

COMMONWEALTH OF KENTUCKY  
BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE  
COMMISSION

In the Matter of:

JOINT APPLICATION OF LOUISVILLE GAS )  
AND ELECTRIC COMPANY AND KENTUCKY )  
UTILITIES COMPANY FOR A CERTIFICATE )  
OF PUBLIC CONVENIENCE AND NECESSITY, )  
AND A SITE COMPATIBILITY CERTIFICATE, )  
FOR THE EXPANSION OF THE TRIMBLE )  
COUNTY GENERATING STATION )

CASE NO.: 2004-00507

**REPLY OF IBEW, LOCAL 2100 AND  
TRADES COUNCIL TO LG&E'S RESPONSE  
REQUESTING ORDER EXCLUDING EVIDENCE  
OF ECONOMIC IMPACT OF CONSTRUCTION LABOR**

The International Brotherhood of Electrical Workers, Local 2100 (IBEW) and the Greater Louisville Building and Construction Trades Council (Trades Council), file the following Reply to LG&E's request that intervention status be conditioned upon an order that IBEW and Trades Council "not seek to introduce any evidence or reference in this proceeding, including expert testimony, concerning the make up of the workforce the companies might require to build the generating unit in question."

**I. THE ROLE OF LABOR CONSTRUCTION COSTS IS DEEPLY EMBEDDED IN THE FINANCIAL ANALYSIS.**

In the *Trimble County Unit 2 Project Approach, Volume 1 Project Execution Plan*<sup>1</sup>, the Burns & McDonald report evaluates the role of labor as a project risk:

Today's EPC contractors [engineer-procure-construct] avoid accepting full responsibility for construction labor for a variety of legitimate reasons. Construction labor requires skilled planning and supervision, which becomes even more demanding on a project that requires 5-6 million hours of skilled and unskilled labor spread over about three years.... Labor cost sharing is a way to mitigate this risk and has become commonplace as a way to share the risk between the buyer and seller. (p. 4-3)

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<sup>1</sup>Attachment to Commission Staff's question number 11(d), Volume 2, filed February 25, 2005.

The Burns & McDonald report also includes a Labor Assessment (4.5) that analyses the availability of skilled, semi-skilled, union and non-union labor in the geographic area, and performed an Area Wage Rate Comparison. (Table 4-3, p. 4-23)

**II. LG&E DECISIONS ABOUT CONSTRUCTION LABOR ARE BEING MADE CONTEMPORANEOUS WITH THIS PROCEEDING.**

The application and supporting testimony<sup>2</sup> establish the following:

- EPC contractors, major equipment providers and engineering firms have already been pre-qualified, scored and ranked through the services of Cummins & Barnard, an engineering firm retained by LG&E.
- LG&E issued bid documents the week of January 24, 2005.
- Project bidders would have three months to provide initial bids, followed by a proposal review period of approximately three months.
- Detailed negotiations would proceed in the latter part of 2005.
- The scheduling target includes a notice to proceed to successful bidders in December 2005-January 2006 timeframe.<sup>3</sup>

LG&E has agreed to provide an initial evaluation of whether the bids are higher or lower than the estimated cost of the EPC portion of the project.<sup>4</sup>

Mr. Voyles estimates that about 650 construction employees will be required, on average, for each of the four years of construction, with a peak of nearly 1200 construction workers, or the equivalent of 2700 man-years. (p. 12)

**III. THE PROPOSED CONTRACTING STRATEGY PROVIDES INCENTIVES FOR CUTTING LABOR COSTS AND PROVIDES NO PROTECTION FOR KENTUCKY WORKERS.**

The Burns & McDonald report analyzed several contracting strategies which allocated various project risks between contractors and LG&E. "Contractor bids are generally higher as the

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<sup>2</sup>Direct testimony of John Voyles, VP Regulated Generation, Joint Application

<sup>3</sup>Voyles' testimony, page 10, 11.

<sup>4</sup>Response to AG's request for information, February 25, 2005, Question No. 1.

level of risk increases. As owner risk increases, a higher level of contingency should be carried to deal with the risk.”<sup>5</sup> The Burns & McDonald report recommends Alternate 4 Contracting Strategy. This strategy is described as follows:

Contracts are awarded early to allow adequate design and procurement time that are in advance of construction so unit costs for labor are the least predictable. (p. 4-14)

The characteristics of this strategy are described as “high risk to contractor, low risk to owner” on two of the three major components of construction. (p. 4-15) While LG&E’s analysis of labor costs is premised upon utilization of a pool of employees, drawn from the geographic area, incentives are provided to contractors, once bids are accepted, to utilize the cheapest labor possible. This could easily include the importation of workers from out of state, who can be paid wages and no benefits that undermine the local labor market and disenfranchise Kentucky employees from opportunities to perform the work. In the absence of negotiated criteria for the utilization of Kentucky employees by the contractor, the TC2 project could easily and predictably result in damage to the local economy and undercutting the expected economic benefit of hundreds of jobs.

As reported by the Courier Journal in a November 27, 2003 article titled Ozone Busters (Ex. 1), several Kentucky utilities have invested over 1 billion dollars in projects that have generated thousands of construction jobs in the process of implementing technology to reduce pollution:

At the peak of construction, LG&E Energy had about 1400 workers at the four power stations being equipped with SCR Units, said Scott Straight, Director of NOx projects for the utility company. Altogether, the project represents about three million work hours and cost six hundred million, Straight said. Sixty percent of the cost was for labor.

Upon information and belief, it is the position of the IBEW and Trades Council that a significant portion of the labor utilized in those projects came from outside Kentucky. Yet the

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<sup>5</sup>*Trimble County Unit 2 Project Approach, Volume 1 Project Execution Plan, Executive Summary, p. 1-2.*

creation of construction jobs has been touted, by implication, as an economic benefit of the construction.<sup>6</sup>

Labor construction costs are clearly a significant financial aspect of the proposed project.

**IV. THE CERTIFICATE OF NEED DISCOVERY AND HEARING PROCESS IS APPROPRIATE FOR CONSIDERATION OF ALL ASPECTS OF THE COMPANY'S PROPOSAL.**

LG&E raises objection that the Certificate of Need process does not embrace issues such as the Commission's review of construction costs and the economic impact. Yet all other aspects of the Company's application are to be examined – projections, financial, energy usage, alternate sources, site and environmental impact. The Commission has a responsibility to citizens of the Commonwealth, and particularly to LG&E rate payers, to insure that all aspects of the Company's proposal have sufficient integrity and fiscal responsibility to be approved.

This Commission has exercised jurisdiction over approval of LG&E mergers by conditioning approval on requiring LG&E merger/acquisition partners to maintain the corporate headquarters for 10 years in the Louisville area. In that proceeding, the economic impact of losing jobs from the Commonwealth was a paramount consideration and led to concessions and conditions that protected the public interest. In the same way, the issue of utilization of local manpower resources is an intrinsic aspect of the Commission's jurisdiction to judge the appropriateness and fiscal responsibility of the LG&E proposal.

If the Commission does not permit investigation of these issues now, it will never occur. The next opportunity would be a rate case after the completion of TC2, when the issue would be moot. This is the appropriate time, the appropriate forum and the appropriate parties to raise these issues. It is difficult to imagine LG&E taking a position that it is not the concern of this Commission, nor the concern of the rate payers, nor the concern of the Company itself how construction dollars – which are expected to be recovered through CWIP from the rate payers – can be spent without any accountability as to whether the economic benefit of the project will inure

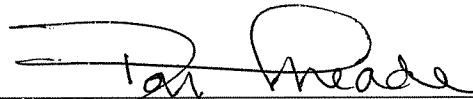
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<sup>6</sup>Courier Journal article November 20, 2004 Power Plant Claim Disputed (Ex. 2)

to the Commonwealth, and workers within the LG&E service area. Yet the Company wants to maintain a veil of secrecy over this issue to prevent public disclosure of this critical information. The Commission should not align itself with such a corporate position and should grant full intervenor status, without conditions.

Respectfully submitted,

PRIDDY, ISENBERG, MILLER & MEADE, PLLC

A handwritten signature in black ink that reads "Don Meade". The signature is written in a cursive style with a large, looped "D" and "M".

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**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing pleading was served via U.S. mail, first-class postage prepaid, this 1<sup>st</sup> day of MARCH, 2005, upon the following persons:

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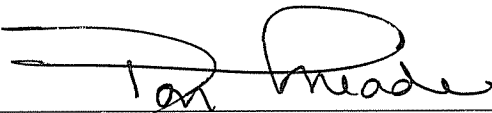
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### OZONE BUSTERS

*WOLFE BILL*

*STAFF*

Pollution-control units at power plants clean the air after providing thousands of jobs across Kentucky  
BILL WOLFE

The Courier-Journal

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After investing more than \$1 billion in projects that have generated thousands of construction jobs and three years of construction across the state, Kentucky's power companies are near completion of an assault on ozone.

Under orders from the federal Environmental Protection Agency to lower ozone-forming emissions by May 31, Louisville Gas & Electric Co., Kentucky Utilities, East Kentucky Power Cooperative and the Tennessee Valley Authority are installing massive pollution control units at six plants. More than half are finished.

The end result will be a 65 percent reduction in nitrous oxides across the eastern United States during the ozone season of May-September. Nitrous oxide, commonly called NOx, is one of the primary ingredients of ground-level ozone, which is harmful to breathe and damaging to the Earth's vegetation. The higher ozone layer is considered good, because it protects from the sun's harmful ultraviolet rays.

Cleaner air comes at a cost to utility customers, of course. LG&E Energy, which owns LG&E, KU and Western Kentucky Energy, adds a state-approved 3 percent environmental surcharge to customers' bills. On a \$100 monthly utility bill, for example, the charge is \$3. The charge will remain in effect until the equipment is paid for - about 25 years.

Utilities use various ways to lower NOx emissions, including low-NOx burners. But the biggest step for Kentucky's power companies has been installing chemical-processing units that use a process called selective catalytic reduction (SCR).

The formula for SCR isn't that complicated: spritz the fumes coming off a coal-fired boiler with a little ammonia and run the mixture past a collection of catalytic plates that speed up a reaction breaking down the NOx. About 90 percent turns into water and nitrogen - the harmless gas that makes up about 80 percent of regular air.

Putting that chemical process into a real-life pollution-control device and retrofitting power plants is

EX 1

more complicated. The mammoth processing units have to be squeezed in and around the plants, their smokestacks and other pollution-control equipment, such as the sulfur scrubbers used at many power plants in Kentucky.

At the peak of construction, LG&E Energy had about 1,400 workers at the four power stations being equipped with SCR units, said Scott Straight, director of NOx projects for the utility company. Altogether, the project represents about 3 million work-hours and costs \$600 million, Straight said. Sixty percent of the costs was for labor.

The SCR construction work goes on while the plants crank out megawatts of power. In some ways, it's like overhauling an engine while a car is still cruising down the highway.

At LG&E's 1,700-megawatt Mill Creek station in Jefferson **County**, the company spent \$3 million just to move power lines for the SCR units, Straight said. At the 30-year-old Ghent generating station in Carroll **County**, which produces about 75 percent of KU's electricity, "we had to rebuild the riverfront," Straight said.

Work at Ghent included bringing in and assembling the world's second-largest mobile crane, which stands 300 feet tall, he said. "It took 42 semi-trucks to bring in that one crane."

There are four generating units at Ghent and three SCR complexes - each about 140 feet tall and as big as a city block.

Parts of the units go deep underground, too. "There were times where we put pylons down 180 feet," Straight said.

Like the other utilities, LG&E and KU put the SCRs in their biggest polluters - their biggest plants. LG&E Energy's other SCRs landed in the 900-megawatt **Trimble County** Station in Bedford, Ky., and at the 420-megawatt Big Rivers' Wilson Station in Island, Ky., operated by Western Kentucky Energy. If LG&E gets approval for its proposed new unit at the **Trimble County** plant, it will include SCR gear, Straight said.

East Kentucky Power Cooperative, a not-for-profit generation and transmission utility in Winchester, spent \$200 million on SCR units and related improvements at the 850-megawatt Spurlock Station near Maysville, spokesman Kevin Osborne said. Designing, engineering and constructing two units there took about two years. The first unit began operating in the spring of 2002, while the second began its work in July.

East Kentucky Power will use a different type of NOx removal that does not need a catalyst at Spurlock Station's new Gilbert Unit, scheduled to begin operation in 2005.

TVA spent \$225 million on three SCR units at its huge 2,266-megawatt Paradise Fossil Plant in Drakesboro, Ky.

The first came online in 2000, the second in 2002 and the third, this summer.

Construction jobs for all of the power-plant work provided Kentucky with a needed boost just when the economy began hitting the skids around 2000. In fact, "back in 1999, it was a big concern whether could we get enough" workers for the projects, Straight said.



Four Kentucky utilities, including Louisville Gas & Electric, are installing massive pollution control units at six plants under orders from the federal Environmental Protection Agency. More than half are finished.

Photos BY JAMIE RHODES, SPECIAL TO THE COURIER-JOURNAL

Appa Rao Karnam welded a test porthole shut at the 30-year-old Ghent (Ky.) generating station near Carrollton.

The Ghent station is getting three selective catalytic reduction units to remove nitrous oxide. Work included assembling the world's second-largest mobile crane, which stands 300 feet tall, said LG&E Energy's Scott Straight. "It took 42 semi-trucks to bring in that one crane."

INFORMATIONAL GRAPHIC CLEANER POWER PLANTS BY STEVE REED, THE C-J (SEE LIBRARY MICROFILM OR LIBRARY KIOSK PDF PAGES)

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**Power-plant claim disputed**

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E.On approved unit before etcher trip

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The Courier-Journal

LG&E Energy's German parent, E.On, approved a new \$1.2 billion coal-fired power plant in **Trimble County** a week before Gov. Ernie Fletcher met with E.On officials at their Dusseldorf headquarters.

But this week, Fletcher and other state officials took partial credit, saying the governor's visit to Germany was a factor in securing a commitment to build the plant - an addition to an existing **Trimble** power station.

In a press conference at the Capitol Tuesday, Fletcher listed the **Trimble** project and a steel plant expansion in Carroll **County** as "some of the fruits of that trip" to Spain, Italy and Germany. With the list of achievements, he said, "I think you can see some of the things that were a direct result of, or at least related to, that trip and stemming from that effort."

Fletcher spokesman Doug Hogan said on Tuesday, "If they've been thinking about this for years and now they're doing it, then that shows you the leadership, the energy and the vision this governor brings to the table gets results. An investment could have been made in the past at some point, but obviously, there was some factor they weren't comfortable with, but now they are because Gov. Fletcher is in office."

On Thursday, Hogan defended the governor's role in securing the plant and said the project "was pretty much scrapped" before Fletcher took office.

But that is not the way LG&E spokeswoman Laura Douglas characterized the project on Thursday. Permitting problems had delayed work, but "it's not a matter of people on this end abandoning the plan to build a new plant," Douglas said.

The **Trimble** power plant project was progressing with or without the governor's help, Douglas said.

Ex 2

Douglas said that LG&E " got the approvals from E.On to go ahead with the project about the 23rd of September." Fletcher left for Europe Sept. 25 and arrived in Germany five days later.

Still, Douglas said, Fletcher's trip was valuable because "he conveyed his support of the project and he really helped solidify the relationship between his office and the E.On leadership."

In response to revelations about progress the project had made before the governor's trip, Hogan said, "We've never said that the deal would not have been inked if the governor had not gone" to Germany. "What we said was the governor had a tremendous impact in the face-to-face meetings" with E.On and "laid the groundwork for what is a huge investment."

LG&E's two minority partners in the **Trimble** operation - Indiana Municipal Power Agency and Illinois Municipal Electric Agency - both said they had never gotten word that the venture might not proceed.

"The last word we had heard ... was that their plans for a second unit were ongoing," said Phillip Mueller, spokesman for the Illinois agency.

**Trimble County** Judge-Executive Randy Stevens, a Democrat, said he had met several times with local LG&E representatives since he took office at the beginning of 2003, and the project had never seemed in doubt. "To my knowledge it was always out there being talked about," he said. "They never indicated that the plans were off the board."

Timing for construction was uncertain, Stevens said, but he had always kept in touch with LG&E on the project.

At one time, LG&E had said the second **Trimble** unit might be operating as early as 2008. Current plans call for construction to begin in 2006 and for the plant to begin operating four years later.

Fletcher and a delegation of state officials and other citizens flew to Europe to seek investments from some of Kentucky's 156 European-owned companies. The trip cost the state \$69,000, but the governor said it will pay off through projects such as the power plant and an expansion of a Carroll **County** steel plant.

During the four years that the power plant is being built, an average of 600 to 700 construction jobs are expected to be created, and 35 permanent full-time employees will be needed to run the completed unit.

North American Stainless, owned by the Acerinox Group in Madrid, plans to expand and add jobs at a plant in Carroll **County**. Before Fletcher's visit, the company had planned a \$75 million expansion that would add 35 jobs. After meeting with the governor, the company authorized 140 more employees.

Fletcher drew criticism for making the trip shortly before the October special session of the Kentucky General Assembly to deal with health insurance for state employees.

Courier-Journal reporter Elisabeth Beardsley contributed to this story.

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