

**COMMONWEALTH OF KENTUCKY**

**BEFORE THE 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 ) Case No. 2005-00152  
For a Merchant Electric Generating )  
Plant Certificate to Construct )

Before:

Mark David Goss, Chairman  
Teresa J. Hill  
W. Gregory Coker  
LaJuana S. Wilcher  
J.R. Wilhite  
Hon. Randy Stevens  
William W. Proulx

**JOINT PROPOSED ORDER SUBMITTED BY  
ILLINOIS MUNICIPAL ELECTRIC AGENCY,  
INDIANA MUNICIPAL ELECTRIC POWER AGENCY,  
LOUISVILLE GAS AND ELECTRIC COMPANY  
AND KENTUCKY UTILITIES COMPANY**

**PROCEDURAL HISTORY**

This proceeding was initiated on April 8, 2005 upon the filing of a notice of intent by the Joint Applicants, the Illinois Municipal Electric Agency (“IMEA”) and the Indiana Municipal Electric Power Agency (“IMPA”) (collectively the “Joint Applicants”). The Joint Applicants are participating with Louisville Gas and Electric Company (“LG&E”) and Kentucky Utilities Company (“KU”) (collectively the “Companies”) in the

construction of a 750 MW electric generating facility (“TC2”) on the site of the existing Trimble County Generating Station (“Trimble Station”). A companion case, *In the Matter of: Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company for a Certificate of Convenience and Necessity and a Site Compatibility Certificate for the Expansion of the Trimble County Generating Station*, Case No. 2004-0507, was filed with the Public Service Commission (“PSC”) on December 17, 2004. That case involves the request for a certificate of convenience and necessity to construct TC2.

Because the Joint Applicants will sell their respective portions of the generating capacity from TC2 to customers in Indiana and Illinois, an application pursuant to KRS 278.704 is required. That Application was filed on May 11, 2005. After the Joint Applicants filed supplemental information required by the Board, the Application was determined to be administratively filed on May 31, 2005.

The Board, on April 21, 2005, filed into the record of the case the report of its consultant, BBC Research and Consulting (“BBC”), which favorably evaluated the Site Assessment Report (“SAR”) which had been filed as part of the Application.<sup>1</sup> LG&E and KU moved to intervene on May 27 and were granted full intervention on June 9. On June 15, the Board issued a procedural schedule. There were a number of requests by the public for a local public hearing, which was held in Bedford, Kentucky on July 6.

On July 19, the Board issued an order determining that certain residents living near the 2100 acres surrounding the proposed Trimble Station owned by LG&E should be given written notice of this proceeding. That notice was given by the Joint Applicants

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<sup>1</sup> BBC recommended that the requested construction certificate be granted conditioned upon certain mitigation measures described below. BBC Report § B, p. 4

on July 21. The Board then issued an order finding that the Application was administratively complete. The Board then entered a new procedural schedule and set the evidentiary hearing for September 19. On August 2, the Board granted intervention to the International Brotherhood of Electrical Workers, Local 2100 and the Greater Louisville Building and Construction Trades Council (collectively the “Unions”).

On August 29, the Unions filed a motion to supplement the record with various documents from PSC Case No. 2004-00507. The Joint Applicants made a similar motion regarding other documents in that case. Both motions were granted from the bench at the evidentiary hearing held on September 19.

At the September 19 hearing, the Joint Applicants presented three witnesses: L. Gayle Mayo, Executive Vice President and Chief Operating Officer for IMPA, Robert Childers, Director of Finance and Business for IMEA and Paul Coomes, Ph.D. The Unions presented Larry Roberts, state Director for the Kentucky State Building and Construction Trades Council, and LG&E and KU presented John Voyles, Vice President of Regulated Generation.

### **BACKGROUND**

IMEA is a body politic and corporate, municipal corporation and unit of local government of the State of Illinois.<sup>2</sup> Its primary purpose is the acquisition and sale of wholesale power and energy to its member municipalities that own and operate their own municipal electric distribution systems.<sup>3</sup> IMEA currently consists of 40 members, 29 of which have executed long-term power supply agreements to purchase their full-

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<sup>2</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, § 1.1 (“Application”)*

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

requirements power supply from IMEA.<sup>4</sup> In addition to power supply, IMEA provides, among other services, engineering, lobbying, load retention and economic development services to its members.<sup>5</sup>

IMPA is a joint action agency formed pursuant to Indiana statute by municipally owned electric utilities in Indiana. IMPA is a body corporate and politic and a political subdivision of the State of Indiana.<sup>6</sup> It currently has 40 members. IMPA members purchase their power supply solely through IMPA.<sup>7</sup> IMEA and IMPA collectively own an undivided 25% interest in the existing unit at the Trimble Station (“TC1”).<sup>8</sup> Pursuant to their respective TC1 Participation Agreements with LG&E, IMEA and IMPA have exercised their respective rights to participate in the development and ownership of the next coal-fired base load unit, TC2.<sup>9</sup> IMEA and IMPA will use their respective portions of TC2 to provide wholesale power to their respective member communities pursuant to long-term contracts.<sup>10</sup> None of the power owned by IMEA or IMPA and generated at the Trimble Station will be sold at retail to Kentucky customers.<sup>11</sup>

IMEA and IMPA have entered into a Participation Agreement with LG&E and KU to participate as tenants-in-common in the ownership of TC2.<sup>12</sup> Specifically, IMEA will own an undivided 12.12% interest, and IMPA will own an undivided 12.88% interest, in TC2.<sup>13</sup> IMEA and IMPA have the same ownership interests in TC1, and the terms of the

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

<sup>5</sup> Direct Testimony of Robert W. Childers (“Childers Direct”) at 2.

<sup>6</sup> Application § 1.1.

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

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

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

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

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

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

<sup>13</sup> *Id.*

Participation Agreement are comparable to those of the TC1 Participation Agreements.<sup>14</sup> As a result of their respective ownership interests, IMEA and IMPA will share in the development, construction and operations costs of the proposed facility and will have a right to a proportionate share of the facility's generating capacity.<sup>15</sup>

Because IMEA and IMPA will sell their share of the TC2 output to wholesale customers in Illinois and Indiana, their 25% ownership interest in the facility qualifies as a merchant plant under KRS 278.700 *et seq.* As such, IMEA and IMPA need this Board's approval for the construction of the facility. As the majority owners, LG&E and KU are required to obtain a certificate of convenience and necessity from the PSC for the construction of the facility, an application for which is pending in Case No. 2004-00507.<sup>16</sup>

The power from TC2 is essential to the fulfillment of IMEA's and IMPA's energy forecasts.<sup>17</sup> IMEA's and IMPA's capacity and energy requirements have increased considerably over the past 15 years and are projected to continue to increase each year for the foreseeable future.<sup>18</sup> In order to economically serve such increases, additional sources of long-term base load capacity and energy will be required.<sup>19</sup> The Joint Applicants and their consultants have investigated numerous alternatives available within the region to supply the base load energy requirements of their respective membership for the next thirty years or more.<sup>20</sup> Based on these detailed investigations, IMEA and IMPA have concluded that an ownership interest in TC2 is the most cost-effective means of meeting a portion of their

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

<sup>15</sup> Direct Testimony of L. Gayle Mayo ("Mayo Direct") at 5.

<sup>16</sup> *See* KRS § 278.020.

<sup>17</sup> Childers Direct at 6.

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

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

<sup>20</sup> *Id.*

long-term base load capacity and energy requirements.<sup>21</sup> Without this additional resource, Joint Applicants will not have sufficient base load capacity or energy to serve the total obligations of their current full requirements members with the most economical resources.<sup>22</sup>

TC2 is proposed as a new 750 MW nominal net super-critical pulverized coal generating unit designed with substantial fuel flexibility to allow for better management of coal costs for today's needs and beyond.<sup>23</sup> 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 and circulating fluidized bed units, reducing fuel costs by decreasing the amount of coal burned in relation to the amount of electricity produced.<sup>24</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>25</sup> TC2 will also employ air pollution control equipment consisting of a Selective 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>26</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

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Direct Testimony of John N. Voyles ("Voyles Direct") at 2.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

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

units in Kentucky.<sup>27</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>28</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>29</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>30</sup>

### **STATUTORY REQUIREMENTS**

KRS 278.710(1) provides for the evaluation of the following criterion in ruling upon an application for a certificate to construct a merchant generating facility::

- a) Impact of the facility on scenic surroundings, property values, the pattern and type of development of adjacent property, and surrounding roads;
- (b) Anticipated noise levels expected as a result of construction and operation of the proposed facility;
- (c) The economic impact of the facility upon the affected region and the state;
- (d) Whether the facility is proposed for a site upon which existing generating facilities, capable of generating ten megawatts (10MW) or more of electricity, are currently located;
- (e) Whether the proposed facility will meet all local planning and zoning requirements that existed on the date the application was filed;
- (f) Whether the additional load imposed upon the electricity transmission system by use of the merchant electric generating facility will adversely affect the reliability of service for retail customers of electric utilities regulated by the Public Service Commission;

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<sup>27</sup> *Id.* at 2-3.

<sup>28</sup> *Id.* at 3.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

(g) Except where the facility is subject to a statewide setback established by a planning and zoning commission as provided in KRS 278.704(3) and except for a facility proposed to be located on site of a former coal processing plant and the facility will use on-site waste coal as a fuel source, whether the exhaust stack of the proposed merchant electric generating facility is at least

one thousand (1,000) feet from the property boundary of any adjoining property owner and two thousand (2,000) feet from any residential neighborhood, school, hospital, or nursing home facility. If a planning and zoning commission has established setback requirements that differ from those under KRS 278.704(2), the applicant shall provide evidence of compliance. If the facility is proposed to be located on site of a former coal processing plant and the facility will use on-site waste coal as a fuel source, the applicant shall provide evidence of compliance with the setback requirements provided in KRS 278.704(5);

(h) The efficacy of any proposed measures to mitigate adverse impacts that are identified pursuant to paragraph (a), (b), (e), or (f) of this subsection from the construction or operation of the proposed facility; and

(i) Whether the applicant has a good environmental compliance history.

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).

The Board will discuss each criterion, applied to the evidence of record in this case, separately.

**Impact on scenic surroundings, property values, adjacent property and surrounding roads**

KRS 278.710(1)(a) directs the Board to consider the impact of a proposed merchant plant on scenic surroundings, property values, adjacent property and local roads.

TC2 is proposed to be constructed at the existing Trimble Station situated on the Ohio River, approximately 5 miles west of Bedford, Kentucky<sup>31</sup> In general, Trimble

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<sup>31</sup> BBC Report § B, p. 1.



County is composed predominantly of rural areas.<sup>32</sup> The areas surrounding the plant include scattered residences, agricultural land, and wooded areas.<sup>33</sup>

The proposed site is bordered to the west by the Ohio River, to the north by agricultural land, and to the east by a steep, wooded hillside.<sup>34</sup> The surrounding areas are predominantly undeveloped and are rural in nature.<sup>35</sup>

The nearest residential community is Wises Landing, which is approximately 3,000 feet from the proposed site.<sup>36</sup> The nearest schools are located in Bedford, approximately 5 miles from the proposed facility.

The construction of TC2 will merely expand the existing facilities at the Trimble Station, and will not increase the site's total land area.<sup>37</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>38</sup> Further, as planned by the Companies, and as recommended by the Board's consultant, 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>39</sup> Finally, TC2 will utilize the existing stack for TC1, as it was originally designed to support two units. As such, there are no plans to construct a new exhaust stack. For all of these reasons, BBC's Report concluded: "Given the existing plant, TC2 is compatible with its scenic surroundings." That Report went on to say: "More importantly, the BBC team is confident that the addition of TC2 to the existing Trimble County Station will not have any measurable effect on local property values."

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<sup>32</sup> SAR at 2.1.

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

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

<sup>35</sup> *Id.*

<sup>36</sup> BBC Report § B, p. 1.

<sup>37</sup> SAR at 3.1.1.

<sup>38</sup> *Id.*; BBC Report § C, p. 14.

<sup>39</sup> BBC Report § B, p. 4.; Transcript of Evidence ("TE") at 71.

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 a number of steps to be taken to mitigate potential negative impact on those roads in connection with the construction of TC2.<sup>40</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>41</sup> The Companies and the Joint Applicants agreed to implement all of those recommended mitigation measures.<sup>42</sup>

Based on the undisputed evidence of record, the findings of BBC Report, and the efforts of the Joint Applicants and the Companies to mitigate the minor issues related to the scenic surroundings, the Board finds that the Joint Applicants have met this requirement.

#### **Anticipated Noise levels**

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

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<sup>40</sup> *Id.* at p. 31.

<sup>41</sup> *Id.* at p. 34.

<sup>42</sup> TE at 19, 71-73, 76-78.

Noise levels associated with TC2 were tested and modeled in the Site Assessment Report, and it was concluded that “no significant impacts” to sound are expected from either construction or operation of TC2.<sup>43</sup> 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>44</sup> BBC also found that its recommended mitigation measures relating to traffic issues, which, as noted above, the Joint Applicants and Companies have agreed to follow, should help alleviate noise related to construction traffic.<sup>45</sup>

At the local public hearing, some concern was voiced regarding noise associated with steam blows. Steam blows are an inevitable aspect of proper steam generating plant operation, and BBC has noted that the frequency of steam blows at the Trimble Station do “not appear to be excessive.”<sup>46</sup> Still, BBC recommended that silencers be installed to dampen the noise related to steam blows, and the Joint Applicants and Companies agreed to that mitigation.<sup>47</sup> In addition, BBC recommended that LG&E and KU “might also consider” utilizing a telephone warning system to notify nearby landowners of planned steam blows.<sup>48</sup> The Companies and Joint Applicants also agreed to consider the feasibility of such a system.<sup>49</sup>

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

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<sup>43</sup> SAR at 5.7.

<sup>44</sup> BBC Report § C, p. 27.

<sup>45</sup> *Id.*; TE at 19, 71-73, 76-78.

<sup>46</sup> *Id.*

<sup>47</sup> TE at 73-75; Response of LG&E and KU to Board Staff’s Post-Hearing Data Request Dated September 19, 2005.

<sup>48</sup> BBC Report § C, p. 27. LG&E already notifies landowners through notices in the local newspaper. *Id.*

<sup>49</sup> TE at 74.

### **Economic Impact on the Affected Region and the Commonwealth**

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

The Joint 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>50</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>51</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>52</sup> Finally, Dr. Coomes testified that the merchant portion of TC2 would generate an estimated \$662,000 in sales tax receipts to Kentucky associated with construction activities, and \$614,000 annually in state and local property taxes.<sup>53</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. However, no proof was presented that use of only

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<sup>50</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 1.

<sup>51</sup> Coomes Report, at 3.

<sup>52</sup> *Id.* at 1.

<sup>53</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.

union labor on the construction of TC2 would in any way increase the economic benefit of the proposed project. In fact, Dr. Coomes testified, and the Board recognizes, that pursuit of a least-cost strategy is important to the state from an economic perspective. Dr. Coomes even testified that paying more than needed for labor rates could result in utility rate increases that might negate the benefit seen from the hiring of local workers.<sup>54</sup> In addition, Mr. Voyles testified that execution of a project labor agreement (“PLA”) requiring union labor at this stage would include work rules that would increase labor costs and, consequently, construction costs on the TC2 project.<sup>55</sup>

The Board finds that the best way to ensure the maximum benefit to Kentucky from the construction of the proposed project is to pursue both a least-cost strategy for construction, balanced with the use of Kentucky workers to the extent possible. It is clear from the record that such an approach is being taken in this case. The RFP issued by LG&E and KU to Engineering, Procurement and Construction (“EPC”) contract bidders 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>56</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>57</sup>

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<sup>54</sup> TE at 128-29.

<sup>55</sup> Voyles Direct at 5-6.

<sup>56</sup> LG&E and KU Response to the IBEW/Trades Council Data Request to Intervenors No. 3.

<sup>57</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.

If the proposed project receives all necessary approvals, LG&E and KU, with the support of the Applicants, will go forward with a construction job recruitment process that allows all qualified local workers (both union and non-union) to be considered for available construction jobs.<sup>58</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>59</sup>

There is no dispute that the proposed project will have a positive economic impact on the region and the Commonwealth, and there is no basis for requiring the hiring of only union labor on the construction project. The hiring efforts proposed by the Joint Applicants, working with LG&E and KU, are entirely consistent with prior orders of this Board, and are approved by the Board here.<sup>60</sup>

#### **Existence of Other Generation Facilities**

KRS 278.710(1)(d) provides that the Board must consider whether a merchant plant is proposed for a site upon which facilities capable of generating 10 MW or more of electricity are already located. Here, the proposed TC2 is to be built at the Trimble Station, where the existing TC1 unit is operating.<sup>61</sup> For that reason, the proposed project is entitled to the statutory preference afforded by KRS 278.710(1)(d).

#### **Local Planning and Zoning Requirements**

KRS 278.710(1)(e) directs the Board to consider whether the proposed facility will

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<sup>58</sup> Voyles Direct at 5.

<sup>59</sup> *Id.*; TE at 81-82.

<sup>60</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>61</sup> SAR at 3.1.1.

meet local planning and zoning requirements. Because there are no planning and zoning requirements or set back requirements in Trimble County, however, the Board need not consider this factor in rendering its decision.<sup>62</sup>

**Potential Impact on the Electricity Transmission System in Kentucky**

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>63</sup> Those studies identified the need for additional transmission facilities in Trimble, Franklin, Anderson, Woodford, Jefferson, Bullitt, Meade and Hardin counties as a result of the 75% 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, other than the required physical interconnection of the plant into the transmission system.<sup>64</sup> That interconnection was recently approved by the PSC in Case No. 2005-00155. The remaining transmission facilities, identified to support LG&E's and KU's portion of TC2, are the subject of other proceedings before the PSC. For all of these reasons, the Board finds that the portion of TC2 which is the subject of this proceeding will not have a negative impact on the transmission system in the Commonwealth.

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<sup>62</sup> Application, Exhibit H.

<sup>63</sup> *Id.* at Exhibit J.

<sup>64</sup> *Id.*

### **Compliance with Statutory Setback Requirements**

KRS 278.710(1)(g) requires the Board to consider whether the proposed facility will comply with any applicable setback requirements. As previously noted, TC2 will utilize the existing stack at the Trimble Station. That existing stack is located more than 1,000 feet from the nearest property boundary and more than 2,000 feet from the nearest residential boundary, and so is in compliance with the setback requirements described in KRS 278.704.<sup>65</sup> There are no other setback requirements that apply to the site.<sup>66</sup> Accordingly, the Board concludes that this criterion is satisfied in this case.

### **Efficacy of Proposed Mitigation Measures**

KRS 278.710(1)(h) next requires the Board to consider the efficacy of measures proposed to mitigate any adverse impact that the proposed facility may have on scenic surroundings, noise levels, zoning requirements and the current transmission system.

The BBC Report recommended several mitigation actions that it concluded would resolve any potential problems with the proposed construction.<sup>67</sup> There was no challenge to the findings of that Report and no offer of any additional mitigation requirements by any party. Certain of the recommended mitigation measures, relating to use of a consistent lighting and color scheme, use of the existing stack, efforts to dampen steam blows and notify nearby landowners of planned blows, and to utilize local workers to the extent practical and possible, have already been discussed in preceding sections of this Order. In addition, BBC made the following recommendations which have not yet been addressed:

**Description of the proposed facility/site development plan.** The following

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<sup>65</sup> BBC Report, § C, p. 11,

<sup>66</sup> *Id.*

<sup>67</sup> BBC Report, § D, p. 1-2.



mitigation measures are recommended for this aspect of the statutory requirements:

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

**Expected noise from construction and operation.** The following mitigation measures are recommended to address this potential issue:

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

**Impacts on transportation.** The following mitigation measures are recommended for this aspect of the statutory requirements:

7. The applicant should seek to direct traffic onto the least impacting routes and schedule construction shifts and deliveries to minimize additional traffic during school bus transit periods and commuting peaks.

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

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

10. Throughout the construction period, LG&E should closely monitor traffic issues and concerns that arise during construction and work with local officials to take action as needed.<sup>68</sup>

The Joint Applicants, together with LG&E and KU, agreed to accept all of the mitigation recommendations made by BBC.<sup>69</sup> Specifically, both the witness for IMPA, Ms. Mayo, and the witness for IMEA, Mr. Childers, testified that their agencies acknowledge the recommendations, and Mr. Voyles, the witness for LG&E and KU, testified that the Companies accepted all of the recommendations.<sup>70</sup>

Based on the Joint Applicants' and the Companies' commitments to accept the

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<sup>68</sup> *Id.*

<sup>69</sup> TE at 19, 71-73, 76-78.

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

BBC recommendations, the Board finds that the mitigation actions are reasonable and will render the project largely compatible with its scenic surroundings.

Finally, the Board recognizes that many of the proposed plans and agreements relating to the construction of TC2 are not yet final. In an effort to assure that the project is constructed consistent with this Order, the Board finds that the submission of an annual project impact report by the Joint Applicants will successfully mitigate any adverse impacts caused by the inherent uncertainty of this project.

### **History of Environmental Compliance**

Finally, KRS 278.710(1)(i) requires the Board to consider an applicant's environmental compliance history.

One very minor administrative environmental violation was acknowledged by IMPA,<sup>71</sup> but that violation was promptly and voluntarily disclosed by IMPA and, as a result, the EPA waived the gravity portion of the penalty.<sup>72</sup> IMEA has never had a reportable EPA violation, and there are no pending administrative or judicial actions against either IMPA or IMEA.<sup>73</sup> Given the scope and size of IMEA's and IMPA's operations, the Board finds that the lack of any material violations is proof of their awareness of their respective responsibilities and commitments to the environment and regulatory requirements. Accordingly, the Board concludes that this statutory factor is satisfied.

### **Other Factors**

#### **Use of Kentucky coal**

In addition to the factors set forth in KRS 278.710(1), subsection (2) of that statute provides that the Board may consider the General Assembly's policy of encouraging the

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<sup>71</sup> Application, Exhibit M.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

use of Kentucky coal in considering an application like that here. The technology proposed for TC2 will allow for significant fuel flexibility, including the ability to burn Kentucky coal.<sup>74</sup> For that reason, the General Assembly's policy for encouraging the use of Kentucky coal is met here, and this factor also weighs in favor of granting the requested construction certificate.

#### **Property owners' concerns**

Finally, a number of public comments were made at the local public hearing in this matter and again at the start of the evidentiary hearing. John Voyles testified at length in his pre-filed direct testimony and on cross-examination at the hearing regarding the efforts undertaken to resolve the concerns of the public.<sup>75</sup> In light of that testimony, which was undisputed, the Board finds that the Companies have made significant good faith efforts to address the concerns of the residents in the local community. However, in order to assure that these commendable efforts continue, the Board will require the Joint Applicants, as part of its annual reporting obligations imposed by this Order, to continue to report any complaints received by them or the Companies from residents near the facility and the responses to address those complaints.

#### **CONCLUSION**

After carefully considering the criteria outlined in KRS Chapter 278, the Board finds that IMEA and IMPA have presented sufficient evidence to obtain a certificate to construct their 25% interest in TC2 to be operated as a merchant facility. The Board conditions its approval upon the implementation of the measures described herein and listed in Appendix A to this Order.

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<sup>74</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.

<sup>75</sup> Voyles Direct at 6-9; TE at 64-68.

The Board, having reviewed the evidence presented in the record, and being otherwise sufficiently advised, hereby grants IMEA and IMPA's Joint Application for a certificate to construct their 25% undivided ownership interest in TC2 in Trimble County, Kentucky.

IT IS SO ORDERED.

## APPENDIX A

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

### MONITORING PROGRAM AND REPORTING REQUIREMENTS

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

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

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

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

- Local Hiring and Procurement –The Joint Applicants shall describe the efforts of the Companies to encourage the use of local workers and vendors. At a minimum, the report shall include a description of the efforts made by the Companies and by contractors and vendors to use local workers and local vendors to build and operate this project. The report shall also include, to the extent practicable, the Companies’ informed estimate of the proportion of the construction, and operational workforce that resided in the region (e.g., 50-mile radius) of the plant site prior to coming to work at the site.
- Public Comments and Responses –The Joint Applicants shall provide a summary of any oral, telephone, e-mail or other written complaints or comments received by the Joint Applicants or the Companies from the public during the intervening period since the last report, and the response to each complaint or comment.
- Specific Mitigation Conditions –The Joint Applicants report shall provide a brief narrative response to indicate the progress, any obstacles encountered, and plans to fulfill each condition or mitigation requirement required by the Board.

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

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

#### SPECIFIC CONDITIONS IMPOSED

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

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

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

F. Colors and lighting selected for the new unit shall be consistent with the existing features of the Trimble County Generating Station.

F. Construction contractors and workers should be encouraged by the Companies to utilize least impacting routes and away from Highway 625.

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

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

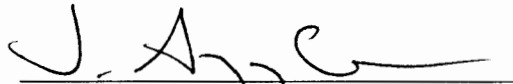
I. The Companies' communications with local officials regarding the timing and routes for ammonia truck deliveries should continue.

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

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

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

Respectfully submitted,



J. Gregory Cornett  
Ogden Newell & Welch PLLC  
1700 PNC Plaza  
500 West Jefferson Street  
Louisville, Kentucky 40202  
Telephone: (502) 582-1601

Robert M. Watt, III  
Stoll, Keenon & Park, LLP  
300 West Vine Street, Suite 2100  
Lexington, Kentucky 40507  
Telephone: (859) 231-3000



Elizabeth L. Cocanougher  
Senior Corporate Counsel  
Louisville Gas and Electric Company  
220 West Main Street  
Post Office Box 32010  
Louisville, Kentucky 40232  
Telephone: (502) 627-4850

Counsel for Louisville Gas and Electric  
Company and Kentucky Utilities  
Company

-and-

John N. Hughes  
Attorney at Law  
124 West Todd Street  
Frankfort, KY 40601

Counsel for IMEA and IMPA