1. In October of 1978 LG&E was granted a Certificate of Convenience to construct both Trimble County 1 and 2, with the expectation that Trimble County 1 would be complete by 1983 and Trimble County 2 by 1985. The forecasted growth upon which the grant of the Certificate of Necessity was based did not materialize. Following a seven year delay past the original projected completion date included in the Certificate case and a twelve year delay from the grant of the Certificate, Trimble County 1 was completed in 1990. LG&E was required to sell off 25% of the plant because the need forecast back in the 1978 Certificate case still had not materialized to support 100% ownership by LG&E.

Though Trimble County 2 had been cancelled entirely and Trimble County 1 was often a hair's breadth from cancellation, the ratepayers began paying for the plant through the customary inclusion of CWIP and a return on CWIP in rates long before the need for and completion of the plant occurred. At times, the situation was so dire that the Commission considered refusing to allow continued inclusion of a return on CWIP in rates.³

² Direct testimony of Kent W. Blake, p. 5.

³ To sample some of the complex issues presented, the enormous effort expended by all involved, the impact of continued uncertainty in the face of the continuing failure of need for generation to materialize, and the enormous cost to the utility and the ratepayers of the delays and the continuous need for regulatory oversight and adaptation surrounding Trimble County 1, see *In the Matter of: An Investigation and Review of Louisville Gas and Electric Company's Capacity Expansion Study and the Need for Trimble County Unit No. 1*, Case No 9243; *A Formal Review of the Current Status of Trimble County Unit No. 1*, Case No. 9934; *General Adjustment in Electric and Gas Rates of Louisville Gas and Electric Company*, Case No. 8924;

No one wants a repeat of the difficulties and added expense of Trimble County 1 that grew out of the issuance of a Certificate under circumstances where the forecasted need did not occur. Consequently, the forecast should clearly support the Companies' assertion that a base load addition of approximately 562 MW is required in 2010 before the Certificate of Convenience is issued. The evidence shows that the projected need for capacity is based on projections for growth that do not match the recent history of growth experienced by the Companies and are, therefore, less than the type of support needed to justify the issuance of a Certificate for TC2.

First, the load forecast for this Certificate case assumes that the growth of peaking capacity is still locked in tandem with growth in sales of energy based on the use of an historic ten year average that levels the load factor in the forecast. It does so despite the fact that there is a trend of improving load factor in the face of sluggish and sporadic growth in peak demand.

Between 1990 and 1998, the companies experienced robust growth. Then, prior to July 25 of this year, the growth in the combined peak of the Companies became sporadic, sluggish, and nearly stagnant. Between 1998 and 2004 only two years showed a growth in peak while two years were constant and three years held declining peaks. The forecast for 2004 actually started out 200 MW lower than the 2002 IRP had done in recognition of the absence of growth in peak load.⁴ By contrast, during that time, energy sales were showing consistent growth.

General Adjustment in Electric and Gas Rates of Louisville Gas and Electric Company, Case No. 8616; Adjustment of Gas and Electric Rates of Louisville Gas and Electric Company, Case No. 10064; and, An Investigation of Electric Rates of Louisville Gas and Electric Company to Implement a 25 Percent Disallowance of Trimble County Unit No. 1, Case No. 10320.

⁴ Direct Testimony of David Brown Kinloch, Exhibit 1.

Though reluctant to agree that it is appropriate to acknowledge a trend of improving load factor with corresponding lessening of the expectations for peak demand based on growth in energy sales for the purposes of forecasting in this case, in the 2005 IRP filed in April of this year the Companies do acknowledge that there are higher load factors resulting in lower peaks now.⁵

Though it occurred after the hearing in this case, on July 25, 2005, the Companies experienced a new combined peak of 6691 MW, the first new peak in three years. The 98 degree high temperature that produced that new peak was also the hottest weather experienced in three years. While this new actual peak was in line with the 2004 load forecast, but below the 2005 forecast, when weather normalized for the extremely high temperature, the peak for planning purposes was somewhat lower. In deciding what weight to give to the new peak, Mr. Sinclair's declaration that one year does not make a trend should be kept in mind.⁶ Thus, it should be noted that the new peak falls below the growth in peak suggested for 2005 in the Companies' Rebuttal. This tends to corroborate the Attorney General's belief that the projected 400 MW of growth for 2005 is inordinately high on the front end and results in growth projections for 2010 through 2014 that are also approximately 200 MW too high.

The need for new capacity must also be examined in light of the capacity the Companies now have. Though they remained adamant in the rebuttal for the Certificate case that their current reserve margin is in the 12-14% range, the 2005 IRP filing shows a

⁵ *In the Matter of: The 2005 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2005-00162, Volume 1, Page 6-23, last paragraph.

⁶ Direct Testimony of David Sinclair, p. 5

reserve margin of 30.4%.⁷ This margin leaves the Companies with the ability to accommodate substantial growth before new capacity is needed.

The filing does not demonstrate a need for new capacity until 2012 at the earliest, and then demonstrates a need for only about half of the capacity represented by the Companies' combined 562 MW share of the proposed 750 MW TC2. This analysis coincides almost precisely with the low growth projections reflected in the Companies' 2005 IRP⁸ that was incorporated by reference by the Companies in response to the Attorney General's Request for Information. Though the Companies contend that low growth cases should not be considered in connection with applications for a Certificate, KRS 278.020 is designed to prevent the wasteful duplication of facilities. Wasteful duplication has been defined by case law as an excess of capacity over need. *Kentucky Utilities Company v. Farmers Rural Electric Cooperative Corporation*, 252 S.W.2d 885 (KY 1952); KRS 278.020. If the low growth case is the more realistic growth than the expected forecast, then it is the level of growth that should be considered when deciding whether to issue the Certificate. The failure to consider realistic growth clearly invites a repetition of the Trimble County 1 difficulties.

In this case, realistic growth does not support the addition of base load capacity until 2012 at the earliest and then supports only a lesser addition of capacity, with more to follow two years later. The cost to ratepayers of adding capacity two years early would

⁷ *In the Matter of: The 2005 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2005-00162, Volume 1, page 8-112, Table 8 (5)(b)-1.

⁸ See, *In the Matter of: The 2005 Joint Integrated Resource Plan of Louisville Gas and Electric Company and Kentucky Utilities Company*, Case No. 2005-00162, Volume 3, Optimum Expansion Plan Analysis, page 12. Take note of Case B in Table 4 on page 12 which would call for the addition of the WV Hydro in 2011 and TC2 in 2013.

be approximately \$172 million over and above the savings that would be represented by the improvements in fuel costs that would be associated with TC2.

In addition, the cost to ratepayers would include the elimination of the consideration of whether a more realistic growth forecast would make it more appropriate to add 200 MW of renewable hydro power in the form of a purchase power agreement with or the actual purchase of the WV Hydro plants (should that be offered by the current owner) from Marketer F. The comparative pricing of that project is stalled until September 2005. But when it is considered, the August 8, 2005, signing of the Energy Policy Act brings more to the table to favor the utilization of hydro power than previously existed in the form of the speculation about the role in the equation to be played by the possibility of carbon tax or the value of Green Tags. Section 242 of the Energy Policy Act establishes a \$0.018/ Kwh incentive and Section 1301 establishes a 9 mil tax credit for ten years for hydro⁹ capacity that meets certain operational deadlines.

The merits of the power offered by Marketer F fall by the wayside in the event of the grant of a Certificate for the construction of TC2 is followed by any reduction in the realization of forecasted growth. Then Case 5, which calls for the addition of TC2 in 2010 and Marketer F in 2013, becomes moot. Likewise, Case B from the 2005 IRP, the low growth case, which calls for the addition of Marketer F in 2011 followed by the addition of TC2 in 2013, becomes moot. Denying the Certificate on the grounds that the need for expanded capacity expressed in numeric paragraph 4 of the Joint Application has not been proven, will encourage and require the utility to return when its need is more certain, will keep the Case 5 and Case B options open, and will insure that the ratepayers will not face undue expense associated with excess, and therefore duplicative, capacity.

⁹ HR 6, Domenici-Barton Energy Policy Act of 2005.

Based on the failure to prove the need for capacity in 2010, the requested Certificate of Convenience and Necessity for the construction of TC2 with an operational date of 2010 should be denied.

Respectfully submitted,

GREGORY D. STUMBO
ATTORNEY GENERAL



Elizabeth E. Blackford
Assistant Attorney General
1024 Capital Center Drive, Suite 200
Frankfort, Kentucky 40601-8204
(502) 696-5453

CERTIFICATE OF SERVICE AND NOTICE OF FILING

I hereby give notice that this the 9th day of August, 2005, I have filed the original and ten copies of the foregoing Post Hearing Brief of the Attorney General with the Kentucky Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky, 40601 and certify that this same day I have served the parties by mailing a true copy of same, postage prepaid, to those listed below.

KENT W BLAKE
DIRECTOR STATE REGULATIONS AND
RATES
LOUISVILLE GAS AND ELECTRIC
COMPANY
P O BOX 32010
LOUISVILLE KY 40232 2010

ELIZABETH L COCANOUGHES ESQ
SENIOR REGULATORY COUNSEL
LOUISVILLE GAS AND ELECTRIC
COMPANY
P O BOX 32010
LOUISVILLE KY 40232

TROY A FODOR P C
913 SOUTH SIXTH STREET
SPRINGFIELD IL 62703

JOHN N HUGHES ESQ
124 WEST TODD STREET
FRANKFORT KY 40601

DOUGLAS L JEAVONS
MANAGING DIRECTOR
BBC RESEARCH & CONSULTING
3773 CHERRY CREEK NORTH DRIVE STE
850
DENVER CO 80209 0448

MICHAEL L KURTZ ESQ
BOEHM KURTZ & LOWRY
36 EAST SEVENTH STREET SUITE 2110
CINCINNATI OH 45202

DANIEL A LANE
VICE PRESIDENT AND MANAGING
COUNSEL
INDIANA MUNICIPAL POWER AGENCY
11610 NORTH COLLEGE AVENUE
CARMEL IN 46032

J GREGORY CORNETT ESQ
KENDRICK R RIGGS ESQ
ODGEN NEWELL & WELCH PLLC
1700 PNC PLAZA
500 WEST JEFFERSON STREET
LOUISVILLE KY 40202

ROBERT M WATT III ESQ
STOLL KEENON & PARK LLP
300 WEST VINE STREET SUITE 2100
LEXINGTON KY 40507-1801

DON MEADE ESQ
PRIDDY ISENBERG MILLER & MEADE
800 REPUBLIC BUILDING
LOUISVILLE KY 40202


