

**COMMONWEALTH OF KENTUCKY**


**BEFORE THE KENTUCKY STATE BOARD ON  
ELECTRIC GENERATION AND TRANSMISSION SITING**

**In the Matter of:**

**THE APPLICATION OF THE ILLINOIS )  
MUNICIPAL ELECTRIC AGENCY AND THE )  
INDIANA MUNICIPAL POWER AGENCY FOR ) CASE NO: 2005-00152  
A MERCHANT ELECTRIC GENERATING )  
PLANT CERTIFICATE TO CONSTRUCT )**

**POST-HEARING BRIEF OF  
LOUISVILLE GAS AND ELECTRIC COMPANY  
AND KENTUCKY UTILITIES COMPANY**

Respectfully submitted,



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## **INTRODUCTION**

This proceeding involves the 25% ownership interest of the Illinois Municipal Electric Agency (“IMEA”) and the Indiana Municipal Power Agency (“IMPA”) (collectively the “Applicants”) in a proposed new 750 MW nominal net super-critical pulverized coal generating unit (“TC2”) to be constructed at the Trimble County Generating Station (“Trimble Station” or “Station”). The Applicants are seeking a construction certificate to operate their respective portion of TC2 as a merchant electric generating facility pursuant to KRS 278.700 *et. seq.* For all of the reasons set forth below, the requested construction certificate should be granted.

## **PROCEDURAL BACKGROUND**

On May 11, 2005, IMEA and IMPA filed their Joint Application, together with supporting testimony and exhibits, with the Kentucky State Board on Electric Generation and Transmission Siting (“Board”). The Board subsequently granted intervention in this proceeding to LG&E and KU and then, later, to the International Brotherhood of Electrical Workers, Local 2100 and the Greater Louisville Building and Construction Trades Council (collectively, “the Unions”).

The Board accepted the Joint Application as administratively complete on April 13, 2005, and then entered a procedural schedule on June 8, 2005.<sup>1</sup> Pursuant to the procedural schedule, the Applicants, Board Staff and intervenors engaged in discovery. In addition, BBC Research and Consulting (“BBC”), a consultant retained by the Board, submitted its review of the Applicants’ Site Assessment Report (“SAR”). On July 6, 2005, a local public hearing was held in Bedford, Kentucky.

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<sup>1</sup> The finding of administrative completeness was rescinded on July 19, 2005 on the basis that notification of the project needed to be given to additional landowners pursuant to KRS 278.706(2)(c)(1). On July 25, 2005, the Board issued a letter determining that the deficiency was cured and that IMEA/IMPA’s application was administratively complete. The Board subsequently entered an order establishing a new procedural schedule on July 28, 2005.

On September 9, 2005, the Unions filed the direct testimony of Larry L. Roberts. Subsequently, on September 13, 2005, LG&E and KU filed the Direct Testimony of John N. Voyles (“Mr. Voyles”). On September 19, 2005, an evidentiary hearing was held before the Board. Following that hearing, LG&E and KU filed their response to the Staff’s post-hearing data request on September 28, 2005. This brief is filed pursuant to the schedule established at the conclusion of the Board’s evidentiary hearing.

### **PROJECT OVERVIEW**

As noted above, this proceeding seeks the Board’s approval for the 25% of TC2 to be operated as a merchant electric generating facility by IMEA and IMPA.<sup>2</sup> LG&E and KU are seeking a Certificate of Public Convenience and Necessity for their 75% interest in TC2 in Case No. 2004-00507 now pending before the Kentucky Public Service Commission (“PSC”).<sup>3</sup>

TC2 will be designed with substantial fuel flexibility to allow for better management of coal costs for today’s needs and beyond.<sup>4</sup> In addition, the super-critical pulverized coal technology to be employed for TC2 has a higher thermal efficiency as compared to other thermal power cycles such as sub-critical pulverized coal units and circulating fluidized bed units, and will reduce fuel costs by decreasing the amount of coal burned in relation to the amount of electricity produced.<sup>5</sup>

There will also be environmental benefits from TC2’s thermal efficiency, because as less coal is combusted to produce the energy, fewer pollutants are emitted as a by-product of that combustion.<sup>6</sup> TC2 will also employ air pollution control equipment consisting of a Selective

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<sup>2</sup> IMEA and IMPA presently own a collective 25% share of LG&E’s existing coal-fired generating unit at the Trimble Station (“TC1”). KU and LG&E have had a good working relationship with IMEA and IMPA to date, and fully expect that relationship to continue with the joint development and ownership of TC2. Direct Testimony of John N. Voyles (“Voyles Direct”) at 1.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 2.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

Catalytic Reduction system, Baghouse, Wet Flue Gas Desulphurization system, and Wet-Electrostatic Precipitator, with provisions for the addition of future environmental controls should air regulations change in the future.<sup>7</sup> This planned air pollution control equipment -- the most modern equipment available -- is expected to result in lower SO<sub>2</sub> and NO<sub>x</sub> emissions, on a lb/mmBtu basis, than any other recently-submitted permit application for pulverized coal and circulating fluidized bed units in Kentucky.<sup>8</sup> TC2 will also be designed and constructed to meet mercury emission limits which are more stringent than those required by the most recent federal legislation.<sup>9</sup> The result of these planned technologies, when coupled with environmental technology upgrades on TC1, is that TC2 will have only a minimal impact on air quality levels.<sup>10</sup> Indeed, the TC2 Prevention of Significant Deterioration Construction Permit Application and Title V Operating Permit Application are based on a net increase of less than 40 tons per year in emissions of NO<sub>x</sub> and SO<sub>2</sub> at the Trimble Station.<sup>11</sup>

Under the terms of the Participation Agreement (“PA”) among LG&E, KU and the Applicants, LG&E and KU will be responsible for the construction of TC2, including managing, controlling, and supervising the design, procurement and construction phases of the project.<sup>12</sup> LG&E and KU believe it is beneficial to utilize contractors in discharging their responsibilities in that regard, and construction will be primarily performed through a single Engineering, Procurement and Construction (“EPC”) contract that will include the boiler, air pollution control equipment, and turbine generator systems.<sup>13</sup> The process of utilizing a single EPC contract is very common in today’s marketplace for owners who wish to mitigate schedule risks,

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 2-3.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* Some relatively minor portions of the project may be constructed by LG&E and KU, independent of the EPC contractor. *Id.*

performance risks and price risks.<sup>14</sup> The EPC contract will have significant penalties associated with these areas of risk to protect LG&E, KU, the Applicants and their respective ratepayers.<sup>15</sup> LG&E and KU will also employ an Owner’s Engineer to assist in certain functions of the project, such as preparing the EPC bid package, assisting in the management of communication during the bid clarification period, and providing support during the contract award process, for conceptual and detailed engineering reviews, and support for site construction management.<sup>16</sup>

The bidding process for the EPC contract is underway using a functional technical specification with a typical set of turn-key, lump sum fixed price terms and conditions for a project of this scale.<sup>17</sup> Proposals were solicited from a set of pre-qualified entities, including EPC contractors, major equipment providers, and engineering firms, and LG&E and KU have “short-listed” two bidders, Fluor and Bechtel.<sup>18</sup> At the conclusion of the bidding process, LG&E and KU will begin an approximately six-month open-book negotiation with the final bidder.<sup>19</sup>

## **ARGUMENT**

### **I. THE REQUESTED CONSTRUCTION CERTIFICATE SHOULD BE GRANTED.**

Pursuant to KRS 278.706(1), any person seeking to construct a merchant electric generating facility is required to first obtain a construction certificate from this Board. By statute, the Board must evaluate the following factors in determining whether to grant or deny an application for a construction certificate: the project’s impact on scenic surroundings, property values, adjacent property and surrounding roads; the anticipated noise levels associated with the project; the project’s economic impact on the region; whether the project is proposed at the site of existing generating facilities; whether the facility complies with local planning and

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 3-4.

<sup>17</sup> *Id.* at 4.

<sup>18</sup> *Id.*

zoning requirements; the potential impact upon the electricity transmission system; the Applicant's compliance with statutory setback requirements; the efficacy of any proposed measures to mitigate adverse impacts; and the Applicant's history of environmental compliance. KRS 278.710(1). In addition, the Board may also consider the policy of the General Assembly to encourage the use of coal as a principal fuel for electricity generation in the Commonwealth. KRS 278.710(2). Each of those factors, applied to the evidence in this case, is addressed in turn below and, for the reasons explained, the Applicants' requested construction certificate should be granted.

**A. The proposed project will have at most only a marginal impact on the scenic surroundings, property values, adjacent property and surrounding local roads.**

The first factor to be considered by the Board is the impact of the proposed facility on "scenic surroundings, property values, the pattern and type of development of adjacent property, and surrounding roads." KRS 278.710(1)(a). The existing Trimble Station is located on a 650 acre site along the Ohio River, and the construction of TC2 will merely expand the existing facilities and not increase the site's total land area.<sup>20</sup> Moreover, the project's proposed facilities will not exceed 285 feet, which is significantly less than the height of the existing structures at the site.<sup>21</sup> Further, as planned by LG&E and KU, 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.<sup>22</sup> Consequently, the proposed project is compatible with its scenic surroundings.<sup>23</sup>

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<sup>19</sup> *Id.*

<sup>20</sup> SAR at 3.1.1.

<sup>21</sup> *Id.*; BBC Report § C, p. 14.

<sup>22</sup> BBC Report § B, p. 4.; Transcript of Evidence ("TE") at 71.

<sup>23</sup> BBC Report § B, p. 2; IMEA and IMPA Application, Exhibit B, SAR for Trimble County Unit 2 at 3.4.

Because of TC2's negligible impact on the current natural landscape, adjoining property values also will not be significantly affected.<sup>24</sup> Indeed, BBC stated that it was "confident that the addition of TC2 to the existing Trimble County Station will not have any measurable effect on local property values," and noted that this view was shared by "knowledgeable sources in the local community."<sup>25</sup> Because there will be no significant impact on property values, BBC recommended no need for mitigation measures in this area.<sup>26</sup>

With regard to impacts on local roads, it is recognized that the roads surrounding the Trimble Station are primarily rural, two-lane roads which could be impacted by increased construction traffic. While those roads were able to handle traffic relating to the past construction projects at the Trimble Station relatively well, BBC recommended that a number of steps be taken to mitigate any potential negative impact on those roads in connection with the construction of TC2.<sup>27</sup> 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 impacted by increased traffic; plant officials communicate with local officials regarding timing of work hours to avoid peak 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.<sup>28</sup> Both LG&E and KU, as well as the Applicants, have agreed to implement all of those mitigation measures.<sup>29</sup> BBC made no recommendations on any mitigation associated with the operation of TC2 once that unit comes on line.

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<sup>24</sup> SAR at 4.2.

<sup>25</sup> BBC Report § C, p. 23.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at p. 31.

<sup>28</sup> *Id.* at p. 34.

<sup>29</sup> TE at 19, 71-73, 76-78.

As set forth above, the evidence of record establishes that TC2 will not have a measurable impact on the surrounding landscape, that local property values will remain largely unchanged, and that any potential impact on local roads can be mitigated. Thus, the first statutory criterion weighs in favor of the Joint Application.

**B. The proposed project will have only negligible impacts on sound levels.**

The Board must next evaluate the expected noise levels resulting from construction and operation of the proposed facility. KRS 278.710(1)(b). Those noise levels were tested and modeled in the SAR, and it was concluded that “no significant impacts” to sound are expected from either construction or operation of TC2.<sup>30</sup> The Board’s consultant, 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.”<sup>31</sup> BBC also found that its recommended mitigation measures relating to traffic issues, which LG&E, KU and the Applicants have agreed to follow, should help alleviate noise related to construction traffic.<sup>32</sup>

At the local public hearing, however, there was some concern voiced regarding noise associated with steam blows. Steam blows occur at planned times during the commissioning of a new generating unit, or when steam is emitted under high pressure from plant pipes following a planned or unplanned outage.<sup>33</sup> BBC recognized that steam blows are “an inevitable aspect of proper steam generating plant operation” and that the frequency of steam blows at the Station “did not appear to be excessive.”<sup>34</sup> BBC recommended that silencers be installed to dampen the noise related to steam blows, and LG&E, KU and the Applicants have agreed to that mitigation.<sup>35</sup> In addition, BBC recommended that LG&E and KU “might also consider” utilizing a telephone

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<sup>30</sup> SAR at 5.7.

<sup>31</sup> BBC Report § C, p. 27.

<sup>32</sup> *Id.*; TE at 19, 71-73, 76-78.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

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



warning system to notify nearby landowners of planned steam blows.<sup>36</sup> LG&E, KU and the Applicants have agreed to consider the feasibility of such a system.<sup>37</sup>

The evidence is undisputed that the operation and construction of TC2 will cause little change in the acoustical environment surrounding the Trimble Station. For that reason, this statutory factor is also favorable to the Joint Application.

**C. The construction and operation of TC2 will have a positive net economic impact on the surrounding region and state.**

The third criterion that the Board must consider in making a decision to grant or deny a construction certificate is the economic impact of the proposed project on the affected region and the state. KRS 278.710(1)(c). In this case, there is no dispute that TC2 will have a significant positive economic impact on the local area and the Commonwealth.

The Applicants' expert witness, Paul A. Coomes, Ph.D. ("Dr. 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 which will allow the unit to be built at an average per kilowatt cost which is lower than it would have been had a smaller unit been constructed.<sup>38</sup> 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."<sup>39</sup> Second, Dr. Coomes estimated that 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 payroll.<sup>40</sup> Finally, Dr. Coomes testified that the merchant portion of TC2 would generate an estimated

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<sup>36</sup> BBC Report § C, p. 27. LG&E already notifies landowners through notices in the local newspaper. *Id.*

<sup>37</sup> TE at 74.

<sup>38</sup> Paul A. Coomes, *Estimates of Regional Economic and Fiscal Impacts of the Proposed Trimble County Electricity Generating Plant*, May 4, 2005 ("Coomes Report"), at 2.

<sup>39</sup> Coomes Report, at 3.

\$662,000 in sales tax receipts to Kentucky associated with construction activities, and \$613,000 annually in state and local property taxes.<sup>41</sup>

Although Dr. Coomes' testimony regarding the economic benefits expected in connection with the proposed merchant portion of TC2 is undisputed, the Unions did question whether the labor component of those benefits would all be realized under the construction plan proposed for TC2. In considering the Unions' position in that regard, it is important to recognize that there is absolutely no proof in the record that use of only union labor on the construction of TC2 would in any way increase the economic benefit of the proposed project. In fact, Dr. Coomes testified that pursuit of a least-cost strategy is important to the state from an economic perspective, and that paying more than needed for labor rates could result in utility rate increases that might even negate the benefit seen from the hiring of local workers.<sup>42</sup> The best way to ensure the maximum benefit to Kentucky from the construction of the proposed project is to both pursue a least-cost strategy and to utilize Kentucky workers, to the extent possible, at TC2. As detailed in section II. below, LG&E, KU and the Applicants are utilizing a competitive bidding process to meet a least-cost plan for TC2, and are working to ensure the use of as many local workers on the project as possible. Those efforts are consistent with prior orders of this Board, and should be approved in this proceeding.<sup>43</sup>

Construction and operation of TC2 will unquestionably be an economic benefit to both the local and state economy. For that reason, the third statutory criterion favors issuance of the construction certificate.

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<sup>40</sup> *Id.* at 1.

<sup>41</sup> *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.

<sup>42</sup> TE at 128-29.

**D. TC2 is proposed at the site of an existing generating facility.**

The Board is also directed to consider whether the facility is proposed for a site upon which facilities capable of generating 10 MW or more of electricity are already located. KRS 278.710(1)(d). In this instance, TC2 will be constructed on the site of the existing Trimble Station, thus meeting the General Assembly's preference for merchant plants to be located at existing generating sites.<sup>44</sup> Accordingly, this statutory criterion is also met.

**E. TC2 will not violate any local planning or zoning requirements.**

The next factor the Board must evaluate is "whether the proposed facility will meet all local planning and zoning requirements" existing on the date the application was filed. KRS 278.710(1)(e). Because there are no planning or zoning requirements in Trimble County, such compliance is a non-issue in this proceeding.<sup>45</sup>

**F. The issue of the nature and location of upgrades in the existing electricity transmission system to support TC2 is currently a matter pending before the KPSC.**

KRS 278.710(1)(f) next requires the Board to determine whether the proposed facility will adversely impact the existing transmission system and affect the reliability of service for utility customers in Kentucky. 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% portion to be owned by LG&E and KU) into the transmission system.<sup>46</sup> Those studies identified the need for additional transmission facilities in Trimble, Franklin, Anderson, Woodford, Jefferson, Bullitt, Meade and

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<sup>43</sup> *E.g. In the Matter of: The Application of Kentucky Mountain Power, LLC / Enviropower, LLC for a Merchant Power Plant Construction Certificate in Knott County, Kentucky Near Talcum*, Case No. 2202-00149, Order of September 5, 2002, at 9.

<sup>44</sup> Voyles Direct at 1.

<sup>45</sup> *In the Matter of: The Application of the Illinois Municipal Electric Agency and the Indiana Municipal Power Agency For a Merchant Electric Generating Plant Certificate to Construct*, Case No. 2005-00152, Exhibit H, Filed May 11, 2005.

<sup>46</sup> *Id.* at Exhibit J.

Hardin counties as a result of the 75% of TC2 to be owned by LG&E and KU, but identified no transmission upgrades needed in Kentucky as a result of the 25% of the project which is the subject of this proceeding.<sup>47</sup> Thus, the merchant portion of TC2 will not have a negative impact on the transmission system in the state, and this statutory criterion favors granting the Joint Application.

**G. TC2 will comply with statutory setback requirements.**

The Board must also consider compliance with statutory setback requirements in determining whether to grant or deny a construction certificate. KRS 278.710(1)(g). The existing stack at the Trimble Station was designed to support two units and, as a consequence, the proposed project will utilize the present stack.<sup>48</sup> That stack is located more than 1,000 feet from the nearest property boundary and 2,000 feet from the nearest residential boundary, thus complying with the setback requirements in KRS 278.704.<sup>49</sup> There are no other setback requirements applicable to the construction of TC2.<sup>50</sup> For those reasons, this criterion is also satisfied.

**H. The mitigation measures undertaken by the Companies will further minimize the negligible effect that TC2 will have on local aesthetics and noise levels.**

The Board also must evaluate proposed mitigation measures relating to impacts on scenic surroundings, noise levels, zoning requirements and the current transmission system. KRS 278.710(1)(h). As noted in the previous subsections, LG&E, KU and the Applicants have agreed to the mitigation measures recommended by the Board's consultant.<sup>51</sup> Accordingly, this criterion also weighs in favor of granting the Applicants' requested construction certificate.

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<sup>47</sup> *Id.* The facilities identified to support LG&E's and KU's portion of TC2 are the subject of proceedings before the PSC.

<sup>48</sup> SAR at 2.7.

<sup>49</sup> BBC Report, § C, p. 11.

<sup>50</sup> *Id.*

<sup>51</sup> TE at 19, 70.

**I. The Applicants' history of environmental compliance should reflect favorably upon their application for a construction certificate.**

The Board is also directed to evaluate an Applicant's environmental compliance history in ruling upon an application for a construction certificate. KRS 278.710(1)(i). Here, IMEA and IMPA both have a favorable environmental compliance history. IMEA has never had a reportable EPA violation.<sup>52</sup> Although IMPA accrued one minor violation in 2000 in connection with a late filing of an Acid Rain Permit Application, monitoring plan, and installation of monitoring equipment at one of its facilities, IMPA disclosed the oversight immediately upon its discovery and the EPA waived the gravity portion of the penalty.<sup>53</sup> Thus, the Applicants' environmental history also weighs in favor of granting their Joint Application.

**J. TC2 will provide flexibility in fuel choice, including the ability to burn Kentucky coal.**

Finally, the Board may consider the General Assembly's policy of encouraging the use of Kentucky coal in considering an application like that here. KRS 278.710(2). The technology proposed for TC2 will allow for significant fuel flexibility, including the ability to burn Kentucky coal.<sup>54</sup> For that reason, the General Assembly's policy for encouraging the use of Kentucky coal is met here, and this last factor also weighs in favor of granting the requested construction certificate.

As set forth in detail in the preceding subsections, the Applicants have met each and every one of the statutory criteria set forth in KRS 278.710(1) and (2). Accordingly, the Board

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<sup>52</sup> *In the Matter of: The Application of the Illinois Municipal Electric Agency and the Indiana Municipal Power Agency For a Merchant Electric Generating Plant Certificate to Construct*, Case No. 2005-00152, Exhibit M, Filed May 11, 2005.

<sup>53</sup> *Id.*

<sup>54</sup> 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.

should grant the requested construction certificate for the Applicants' 25% ownership interest in TC2.

**II. THE BOARD SHOULD NOT CONDITION A CONSTRUCTION CERTIFICATE ON THE USE OF ANY SPECIFIC LOCAL WORKFORCE.**

The Unions intervened in this proceeding based upon an argument that they were advocating for the utilization of Kentucky workers on the construction of TC2.<sup>55</sup> On that exact point, there is no disagreement, as the Applicants, LG&E and KU fully support the utilization of available, qualified Kentucky workers.<sup>56</sup> The TC2 project will require a large number of heavy industrial construction-skilled crafts that must be filled with drug free, qualified workers.<sup>57</sup> Consistent with that need, the RFP to EPC contractors specifically provides that, wherever practical and appropriate, the use of local services and employment of local labor is to be followed during the construction of TC2.<sup>58</sup> Specifically, the RFP states that the successful EPC bidder shall:

- maximize the use of local direct hire union and non-union contractors, and
- define and utilize processes to maximize the use of local union and non-union, MBE, and WBE labor, goods and services.<sup>59</sup>

In addition, 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.<sup>60</sup> LG&E and KU have committed to work “very closely to see that [the successful EPC bidder is]

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<sup>55</sup> Unions' Motion to Intervene at 2.

<sup>56</sup> Voyles Direct at 4.

<sup>57</sup> TE at 82.

<sup>58</sup> *Id.* at 2.

<sup>59</sup> LG&E and KU Response to the IBEW/Trades Council Data Request to Intervenors No. 3.

<sup>60</sup> TE at 46, 60. That preference, and the above-cited language from the RFP, is significantly stronger than the requirements for local labor on previous LG&E construction projects. *Id.* at 39. Thus, the Unions' efforts to compare past constructions projects with the TC2 project are not valid. *Id.* at 34, 36, 39.

delivering” on the requirements for using local workers.<sup>61</sup> All of these requirements are fully consistent with previous orders of this Board, in which construction certificates have been conditioned upon requirements that local workers be utilized “whenever practical and possible.”<sup>62</sup>

Should the TC2 project receive all necessary approvals, LG&E and KU, in cooperation with the successful EPC bidder and with the support of the Applicants, will go forward with a construction job recruitment process that insures all qualified local workers (both union and non-union) will be fairly considered for available construction jobs.<sup>63</sup> That 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, Kentucky Department of Employment Services, and local vocational and community college training services.<sup>64</sup> Local union workers will have the same opportunities to apply for jobs at TC2 as will non-union workers.<sup>65</sup>

Although the Unions purported to have an interest only in the use of local workers, a review of the Unions’ testimony reveals that their real interest is to advocate for the use of a project labor agreement (“PLA”) for TC2, which agreement would typically require the hiring of only union workers.<sup>66</sup> On that issue, LG&E, KU and the Applicants do have disagreement with the Unions. Importantly, the Board has not previously required the use of a PLA on a merchant generating project, or otherwise conditioned a construction certificate on the use of union

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<sup>61</sup> TE at 44, 62.

<sup>62</sup> *In the Matter of: The Application of Kentucky Mountain Power, LLC / Enviropower, LLC for a Merchant Power Plant Construction Certificate in Knott County, Kentucky Near Talcum*, Case No. 2202-00149, Order of September 5, 2002, at 9.

<sup>63</sup> Voyles Direct at 5.

<sup>64</sup> *Id.*; TE at 81-82.

<sup>65</sup> TE at 86-87.

<sup>66</sup> *Id.*; Direct Testimony of Larry L. Roberts, pp. 3-4, 7.

workers.<sup>67</sup> That is so because there is nothing in the express grant of authority in KRS 278.700 *et. seq.* which, by necessity or fair implication, allows such a ruling in this context.<sup>68</sup>

Moreover, the lack of authority aside, LG&E and KU have explained why it is not advisable to require the use of a PLA in this situation. To begin with, utilization of a PLA would not in and of itself help to fully utilize Kentucky workers and, in fact, would typically exclude a majority of local workers from consideration for the TC2 project.<sup>69</sup> In addition, a PLA would include work rules that would increase labor costs and, consequently, construction costs on the TC2 project.<sup>70</sup> Finally, use of a PLA at this stage would hamper the efforts of LG&E and KU to minimize the risks associated with construction timing delays and cost overruns. Specifically, as outlined in the RFP for TC2, the final contract with the successful EPC bidder will contain penalty provisions for the failure to perform as required on the project. If LG&E and KU were to be signatories to or require a PLA to be executed by the successful EPC bidder, the protections of the penalty provisions would be significantly weakened and the successful EPC bidder would be able to pass cost and schedule risks back to LG&E and KU and, ultimately, their Kentucky ratepayers.<sup>71</sup> All of these factors, which went unrebutted by the Unions, clearly dictate against the execution of a PLA.<sup>72</sup>

LG&E and KU, together with the Applicants, have proposed a construction plan which seeks to maximize the use of all available, qualified local labor to the extent practical, without

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<sup>67</sup> Counsel for the Companies has searched previous Board orders and found no instance in which a PLA was required or in which a construction certificate was conditioned on use of a specific workforce population.

<sup>68</sup> *Boone Co. Water and Sewer Dist. v. Pub. Serv. Comm'n*, 949 S.W.2d 588 (Ky. 1997) (recognizing the limitation on the Commission's authority).

<sup>69</sup> Voyles Direct at 5. The Unions' witness admitted under cross-examination that he had no studies or analysis to support the claim that use of a PLA would benefit the Companies, their ratepayers, or Kentucky workers. TE at 136-37.

<sup>70</sup> Voyles Direct at 5-6.

<sup>71</sup> *Id.*

<sup>72</sup> All of this said, however, the Companies do not object to the use of a PLA for the labor on TC2, should that choice be made by the successful EPC bidder and not increase the costs and risks to the Companies and their ratepayers. *Id.* To that end, the Companies have facilitated contact between the unions and the EPC bidders. TE at 87, 139.



limiting the exercise of prudent management to control risks and costs. There is no basis or precedent for the Board to require any different action in this proceeding. Accordingly, the Board should reject the efforts to mandate the hiring of union workers for the proposed project.

**III. THE BOARD SHOULD FIND THAT PUBLIC COMMENTS WERE APPROPRIATELY CONSIDERED AND ADDRESSED IN THIS PROCEEDING.**

As previously noted, a local public hearing was held in this matter on July 6, 2005. In addition, Mr. Kelly Leach was permitted to make further public comments before the start of the evidentiary hearing on September 19, 2005, and he largely reiterated his previous comments. As Mr. Voyles testified, representatives of KU and LG&E were present to hear the comments of local residents, and steps were then taken to address those concerns.<sup>73</sup> Specifically, with regard to concerns about the condition of properties surrounding the Trimble Station, Mr. Voyles testified that Mr. Tom Crutcher, General Manager of the Trimble Station, has been designated to oversee the clean-up of those properties, that a contractor has been chosen to conduct the clean-up, and that LG&E and KU are committed to following through with those efforts and monitoring the condition of the properties in the future.<sup>74</sup>

As to the public comments about noise levels associated with steam blows at TC2, Mr. Voyles testified that representatives of LG&E and KU met with concerned property owners, explained the importance of the steam blows, and assured property owners that they would be notified of planned blows in advance.<sup>75</sup> In addition, as noted earlier, LG&E and KU have agreed to install silencers to dampen the noise from both planned and unplanned steam blows.<sup>76</sup>

Mr. Voyles also testified that LG&E and KU responded to public comments regarding emissions from the Trimble Station by explaining to property owners that TC2 will utilize state

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<sup>73</sup> Voyles Direct at 6.

<sup>74</sup> *Id* at 6-7; TE at 80.

<sup>75</sup> Voyles Direct at 7.

<sup>76</sup> TE at 73-75; Response of LG&E and KU to Board Staff's Post-Hearing Data Request Dated September 19, 2005.

of the art pollution control equipment which, together with environmental technology upgrades on TC1, will result in TC2 having only a minimal impact on air quality levels.<sup>77</sup> LG&E and KU also explained to concerned residents that the “plume” coming from the cooling tower at the Trimble Station is merely condensation resulting from the cooling of the process water used in producing electricity at the Station.<sup>78</sup> Finally, residents were advised that the “bluish” plume occasionally seen coming from the existing chimney at the Trimble Station is caused by the presence of sulfuric acid mist (SO<sub>3</sub>) in the flue gas, and that LG&E and KU are currently studying different technology options which might be used to reduce the level of SO<sub>3</sub> in the flue gas.<sup>79</sup> Importantly, the residents were advised that SO<sub>3</sub> emissions should not be an issue with TC2, because the planned pollution control equipment for the new unit will mitigate the presence of SO<sub>3</sub>.<sup>80</sup>

Finally, Mr. Voyles testified that the public comments regarding the use of ammonia at the Trimble Station were addressed by explaining to the residents that Station personnel have worked with the Trimble County Local Emergency Planning Commission to develop a local written emergency operations plan, that the Station has a Contingency Plan to call the 24-hour Local Emergency Planning Commission number immediately in the event of a reportable ammonia spill, that Trimble County Local Emergency Planning personnel have visited the Station and conducted a mock disaster scenario with Station personnel, and that the Station has both Process Safety Management (OSHA) and Risk Management (EPA) plans in place to help ensure the safe handling of ammonia.<sup>81</sup>

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<sup>77</sup> Voyles Direct at 7-8.

<sup>78</sup> *Id.* at 8.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at 8-9.

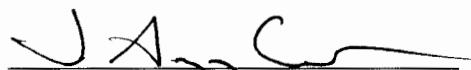
It is clear that the public comments in this proceeding were met with good faith efforts to respond to those comments. For all of those reasons, the Board should find that the public's comments were appropriately considered and addressed.

**CONCLUSION**

For all of the reasons set forth above, the Applicants have clearly met the requirements for a construction certificate set forth in KRS 278.710(1). Accordingly, the Board should enter an order consistent with the Joint Proposed Order submitted simultaneously herewith by LG&E, KU, IMEA and IMPA.

Dated: October 7, 2005

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing was filed electronically and also served on the following persons on the 7th day of October, 2005, U.S. mail, postage prepaid:

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