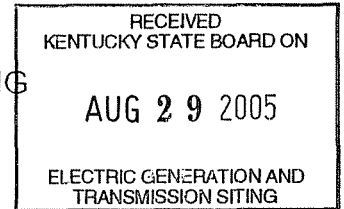


COMMONWEALTH OF KENTUCKY

BEFORE THE KENTUCKY STATE BOARD ON
ELECTRIC GENERATION AND TRANSMISSION SITING



In the Matter of:

THE APPLICATION OF THOROUGHbred)	
GENERATING COMPANY, LLC FOR A)	CASE NO.
MERCHANT POWER PLANT CONSTRUCTION)	2002-00150
CERTIFICATE IN MUHLENBERG COUNTY,)	
KENTUCKY)	

Before: *Martin J. Huelsmann, Chairman*
 Robert E. Spurlin
 Henry List
 J.R. Wilhite
 David Rhoades
 Randall Smith

O R D E R

PROCEDURAL HISTORY

Thoroughbred Generating Company, LLC ("Thoroughbred")¹ filed an application before the Kentucky State Board on Electric Generation and Transmission Siting (the "Board") on July 17, 2003 for approval to construct a 1500 MW coal-fueled electric generation facility (the "Facility") in Muhlenberg County, Kentucky. Thoroughbred filed an amended application on October 13, 2003, and it was deemed administratively

¹ Thoroughbred is a wholly owned subsidiary of Peabody Energy Corporation ("Peabody Energy") and is principally located at 701 Market Street, St. Louis, Missouri.

complete on that date by the Board's November 5, 2003 Order.² Intervention was granted in this case to Big Rivers Electric Corporation ("Big Rivers"), Louisville Gas and Electric Company and Kentucky Utilities Company ("KU/LG&E"), Gary Watrous, and Western Kentucky Energy Corporation ("WKE").

On September 3, 2003, Big Rivers filed a Motion to Deny the Thoroughbred Application. Big Rivers argued that Thoroughbred had failed to satisfy the minimum filing requirements set forth in KRS 278.706(2)(g) (requiring a summary of the efforts the applicant has made to locate the Facility on a site where existing generation facilities are located) and 278.706(2)(j) (requiring an analysis of the economic impact the Facility will have upon the region and the state). In support of the argument that Thoroughbred had failed adequately to address the economic impact the Facility would have on the region and the state, Big Rivers pointed out that Thoroughbred revealed only the favorable economic impacts of the Facility and failed to disclose the unfavorable. Big Rivers suggested that emissions and discharges from the proposed Facility could adversely affect the surrounding economy and that, due to a finite limit on certain emissions, future economic development in the region could be negatively affected by construction of the Facility.

² The application was initially determined to be administratively complete on August 5, 2003. However, when the Board convened a public hearing on October 21, 2003 to consider the application, it was discovered that the public notice required by 807 KAR 5:110, Section 9(1) had not been given. The hearing was recessed and reconvened on November 10, 2003 upon proper public notice. Pursuant to the parties' Joint Motion, the statutory deadlines governing this case are predicated upon an "administratively complete" date of October 13, 2003, although no party has waived its right to object to the sufficiency of the application.

Thoroughbred argued in response that less evidence is necessary to satisfy a minimum filing requirement than is necessary to justify a decision to grant a certificate. Thoroughbred also contended the Board lacks jurisdiction over emissions or discharges from a merchant generating plant, and thus cannot consider the economic impact emissions and discharges would have upon the region and the state. The Board found that the economic impact analysis required by the statute is not limited to analysis of any specific factors. To the extent that emissions and discharges from a merchant generating plant can be shown to have an economic impact on the region and the state, the Board can consider them in reaching its decision on the merits. The Board entered its Order on October 1, 2003 finding that the motion had a factual basis that had not been subject to testing at a hearing, and deferred a ruling on the motion pending conclusion of the evidentiary hearing.

On October 20, 2003, Thoroughbred filed a motion to strike the testimonies of Durham, a witness for Big Rivers, and intervenor Gary Watrous. In support of its motion, Thoroughbred argued that the testimony of both witnesses concerned air quality and emissions issues beyond the jurisdiction of the Board to consider under KRS 278.710, and further that the testimony regarding the economic impact on the region and the state was too "speculative" for consideration in an administrative proceeding.

By Order issued November 3, 2003 the Board overruled the motion, finding that the objections raised by Thoroughbred were sufficient to affect the weight accorded such testimony but were insufficient to warrant striking it altogether.

An evidentiary hearing on the merits of the application was held on November 10, 2003. During the public hearing, the Board identified several issues as being

appropriate for further written response by the parties. Thoroughbred, Big Rivers, and KU/LG&E responded to questions regarding: (1) cost recovery related to construction of transmission upgrades necessary if the Thoroughbred merchant plant is constructed; and (2) the extent to which the Federal Energy Regulatory Commission ("FERC") would be involved in resolving any disputes between the parties that arose with respect to recovery of those costs. Thoroughbred was also asked to respond in writing specifically addressing whether it would waive any rights or claims it might otherwise assert to recovery of the costs through transmission credits, cash refunds, or otherwise. These issues are relevant to the Board's analysis of the impact on Kentucky's electrical grid, on the customers currently served by Big Rivers' member cooperatives and KU/LG&E, and the prohibition of subsidies by Kentucky customers of merchant generator expenses pursuant to KRS 278.212. The responses were filed on November 17, 2003. Post-hearing briefs were filed on November 24, 2003.

We now review the evidence presented in this case with regard to the statutory criteria listed in KRS 278.710(1). Moreover, as KRS 278.708(6) authorizes the Board to condition a construction certificate upon the implementation of any mitigation measures deemed appropriate, we order mitigation strategies as necessary. Based upon the following, we conditionally grant the requested certificate.

STATUTORY CRITERIA

Introduction

Pursuant to KRS 278.706(1), no person shall commence to construct a merchant electrical generating facility until that person has applied for and obtained a construction certificate for the proposed facility from the Board. KRS 278.710(1) directs the Board to

consider the following criteria in rendering its decision: impact on scenic surroundings, property values, and surrounding roads; anticipated noise levels; economic impact upon the affected region and the state; the existence on the proposed site of other generation facilities capable of generating at least 10 MW of energy; local planning and zoning requirements; potential impact upon the electricity transmission system; compliance with statutory setback requirements; efficacy of any proposed measures to mitigate adverse impacts; and history of environmental compliance. We will evaluate the application pursuant to all the statutory criteria herein; however, as two of the statutory criteria were the subject of numerous motions, objections, and extensive testimony, they will be treated first.

Potential Impact on the Electric Transmission System

Before the Board may grant a merchant plant construction certificate, it is required to consider whether the additional load imposed upon the electricity transmission system by the proposed facility will adversely affect the reliability of service for retail customers of electric utilities regulated by the Kentucky Public Service Commission ("PSC"). It is apparent from a review of the application that the proposed Facility will require certain upgrades to Kentucky's transmission grid if the present level of service reliability to Kentucky's retail electric customers is to be maintained.³ The fact that there will be an adverse impact on the grid if the Facility is constructed is undisputed.

³ Thoroughbred Application, Section 5, Commonwealth Associates, Inc. Interconnection Impact Study at 5-6.

Economic Impact: Potential Adverse Effects on Electric Rates

The proposed project will require construction of transmission facilities by PSC-regulated utilities to interconnect the new Facility to Kentucky's transmission grid. The subsequent operation of the Facility will require numerous and significant transmission network upgrades to protect the reliability of the existing transmission grid. While we accept the findings submitted in the Interconnect Impact Study, we are also aware that additional transmission studies will be needed to further define and evaluate necessary transmission system upgrades and additions. We therefore will require Thoroughbred to submit those final transmission interconnect studies within 20 days of their completion.

At issue in this proceeding is the question of who pays the cost of the network upgrades and how those costs will be recovered. Construction of the Thoroughbred Facility will necessitate significant transmission investment, the majority of which would be under the jurisdiction of FERC, not the PSC, with respect to transmission rates and cost recovery. Currently, FERC favors subsidizing the costs of network upgrades by all users of the transmission grid, even though those users do not need additional generation, and even though the upgrades would have been unnecessary "but for" the generation facility being constructed.⁴ Consequently, PSC-regulated utilities would potentially bear transmission costs for the proposed Facility, and those costs would flow through to Kentucky retail customers.

In exercising its jurisdiction over the siting of merchant generation, the Board is obligated to uphold Kentucky law. KRS 278.212 requires that "any costs or expenses

⁴ Order No. 2003, FERC Stats & Regs. § 31, 146(2003) ("Order 2003").

associated with upgrading the existing electric transmission grid, as a result of the additional load caused by a merchant electric generating facility, shall be borne solely by the person constructing the merchant electric generating facility and shall in no way be borne by the retail electric customers of the Commonwealth.”

Much of the testimony at the hearing concerned the method of recovery of network upgrade costs should Thoroughbred be entitled to recovery of its upfront and initial investment. In their post-hearing responses, Thoroughbred and the intervenors agreed that Thoroughbred should be responsible for the upfront payment of the costs of network upgrades. There is considerable disagreement among the parties as to how and whether Thoroughbred can recover its investments in network upgrades through the use of transmission credits or refunds pursuant to FERC's present policy. The parties were asked to address the issue of this cost recovery mechanism and its effect on each of them.

Thoroughbred's Response

In its response of November 17, 2003, Thoroughbred indicates that it will comply with all requirements of Kentucky law. It agrees to accept cost responsibility for payment of all costs to Big Rivers and KU/LG&E associated with transmission interconnection and network upgrades. However, Thoroughbred does not waive any rights it has under the Federal Power Act and the FERC rules to collect transmission credits from Big Rivers and KU/LG&E for use of any transmission facilities where Thoroughbred has paid for the network upgrades. Thoroughbred believes that no such waiver is required by Kentucky law.

Thoroughbred argues that if it funds the upgrades, it should be allowed to recover its investment pursuant to FERC's policy of allowing transmission credits. In its November 17, 2003 response to post-hearing data requests, Thoroughbred expressly waived its right under FERC's policy to a cash refund at the expiration of a five-year period. It suggests, however, that instead of the cash refund, it should continue to receive transmission credits until its investment is fully recovered.

KU/LG&E's Response

KU/LG&E objects to refunding all monies fronted by Thoroughbred regardless of whether Thoroughbred purchases transmission service from KU/LG&E. The construction of the Thoroughbred Facility will require the construction of a 345 kV interconnect between Big Rivers and KU to prevent degradation of KU's present level of service.⁵ Thus, while the exact amount of the investment is not known, it is apt to be quite large.

Under its present rule, FERC has decreed that "affected systems"⁶ such as KU must be solely responsible for the payment of these costs. The affected system is responsible for payment of the costs (via the crediting mechanism) even where no means for partially offsetting revenues exist.⁷ KU/LG&E argue that the crediting of amounts related to these system upgrades unfairly requires KU's retail customers to subsidize the cost of facilities that would not be required by KU "but for" the construction

⁵ KU/LG&E Post Hearing Data Request at 4.

⁶ An "affected system," KU/LG&E explains, is a system other than a transmission provider that is affected by the interconnection. KU/LG&E Brief at 3.

⁷ KU/LG&E point out that there is no guarantee that Thoroughbred will utilize any portion of their system for actual transportation service.

of Thoroughbred's Facility. It also unfairly requires KU's retail customers to subsidize the cost of transmission facilities that are unnecessary to provide or maintain their present level of service.

Although Thoroughbred represents to this Board in its November 17, 2003 response that it will be entitled to transmission credits only to the extent that it receives transmission service, this statement appears to be at odds with KU/LG&E's understanding of FERC's intent.⁸ KU/LG&E represent that the affected transmission system must refund to the generator the entire amount of the system upgrades even if the generator has not contracted for transmission service.⁹

KU/LG&E is reasonably assured that FERC will attempt to enforce the provisions of FERC Order 2003 upon KU/LG&E with respect to its future Interconnect Agreement with Thoroughbred. KU/LG&E request the Board to condition any approval of the Thoroughbred Facility upon KU/LG&E's receipt of an Order from FERC waiving the Order 2003 crediting rules or otherwise permitting Thoroughbred to assign back to KU any credits required under FERC Order 2003.

Big Rivers' Response

Big Rivers is a non-public utility under the Federal Power Act and as such is not subject to FERC's jurisdiction. In its data responses, Big Rivers states that the provisions of FERC Order 2003 do not apply to it. It also suggests that Thoroughbred is responsible for all "directly-assignable costs" incurred to interconnect its generation facility with the Big Rivers system. Thoroughbred has no rights to credits for these

⁸ KU/LG&E Post Hearing Data Request at 3-4.

⁹ Id. at 4.

facilities under FERC rules.¹⁰ However, Thoroughbred has indicated in its November 17, 2003 response that it "expects to receive transmission credits for the payment of network upgrades consistent with the FERC rules." Thoroughbred goes on to say that it expects the treatment described above.

Big Rivers identifies three options available with respect to the costs of network upgrades. The first option is for Thoroughbred to pay for the upgrades up front; Big Rivers rolls the costs of the upgrades into its transmission rate base; Thoroughbred pays the new transmission rates to Big Rivers and receives transmission credits and a refund of the unamortized amount after five years. This is the same treatment required under FERC's rules for a "public utility." According to Big Rivers, this option will not work since any cash payment required at the end of five years is unrecoverable from its ratepayers and it has no other source from which to make the cash refund.¹¹

The second option differs from the first only in that Thoroughbred receives no transmission credits and is due no refund at the end of five years. This is the option Big Rivers requests the Board consider as a condition to impose on Thoroughbred if the certificate is granted. The third option involves Thoroughbred and Big Rivers negotiating an Interconnect Agreement in the future that contains elements of the first and second options. That Interconnect Agreement would be subject to approval of the PSC and would have to be consistent with the provisions of KRS 278.212(2).

¹⁰ Big Rivers Post Hearing Data Request at 5.

¹¹ Big Rivers' Brief at 11.

Board Discussion of the Concerns of KU/LG&E and
Big Rivers Pertaining to Cost Recovery

We agree with KU/LG&E that permitting Thoroughbred to recoup its investment through the use of transmission credits where no transmission service is provided unfairly penalizes KU/LG&E retail customers and clearly violates Kentucky law. Assigning cost liability to the cost-causer is fundamental in utility regulation. Preventing the imposition of costs on captive ratepayers unless a corresponding benefit is received is fair and just in this instance. To rule otherwise would be to acquiesce in a compensatory scheme that is contrary to Kentucky law and which would have adverse economic impact on Kentucky by raising retail electric rates.

Although Thoroughbred has expressed its willingness at this juncture to assume the costs necessary to upgrade the electrical grid in conformity with state law, Interconnect Agreements and other associated contracts and agreements will be filed at FERC. We are concerned that FERC will ignore the interests of the Kentucky ratepayers and the Board's attempt to fashion remedies fair to all concerned and in accordance with state law.¹² We are also concerned that Thoroughbred, when faced with the prospect of obtaining an Order from FERC that is financially advantageous, will have little, if any, incentive to argue convincingly that any promises made to this Board should be honored.

Therefore, as a condition of granting a construction certificate, we will require that Thoroughbred obtain an Order from FERC approving Thoroughbred's assumption of the

¹² We have no reason to believe otherwise. See Midwest Independent System Operator, Inc., Opinion No. 453, 97 FERC § 61,033 (issued Oct. 11, 2001) in FERC dockets ER98-1438, et al.

costs of network upgrades and waiving any entitlement to interest and a cash refund, while its entitlement to transmission credits will extend indefinitely beyond the five-year term. Absent an Order from FERC unequivocally stating its approval of the agreement expressed by Thoroughbred to waive its rights under FERC's current policy, the certificate granted herein is void and Thoroughbred's request to construct is denied.

With respect to the concerns of Big Rivers, we agree that its second option eliminates much of our concern regarding ratepayer subsidization with respect to the crediting mechanism in FERC's Order 2003. Accordingly, Thoroughbred and Big Rivers are put on notice that any agreement negotiated between them regarding transmission interconnect issues shall comply in all respects with KRS 278.212(2). Thoroughbred shall hold Big Rivers, KU and LG&E harmless for costs of any and all interconnection and network upgrade costs. Kentucky ratepayers may not be required to subsidize Thoroughbred's investment contrary to the provisions of KRS 278.212(2) and contrary to this Board's mandate to ensure economically favorable results when reviewing an application to construct a merchant power plant. Moreover, Thoroughbred shall agree to pay its fair allocated share of operating and maintenance costs of the transmission system. Failure to comply in all respects with this condition shall render the certificate granted herein void.

Economic Impact: Depletion of Emissions Allowances on the Affected Region

KRS 278.710(1)(c) requires the Board to consider the economic impact that the proposed facility will have on the affected region and the state. Big Rivers has alleged that Thoroughbred presented only the favorable economic consequences of the project to the Board. Those favorable consequences, however, are considerable.

Thoroughbred submitted with its application a report prepared by its economic consultant KPMG LLC ("KPMG").¹³ In that report, KPMG examined the economic impact of the project over a 17-county region referred to as the "Thoroughbred Community."¹⁴

The project, it is estimated, will create an average of \$98 million in new spending on an annual basis.¹⁵ Construction of the plant, scheduled to occur over a four-and-one-half-year period, will create an average of 1,500 jobs, with a maximum peak of 2,900.¹⁶ Approximately 450 workers will be employed full-time once the plant is operational. KPMG estimates that of the 450 full-time workers, approximately 402 can be expected to be residents of the Commonwealth.¹⁷

Approximately \$3.345 billion in cumulative new spending can be expected to occur over the construction and operating life of the project.¹⁸ Once the plant is operational, it is expected that \$11 million will be spent on an annual basis for locally provided goods and services.¹⁹ Coincidentally, the average operating payroll is estimated to be \$11 million annually, and \$4 million of that income will go to employees

¹³ Thoroughbred Application, Section 6.

¹⁴ The counties are: Butler, Caldwell, Christian, Crittenden, Daviess, Hancock, Henderson, Hopkins, Logan, Lyon, McClean, Muhlenberg, Ohio, Todd, Trigg, Union and Webster.

¹⁵ KPMG Report at 4.

¹⁶ Thoroughbred Application, Section 6.

¹⁷ KPMG at 4.

¹⁸ Thoroughbred Application, Section 6.

¹⁹ KPMG Report at 10.

residing in Muhlenberg County.²⁰ KPMG estimates that for every dollar spent for construction and operation, 54 cents in additional spending will be generated in the Commonwealth; 74 cents of additional income will be generated in the Commonwealth for every dollar paid in wages; and 1.7 additional jobs will be created in the Commonwealth for each worker hired.²¹

Big Rivers and Intervenor Gary Watrous raised significant issues related to the unfavorable economic consequences occurring as a result of the generation facility's emissions and discharges. Specifically, Big Rivers argues that it, and the retail ratepayers served by its three distribution cooperatives, will suffer economic detriment as a result of the Thoroughbred plant's consumption of virtually all of the available air resources in the region.²² Because the Facility will be located in a Class I area, few emissions are permitted; and Thoroughbred's emissions modeling was done to give itself maximum flexibility to emit without exceeding the limits of the Clean Air Act.²³ Thus, the plant is projected to consume all available emissions allowances (particularly as the exaggerated level of emissions used in the modeling will have to be computed into any "new source" modeling required for a permit until two years after Thoroughbred is actually in operation – possibly a decade from now). Other economic development projects that will be "new sources" of emissions will be foreclosed or will be forced to expend huge amounts to mitigate emissions. This may discourage economic growth in

²⁰ Id.

²¹ Id. at 12.

²² Prefiled Direct Testimony of Mick Durham at 6-8.

²³ Id. at 7-10.

the region as EPA-related expenses increase. Moreover, Big Rivers asserts that it might have to expend a great deal of money to bring emissions from its Wilson I generating plant under control as a result of the Thoroughbred plant. It also faces greatly increased expense if it wishes to go ahead with its own project to build a second generator (Wilson II). This will create adverse economic impacts upon captive ratepayers served by Big Rivers' member cooperatives.

These issues raise the very real possibility of potentially severe economic impacts to the region and must be considered when weighing whether Thoroughbred should receive a construction certificate. However, we note that, other than Big Rivers, no one from the region intervened in opposition to the Facility. When weighed against the potential for an economic boon to the local economy, we conclude that the Facility is more likely to aid the region economically than to harm it. This is particularly true since we cannot say that the potential for economic harm in the area as a result of Thoroughbred's consumption of Class I increment is a certainty. On the contrary, the evidence presented is contingent and speculative. We are presented with no concrete evidence that new sources plan to locate in the affected region in the near future. Big Rivers' future plans for Wilson II are tentative at best. If Wilson II is built before Thoroughbred has been in operation for two years, Big Rivers could certainly feel the effect of the unavailability of additional Class I increment. However, weighed against the evidence of a favorable impact upon the local economy, and the overwhelming local support demonstrated at the hearings, we find sufficient evidence in the record on this issue to support granting the certificate.

EXHIBIT 4

13 February 2001

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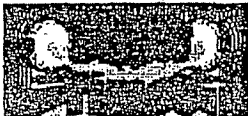
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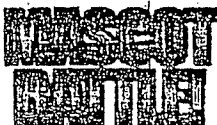
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Peabody announces coal plant plans

Construction will bring 1,000 jobs

13 February 2001

By David Blackburn
Messenger-Inquirer

POWDERLY -- In a building conceived as a place to retrain people for careers outside the coal mines, Gov. Paul Patton and other dignitaries Monday celebrated the announcement of a coal-fired power plant that will create more than 1,000 jobs.

"Welcome to Kentucky again," Patton told representatives of the project's developer, the Peabody Group, at a news conference in the new Career Advancement Center of Muhlenberg County.



Central City Mayor Hugh Sweatt speaks to an overflow crowd Monday at the Career Advancement Center of Muhlenberg County during a formal announcement of a 1,500-megawatt generating plant being built in the county by Peabody Group. The Thoroughbred Energy Campus will include an underground coal mine on 4,500 acres controlled by Peabody near Central City. The mine will produce 6 million tons per year. Listening to Sweatt's comments are Gov. Paul

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Patton, rear, U.S. Sen. Mitch McConnell, second from right, and U.S. Rep. Ed Whitfield. Photo by Robert Bruck, M-I

"We kept the light on for you," Central City Mayor Hugh Sweatt Jr. said before an estimated crowd of 400 local, state and federal representatives, media members and onlookers.

The \$1.5 billion Thoroughbred Energy Campus will use about 6 million tons of high-sulfur coal annually from an underground mine that will be built on the former Gibraltar Coal Co. land by the Green River. Plans for the project were first revealed by the Messenger-Inquirer on Feb. 4.

Accompanying the mine will be a 1,500-megawatt power plant. Its energy will be sold wholesale on the national grid.

"With this announcement, we hope we will advance a lot of careers in Muhlenberg County," Judge-Executive Rodney Kirtley said.

Patton added, "I have long appreciated what it (coal) means to our commonwealth and what it means to our people."

Peabody initially will assume responsibility for getting permits until it finds a partner that will be responsible for the construction and operation of the plant, as well as marketing the power, said Roger D. Walcott, Peabody's executive vice president.

The decision on a partner will not be announced for another one to two months, Walcott said, adding that Peabody is in negotiations with several companies. But he hopes a decision is made soon.

"We'd like the partner involved in a number of the key decisions around the plant," Walcott said after the half-hour news conference.

One of those decisions probably will be whether the complex will employ union or nonunion workers, said Beth Sutton, a manager with Peabody's public affairs department.

The plant is expected to create 1,000 jobs with an annual direct economic benefit of more than \$75 million during the estimated four-year construction phase, Walcott said.

The plant and mine, once operating, will create 500 jobs and an additional \$80 million benefit in wages and taxes, Walcott said. The plant will generate enough electricity to power 1.5 million homes.

Wayne Brown of Greenville, a welder for 13 years at Peabody's River Queen Surface Mine until being laid off in 1987, welcomed the news, but he was unsure afterward how or if it would benefit him.

Brown is on Peabody's panel, a list of laid-off miners from which jobs are filled according to seniority. But he wanted to know if panel members will be offered a job in the plant's construction or as a permanent employee once it is built.

"We hope we'll see several miners go back to work," said Steve Earle of Greenville, the political action director and a lobbyist for the United Mine Workers of America in Kentucky and Tennessee. "I hope this is a business venture we can all prosper from."

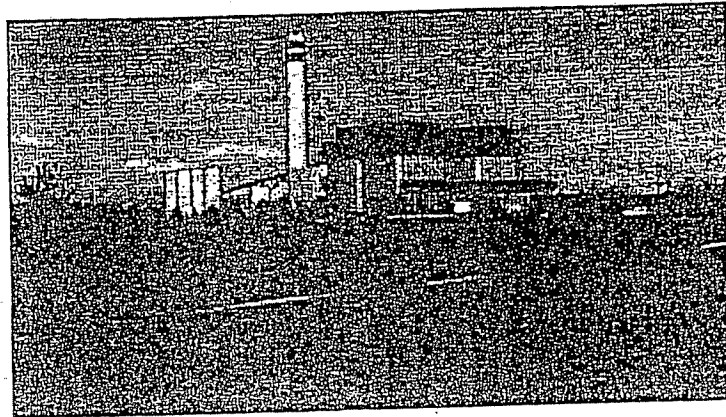
Kenny Allen, Peabody's Midwest operations manager and chairman of the Kentucky Coal Association, said miners will not be hired until late 2003 or early 2004.

"That's best case," he said. "Permitting will dictate when we start things."

Bobby Allen Jr. of Drakesboro, a member of the AFL-CIO's carpenter's Local 549 in Owensboro, was curious and optimistic about the work force.

"Quite a few of them (construction jobs at the plant) will be carpenters, I'd say," said Allen,

The announcement "is outstanding," Allen added. "Any time that a union carpenter can have an opportunity to work in his home state and his hometown, it's a big benefit."



The Peabody Group's Thoroughbred Energy Campus near Central City is shown in this artist's conception.

Another benefit of the plant is that emissions will be below state and federal standards, Walcott said.

The new power plant will use the latest technology to remove an estimated 97 percent of the sulfur dioxide, 75 percent of the nitrous oxide and 99.9 percent of particulates caused by coal burning, Walcott said.

"We expect it to be the cleanest coal plant east of the Mississippi River," he said.

Several speakers Monday said environmental legislation was partly to blame for a slump in the coal industry for the last 20 years.

Kenny Allen, no relation to Bobby Allen Jr., said about 2,000 miners annually produced 30 million tons of coal in Muhlenberg and Ohio counties during the peak years in the early 1980s. Now, only 500 or so miners produce a million tons per year, he said.

The eight years under former President Clinton "have not been . . . friendly to the use of coal," said U.S. Rep. Ed Whitfield, R-Hopkinsville.

Whitfield called for a national energy policy, adding that coal-based generation produces 55 percent of the electricity in the United States.

"We cannot meet the demands of the American people or of industry . . . without the use of coal," he said.

"We can produce energy cleanly," said U.S. Sen. Mitch McConnell, R-Louisville, who decried a recent lack of research into clean coal-burning.

The arrival of a more business-friendly administration and the energy shortages in California have produced changes in favor of the coal industry, McConnell said.

"There is a new attitude in Washington," he said. "We're going to dig more coal, and we're going to burn more coal in America, and we're going to begin right here in Muhlenberg County."

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- Concerns raised about Peabody project

specifically to effects on hiring and such, because that would be premature at this point."

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Yonts said he has written Peabody and Gov. Paul Patton, who attended the February 2001 announcement, about his concerns.

"This (the plant project) was presented as a salvation economically for the people in Muhlenberg County and in this region," Yonts said, citing Muhlenberg's repeatedly high unemployment.

Gary Osborne, president of the International Brotherhood of Electrical Workers Local 1701 in Owensboro, also has written to Patton and Peabody.

In a March 29 letter to them and state legislators, Osborne based his fear on an unconfirmed report that nearly all of the project work would be self-performed by Zachry.

"Our support for this project hinged on the much-needed jobs for the members of the Kentucky Building and Trades craftsmen," Osborne wrote.

He said 700 qualified members are in Muhlenberg County and more than 10,000 are in a nine-county area represented by the AFL-CIO's Owensboro Area Buildings and Construction Trades Council.

"Our concern is the vast amount of out-of-state construction workers that would be brought into the area," Osborne said Friday during a telephone interview. "Zachry will bring in a good many of their folks."

Exactly how many that will be is unknown.

No contractor is chosen yet, Peabody officials said.

"The selection process has not been finalized as of yet," Svec said. The decision should be made "sometime within the next several months," he said.

Svec said early estimates indicate nearly 2,500 jobs will be created during a peak construction.

Vicky Waddy, Zachry's director of public relations, estimated that more than 2,000 of them would be from the area "if we get applications from qualified people."

Waddy said the company would bring along its own managers and "give(s) preference to people who have previously worked for

Zachry," then commit to hiring -- and purchasing -- locally.

As an open shop, Zachry usually sets up an employment center near the construction site, Waddy said. Applicants are screened, tested -- and not asked about their union affiliations.

"We just hire people who are qualified to do the work that we need," Waddy said.

Like Svec, Waddy said Zachry Construction has not been chosen as the project contractor.

But Zachry is part of a consortium doing preliminary work -- such as estimates of the materials and number of workers needed for the project -- for Peabody that is due by the end of the year, Waddy said.

Peabody will use the figures to form formal construction contracts, she said.

Because Zachry is handling that chore, Waddy said, "that's an indication to us that Peabody is considering us to do the construction.

"It's kind of difficult for one group to do the planning and another group to have to come in and have to pick up those plans and do the construction."

Svec said he could not comment on Zachry's status. He also declined to comment on a construction labor survey done last summer concerning the Thoroughbred plant.

The survey looked at labor experience, the historical labor trends, current and predicted labor availability shortage, and the project's size and complexity.

The survey yielded a July 5 suggestion to Peabody that a project labor agreement be established through an AFL-CIO building and construction trades department because of the demand for so many skilled craft workers.

A project labor agreement allows a company to remain an open shop, but, for just one project, all the laborers would be referred by unions, said Osborne.

Osborne provided the Messenger-Inquirer with a copy of the recommendation, which he said he obtained through the National Building and Construction Trades Department in Washington, D.C.


"I can't speak specifically to any one recommendation that any

EXHIBIT 6

Mar 24, 2005 11:41AM
 MAR-24-2005 09:16 FROM: 16EW 1701
 Criticism of Peabody plant premature

2706844255

TO: 1270737E No. 2530 P. 65
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Criticism of Peabody plant premature

Company should soon explain its construction plan

12 April 2002

Messenger-Inquirer

Barely two months ago, a standing-room-only crowd of about 200 Muhlenberg County residents turned a public hearing into a rousing endorsement for a proposed coal-fired power plant.

Speaker after speaker praised the impact the 1,500-megawatt-capacity merchant power plant — expected to be built on the Green River near Central City — would have on the community.

The mood, however, seems to have quickly changed, at least among union representatives and some elected officials. Concerns have been raised that Peabody plans to hire a Texas company — one that is nonunion — to oversee construction of the plant and that the company will bring its own laborers to do much of the work.

"If that's the direction this is going, it's a slap in the face to Muhlenberg County and the people of this area," said Rep. Brent Yonts, a Greenville Democrat.

The people of Muhlenberg County have every right to expect Peabody to stick to the promises its made. As the plant-siting process has played out, Peabody has claimed a local economic impact of \$75 million annually and \$3.3 billion in new spending during the life of the project.

In addition, the company has said that four years of construction would create 2,500 temporary jobs and 450 permanent employment positions once the plant opens.

Criticism of Peabody plant premature

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4/12/2002

EXHIBIT 6

Mar 24, 2005 11:42AM
 MAR-24-2005 09:17 FROM: IBCW 1701

2706844255

TO: 12707372... No. 2630 P. 77
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Criticism of Peabody plant premature

The stakes are certainly high, but those who are now criticizing Peabody seem premature in their judgment. Union representatives — as well as politicians — are rightfully uneasy about how the jobs will be filled, considering more than 10,000 AFL-CIO members live in a local nine-county area.

But they are basing their complaints on a rumor. Because Zachry Construction is part of a consortium doing preliminary work, the assumption is the company will also be chosen for construction. Peabody, however, has said that no such decision will be made for several months.

A representative from Zachry told Messenger-Inquirer reporter David Blackburn that if the company were to be selected, an estimated 2,000 jobs would be filled from within the area.

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

Peabody has touted the community support this project has received, and that has no doubt made the permit process easier. Had 200 people spoken out against, rather than in favor of, the plant, the process likely would not be nearly as far along. That support is directly tied to the perceived economic benefits.

For Peabody to maintain the trust and support of Muhlenberg County it needs to detail — and soon — how the construction process will play out and who will do the work. That way residents can decide for themselves if this is truly a project that they want to support.

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4/12/2002

EXHIBIT 7

Mar 24, 2005 11:44AM
MAR-24-2005 05:00 FROM:IDCW 1701

2706844255

TO: 1270737E No. 2630 P. 134

Muhlenberg to urge Peabody to use local workers

10 May 2002

By **David Blackburn** <<mailto:dblackburn@messenger-inquirer.com>>

Messenger-Inquirer

GREENVILLE -- Magistrates agreed Thursday to use a Penrod woman's letter as a guideline for a resolution asking Peabody Energy to use local tradespeople to build a proposed coal-fired power plant.

But the court stopped short of agreeing to incorporate all of Dora Mercer's letter, which claims the jobs created by the Thoroughbred Energy project near Central City belong to local workers.

Peabody does not need "to bring in outsiders to fill the jobs that rightfully belong to our Muhlenberg County tradesmen and women," the letter said.

Mercer read the letter during the court's biweekly meeting in the Muhlenberg County Courthouse.

She said it comes amid speculation that Peabody has talked to Texas-based Zachry Construction Corp., which uses union and nonunion laborers, and that the firm would use mostly its own workers to build the proposed plant near Central City.

Peabody has downplayed those concerns and stressed that no general contractor has been selected. Peabody officials have said they expect the plant construction and operation to have "significant local benefits."

Mercer said she represented 700 workers in the county who are members of the Boilermakers Local 40 in Elizabethtown. She said her husband, brother and son belong or once belonged to the union.

The letter's wording, and the insistence that only Muhlenberg Countians should be hired, might keep the plant from being built, taking away any hopes of jobs, Magistrate Malcolm West said.

"I think it's a little stout," said West, a self-proclaimed union supporter. "We need to get the plant built."

Mercer insisted a stout message is needed.

"We've got people hurting for jobs," she said. "The union can't do nothing once it's built. I'm asking you all to keep that from happening. This is getting the message across to back off or we'll make 'em back off."

West responded, "I don't want to draw a line in the sand when there hasn't even been a shovel of dirt turned."

County Judge-Executive Rodney Kirtley said he is trying to arrange a meeting with H.B. Zachry through Peabody to find out if, or how many, trades people will be used to build the plant.

Kirtley said he has asked local union representatives to be prepared to be competitive when they

MAR-24-2005 09:20 FROM: JEW 1701

2706844255

TO: 12707370 No. 2630 P. 145

negotiate.

The court is slated to review the resolution request May 23.

In other matters, the court voted to close part of the Jagoe Cemetery Road near Central City for up to seven years so it can be used by a small mining operation nearby.

The action came at the request of attorney Harry Mathison, who represents Schoate Mining Co. in Henderson. Schoate recently opened an operation just off the Kentucky 189 Bypass.

About a mile of the road will be closed beyond the Jagoe Cemetery in the southeastern corner of the intersection of the bypass and the Wendell H. Ford Western Kentucky Parkway. Access to the Jagoe Cemetery will not be affected, Kirtley said.

Also, the court received a request of \$176,500 for the coming fiscal year from the Muhlenberg County Fire and Rescue Association.

Association president Ricky King, the Central City fire chief, told how the money would be used.

The Greenville, Central City, Bremen, Drakesboro, Graham and Beechmont departments would receive \$25,000 each. Dunmore would get \$15,500, and Nelson Creek would get \$11,000.

EXHIBIT 8

Mar. 24. 2005 11:42AM
MAR-24-2005 09:18 FROM: IBEW 1701
Residents at hearing demand union labor

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Residents at hearing demand union labor

Peabody official says decision on workers is premature

26 July 2002

By David Blackburn
Messenger-Inquirer

GREENVILLE — A public hearing conducted Thursday night was supposed to talk about an air quality permit at the coal-fired power plant that Peabody Energy wants to build near Central City.

Instead, most comments included requests — and some demands — for assurances from Peabody that it would use union labor to build and staff the Thoroughbred Energy plant and the nearby underground mine.

Most of the 300 people that packed the Muhlenberg North High School cafeteria wore union T-shirts or sported "Local Plant, Local Jobs" stickers to the state Division for Air Quality hearing.

But it was one of the first speakers — Roger Walcott, Peabody's executive vice president for corporate development — who veered from the topic in praising the plant that is expected to create thousands of jobs.

"We will employ the best-qualified talent we can find," Walcott said. "We anticipate the vast majority of that will come from the region."

Although it is being discussed, the labor decision is premature, he said.

"It's too early in the process for us to make specific decisions about how we will divide up the pie that may never be created," Walcott said.

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EXHIBIT 8

Mar 24 2005 11:43AM
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Residents at hearing demand union labor

2706844255

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Brackett Mine results

His comments did little to appease many in the crowd, especially after months of talk that Peabody plans to use a nonunion Texas construction contractor to build the plant and a nonunion Peabody arm to mine the coal.

Delbert Lee Richie, a member of the United Mine Workers of America, was among several speakers who said local union workers made Peabody the world's top coal producer.

"Do not abandon the people who made it happen," said Richie, noting that he is asking for future generations of Muhlenberg Countians "We will do an exceptional job."

Other speakers were more insistent.

Steve Earle, a UMW political action director and lobbyist, said he and other union members attended the hearing at the urging of Peabody to show support for the project.

"Loyalty is not a one-way street," he said before challenging Walcott and other Peabody officials to publicly agree to use union laborers.

"If they want us to partner up with them, I think it's very appropriate for them to come up, and let's partner up right now," Earle said to loud applause.

Beaver Dam Mayor Bob Cox, who said all but two years of his 35-year mining career has been spent in Muhlenberg County, thought it "a damned shame" that the use of nonunion labor was even being considered.

He also urged Peabody and the unions to work out the issue.

"Try to do the right thing for the right reason," Cox said.

Unlike a February public hearing on the old draft air permit, some spoke out against the project.

John Blair, president of Evansville-based Valley Watch Inc., suggested that Peabody bought favors and permit approval through state campaign contributions.

He also listed potential environmental problems, such as the presence of mercury and other pollutants from coal-fired plants.

"We sit in the largest concentration of coal-fired power plants in the world," Blair said of the mercury run-off and the potential health effects. "We need to stop it now."

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MAR-24-2005 09:15 FROM: JEW 1701

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TO: 1270737 No. 2630 P. 10.1

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Residents at hearing demand union labor

In an odd twist, former union members spoke out against the project because of possible environmental problems.

Alvin Dukes, a retired Boilermaker, said Peabody would store large amounts of anhydrous ammonia at the plant.

A spill could be unhealthy, especially if the tanks that hold it fail because they were made by nonunion welders, Dukes said, drawing applause and laughter.

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7/26/2002

EXHIBIT 9

MITCH McCONNELL
Kentucky

381-A RUSSELL SENATE OFFICE BUILDING
WASHINGTON, DC 20510-1702
(202) 224-2541

United States Senate

July 15, 2002

Mr. Roger B. Walcott, Jr.
Peabody Group
701 Market Street, Suite 700
Saint Louis, Missouri 63101-1826

Dear Mr. Walcott:

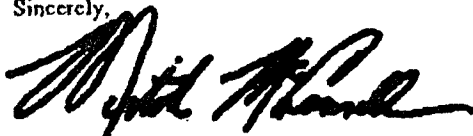
I write in support of Peabody Energy's plans to construct a new, 1500-megawatt power plant at the Thoroughbred Energy Campus in Central City, Kentucky. I am fully confident that this development raises tremendous new opportunities for the residents of Muhlenberg County, and I will continue working closely with industry officials and local leaders to make this new enterprise a success.

Muhlenberg County and its people have a long and proud association with the energy industry, and it is fitting that Peabody Energy chose the Thoroughbred Energy Campus as the site for its new plant. The unfortunate reality is that unemployment levels run high in the region, and many skilled, capable, and energetic men and women have been unable to find work. In my tenure as a United States Senator, I have been a strong and persistent advocate for clean coal technology, and in recent years I was proud to actively support efforts to move this project from concept to reality. In the years ahead, the Muhlenberg County economy will benefit from hundreds of new, well-paying jobs: approximately 2,500 in the construction process, and 500 permanent positions within the new plant.

It has recently come to my attention, however, that one of the lead contractors, the H.B. Zachry Construction Corporation of San Antonio, Texas, has announced its intention to hire its first workers from a pool of former employees – the vast majority of whom are Texas residents. Contrary to all common sense, the proposed hiring rules would place Kentucky workers at a significant disadvantage in competing for these new jobs located in Kentucky, and do nothing to relieve the already too-high unemployment rates. I urge you in the strongest terms to ensure that local residents receive top priority as job applicants for all positions, both within the new Peabody Energy plant and through construction and operation contractors. I never would have offered my support for this project had I known that job applicants from Kentucky would be given second-class status. Kentucky's working men and women are second to none in the quality of their work, and I am confident that Peabody Energy and its contracted affiliates will not be disappointed with those Kentuckians hired to build and operate the Thoroughbred Energy Campus plant.

Thank you for your time and attention to this important matter. If I can be of assistance to you in the future, please do not hesitate to contact me.

Sincerely,



MITCH McCONNELL
UNITED STATES SENATOR

MM/jab

cc: Mr. Larry Cantwell, H B Zachry Construction Corporation
Mr Gary Osborne

Federal Building
281 F. Hall Street
Room 102
Bowling Green, KY 42101
(270) 781-1573

1895 Lusk Highway
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EXHIBIT 9

EXHIBIT 10

The Trimble Hammer

Page 622, No. 48

Wednesday, March 2, 2005, Bedford, N.H.

50 cents 14 pages

Meeting seeks local labor for LG&E project

By Darren Pike
Editor

In a town meeting last week the Greater Louisville Building and Construction Council accused LG&E of not wanting to hire local workers for the proposed construction of a new generating unit at the Trimble County Generating Station.

The proposed project, currently under review, would install a new state of the art generator at

the plant at a cost of \$1.2 billion. The new generating unit would allow LG&E to meet the future needs of its customers while adding

the town meeting and about 300 area residents were in attendance. Joseph B. Wise, III, spoke on behalf of the council and said that LG&E has made a business decision to do away with their construction unit and that they now contract, or out-source, their projects. He said this leaves local workers in the lurch.

Wise said to ensure that local jobs are given to local

"... we're not going to dictate to people who are qualified to build that unit what their source of labor should be."

— Tom Crutcher
Manager, Trimble Co. Generating Plant

to hire local workers."

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

there is some intervention local jobs for local workers will become a

thing of the past.

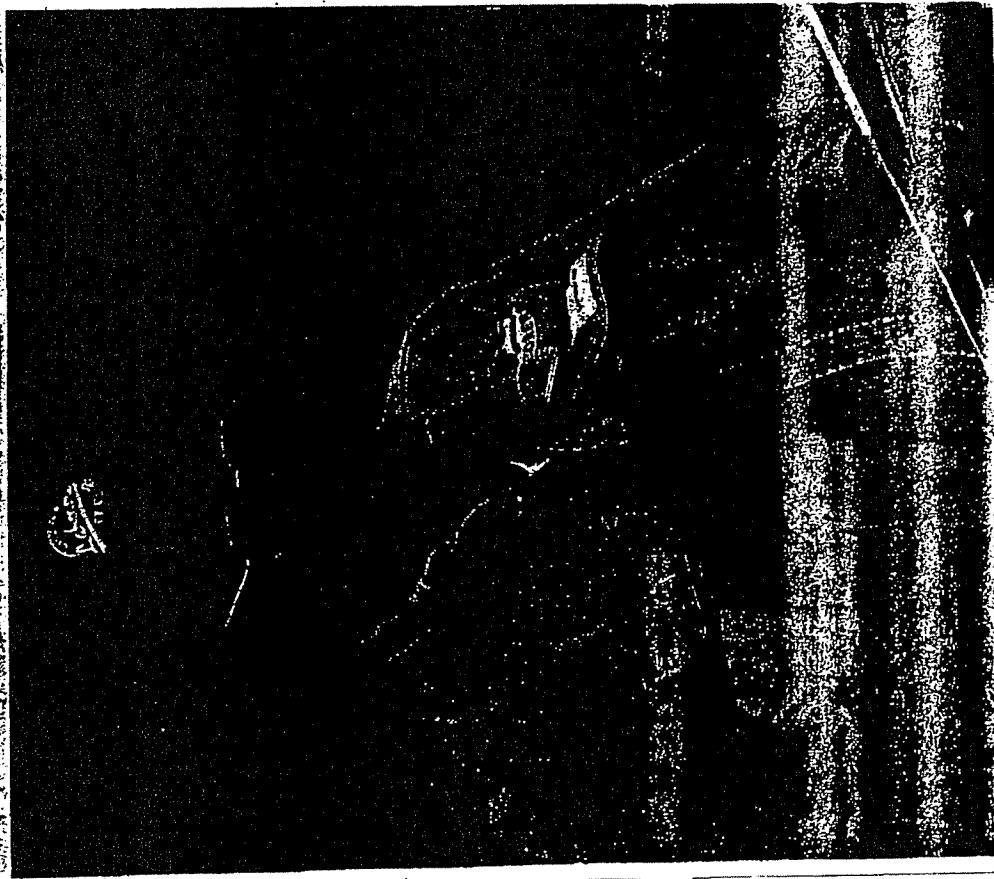
Wise said he has been negotiating with LG&E for about a year and a half on the Trimble project trying to secure jobs for local workers. He said LG&E has told him that they empathize with his position and that they want local workers to be hired, but once the contract is signed there is really nothing they can do to ensure that local workers are hired.

workers a project labor agreement should be signed between LG&E and the construction company.

"I have been talking to LG&E and they just don't want to do it," Wise said. "We tried to go through the same process four years ago with the scrubbers. We didn't have to worry about local jobs because we were going to have it in our contract. When the contract was awarded to the projects there was nothing in writing to require them

ing in writing to require them

See LG&E, Page 6



LG&E

(Continued from Page 1)

"When I talk about local jobs for local workers what I'm talking about is what the Kentucky Economic Cabinet defines as a local job market. A local job market is an area where a worker can drive 60 minutes and get to that particular project," Wise said. "Our local job market comes from Cincinnati down to the Louisville area through southern Indiana and down to the Lexington area. From the National Building Trades Department we have been informed that in this particular area there are 18,000 skilled construction workers that are capable of doing this work."

Wise said that according to the building trades the LG&E project will take 600 workers up to three years to complete. He said the average wage for a construction worker is \$925 a week. "If we base on these figures the state would lose approximately \$6 million in taxes from this project alone unless local workers are used. He said if there is no project labor agreement prior to construction then there will be no assurances that local labor will be used for the Trimble project."

Tom Crutcher, manager of LG&E's Trimble County Generating Station, also spoke at the town meeting and said it is too early to begin serious consideration of who will construct the project.

"First of all, LG&E has not received any of the required approvals to go forward with the TC2 project," Crutcher said. "We will not identify a contractor and execute a construction agreement without these approvals. Required approvals include the air permit and the generation and transmission certificates of

convenience and necessity. Plainly stated, we are on the very front end of this project. I would estimate that we are at least 10 to 12 months away from going forward."

Crutcher said he doesn't expect a response from the applications for approval until the end of the year. In the meantime, he said he has sent out proposals to five prospective construction companies inviting them to bid on the project. Crutcher said this is being done at the same time the applications are being reviewed to keep the project moving in a timely fashion. He said the bids are not due back until the end of April and at that time the Trimble plant will take 12 weeks to review the bids. Crutcher said the bids will then be narrowed about mid-May and that six weeks will be set aside to review bids that made the July cut. By the end of the year Crutcher said a construction company will be selected to begin the project, but in the meantime, if any applications are turned down

Crutcher said LG&E has an obligation to their rate payers to build the most reliable, cost effective, and dependable plant possible. He said the Trimble County power plant is part of the community and that he wants as many local people involved as possible. However, he said he wants qualified workers on the job and that because of the size of the project and the technical expertise involved the winning construction company may have to go outside of the community to find qualified workers. When the plant was originally built most of the labor came from local workers and Crutcher said he hopes it will be the same with the proposed project.

Crutcher said that Wise has an agenda and that he only wants to make sure that union labor is used because his paycheck is affected by how many union workers are

needed. Crutcher said he really wants the same thing that Wise and the council wants, but said he has little control over who the construction companies hire. He said to enter into a project labor agreement could limit the ability of LG&E to build a quality power plant and may limit the number of qualified workers needed for any specific job. Crutcher said there will only be a small number of companies that will actually bid on the project. He said it will ultimately be up to them to negotiate whether union or non-union or a combination thereof is more cost effective for them.

In our request for proposals there is language that we gave consideration to local labor, Crutcher said. "The parts of this project that are non-union and union will be sorted out by the bidding process and we absolutely don't have any preconceived notions as to what that split will be. It is entirely up to our bidders to make a proposal to us that they feel is competi-

Crutcher said he plans on keeping the public informed about the project and its impact and said LG&E will host several public meetings before the project is complete. The first public meeting is tentatively scheduled for April, although no date has

been set. Crutcher said he is concentrating on getting approval for the project. He said at this point in time discussion is a bit like putting the cart before the horse.

"First of all, we don't have a construction project. We have a proposed project and we are cautiously optimistic that the project will move forward," Crutcher said. "We don't have permission from our rate board to build anything and we don't have approval to build anything from any regulating body that we report to, such as the PSC and Kentucky Division of Quality. So, I would advise people that we don't have a construction project, and until we do this is a good discussion and good issues to talk about, but really they are a bit premature. The second thing is we bear an obligation to the rate payer to build the most cost reliable generating unit that we can buy and we're not going to dictate to people who are qualified to build that unit what their

Crutcher said he plans on keeping the public informed about the project and its impact and said LG&E will host several public meetings before the project is complete. The first public meeting is tentatively scheduled for April, although no date has

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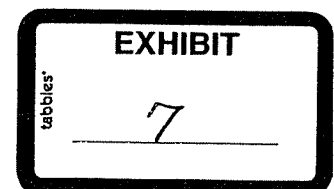
In the Matter of:

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

**ATTORNEY GENERAL'S OFFICE'S
MOTION IN SUPPORT OF
INTERVENOR IBEW'S AND TRADES COUNCIL'S
MOTION FOR RECONSIDERATION
AND MOTION TO COMPEL DISCOVERY REQUESTS**

Comes now the Attorney General's Office, by and through his Office of Rate Intervention, and files this Motion In Support of Intervenor IBEW's and Trades Council's ("IBEW") Motion for Reconsideration and Motion To Compel Discovery Requests. As grounds for his motion, the Attorney General states as follows:

First and foremost, the Attorney General does not believe, at this time, that a Certificate of Public Convenience and Necessity and a Site Compatibility Certificate for the expansion of the Trimble County Generation Station should be awarded to Louisville Gas & Electric Company and Kentucky Utilities Company. However, in the event that the Commission does, in fact, grant the certificate, the Attorney General suggests that consideration should be given to attempts to secure employment for Kentuckians in the construction of the particular facilities. While one of the primary missions, if not the main one, of the Attorney General, is to secure the lowest-cost utility rates for the citizens of the Commonwealth of Kentucky, other economic benefits should likewise be pursued. This is particularly true in this instance because the 25%



ownership of the out-of-state municipalities will be considered in companion cases brought under the merchant plant statutes with their consideration of the economic benefits presented under KRS 278.706(2)(j).

IBEW advances the position that it should be entitled to fair treatment in the hiring process for the facilities by prohibiting the companies from “engaging in contracting strategies that undermine Kentucky workers, and their unions, by allowing construction to be performed through the importation of out of state workers, employed at sub-standard wages and benefits.”¹ This request should be openly embraced as a matter of fairness for Kentucky’s workers because to do otherwise would create an unfair advantage for other states’ workers as well as to foster animosity toward, and damage to, the goodwill of the companies – companies which used to be “Kentucky” companies. Moreover, it is unequivocal that an economic benefit would arise if Kentuckians are gainfully employed by this project, again even assuming the project is necessary. It is unequivocal that money earned from employment will generate an economic benefit for the local community as well as the state. By way of a taxation consequence example, this means that for every \$1 returned to the people in a certain taxing jurisdiction, the economy in that jurisdiction will increase by \$2.00.² It is axiomatic that the comparison works in a similar manner in the case at hand in that for every dollar generated from employment, approximately two dollars are ultimately created within that jurisdiction.

In conclusion, the Attorney General does not suggest that the PSC can mandate the companies hire only Kentuckians for the construction of the requested facilities, assuming the certificate is required which the Attorney General does not concede. Rather, consideration for


¹ See IBEW’s *Motion for Reconsideration and Motion to Compel Discovery Responses* at pages 2 and 3.

² For reference, please see <http://www.cafrman.com/EconomicImpactAnalysis.htm> for an explanation of the Economic Output Multiplier as used by the Department of Commerce, Bureau of Economic Analysis.


fairness in the employment contracting process should be made as a result of the potential economic benefit. Nonetheless, any such benefit ultimately must be weighed against, and in light of, any increase borne by the ratepayers.

Respectfully submitted,

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ATTORNEY GENERAL OF KENTUCKY



ELIZABETH BLACKFORD



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CERTIFICATE OF SERVICE AND NOTICE OF FILING

I hereby give notice that this the 13th day of April, 2005, I have filed the original and ten copies of the foregoing Motion In Support of Intervenor IBEW's and Trades Council's Motion for Reconsideration and Motion To Compel Discovery Requests with the Kentucky Public Service Commission at 211 Sower Boulevard, Frankfort, Kentucky, 40601 and certify that this same day I have served the parties by mailing a true copy of same, postage prepaid, to those listed below.

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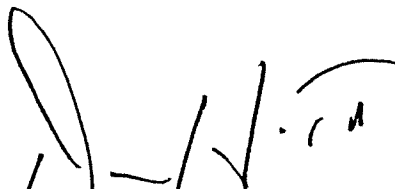
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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

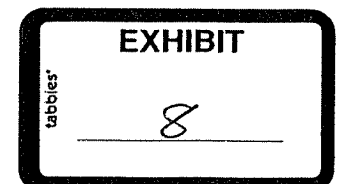
In the Matter of:

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

* * * * *

**RESPONSE OF LOUISVILLE GAS AND ELECTRIC
COMPANY AND KENTUCKY UTILITIES COMPANY TO
IBEW'S AND TRADES COUNCIL'S MOTIONS FOR
RECONSIDERATION AND TO COMPEL
DISCOVERY RESPONSES**

Louisville Gas and Electric Company and Kentucky Utilities Company (collectively, the "Companies") respectfully submit this Response to the Motions of Intervenor, International Brotherhood of Electrical Workers, Local 2100 ("IBEW") and the Greater Louisville Building and Construction Trades Council ("Trades Council") for Reconsideration [of the Order of March 4, 2005, herein] and to Compel Discovery Responses. As a procedural matter, the Motion for Reconsideration has been filed too late and should not be considered by the Commission. Substantively, the Commission acted within its authority when it issued the Order of March 4, 2005, herein and it should not accept the invitation of IBEW and the Trades Council to act beyond the scope of its authority by injecting extraneous issues into this case. Since the discovery requests seek information found not to be pertinent to this proceeding and which



finding the Commission should not disturb, the Motion to Compel Discovery Responses should also be denied.

First, the Motion for Reconsideration has been filed too late for Commission action. It was filed 33 days after the entry of the Order for which reconsideration is sought. There is no provision in the Commission's statutes or rules for a "motion for reconsideration," although they have been filed on several occasions. The closest statutory procedure to a motion for reconsideration is the motion for rehearing authorized by KRS 278.400. That statute calls for the filing of a motion for rehearing within 20 days after the service of the order at issue, plus three days for mailing. IBEW and the Trades Council missed this deadline by ten days. The Commission has found that a pleading styled "Request for Motion" was, in fact, a motion for rehearing pursuant to KRS 278.400 and denied it as untimely because it was filed more than 23 days after the date of the order at issue.¹ IBEW and the Trades Council also missed the deadline by which they could have appealed the March 4, 2005, order. KRS 278.410, which authorizes appeals, provides that they must be filed within thirty days after service of the order on appeal. Thus, IBEW and the Trades Council have filed their Motion for Reconsideration too late for it to be considered by the Commission.

Second, even if the Motion for Reconsideration had been timely filed, the Commission correctly delineated the scope of this proceeding in the Order of March 4, 2005, and reconsideration is unnecessary. The Order of March 4, 2005, herein grants the Motion of IBEW and the Trades Council for full intervenor status in this case, but further directs that "[this] case, however, is not the correct forum to raise" the labor force issues identified in the Motion to

¹ *In the Matter of: Petition of CTA Acoustics, Inc. To Retain Kentucky Utilities Company As Power Supplier*, 2003 WL 23471576, Case No. 2003-00226 (December 16, 2003)

Intervene.² The Commission went on to find that IBEW and the Trades Council “should limit the issues they address in this case to those issues properly before the Commission.”³ In the Motion for Reconsideration, IBEW and the Trades Council again request the Commission to include the labor force issues among those the Commission should consider in this case.

The efforts of IBEW and the Trades Council to expand the authority of the Commission to consider the labor force issues and to require certain employment practices by contractors on the construction project must fail. The statutes under which the Commission is proceeding simply do not authorize the Commission to go where IBEW and the Trades Council want it to go.

KRS 278.020(1) requires the Companies to obtain “a certificate that public convenience and necessity require the” construction before commencing same. It does not authorize the Commission to direct how that construction should proceed. Similarly, KRS 278.216, under which the Companies are seeking a site compatibility certificate, does not address the fashion or manner in which construction should proceed or how labor should be employed. The Supreme Court of Kentucky has held as follows:

The powers of the PSC are purely statutory and it has only such powers as are conferred expressly or by necessity or fair implication. *Croke v. Public Service Commission of Kentucky*, Ky. App., 573 S.W.2d 927 (1978). As a statutory agency of limited authority, the PSC cannot add to its enumerated powers. *South Central Bell Telephone Co. v. Utility Regulatory Commission*, Ky., 637 S.W.2d 649 (1982).⁴

The Commission would violate the precept of the *Boone County* case if it expanded its authority to the extent urged by IBEW and the Trades Council.

² Order of March 4, 2005, at 2.

³ *Id.* at 3.

⁴ *Boone County Water and Sewer District v. Public Service Commission*, Ky., 949 S.W.2d 588, 591 (1997) (reh. den. 1997).

IBEW and the Trades Council urge the Commission to include the labor force issues in this proceeding by reference to cases decided under two other statutes: KRS 278.706 and KRS 278.020(5). The first case was before the Kentucky State Board on Electric Generation and Transmission Siting (the “Siting Board”) and not this Commission. There the enabling legislation, KRS 278.706 explicitly requires an analysis of the economic impact of the proposed merchant power plant. Neither KRS 278.020(1) nor KRS 278.216 has any such requirement. The other cases cited by IBEW and the Trades Council were change of control proceedings decided under KRS 278.020(5). That statutory provision expressly gives the Commission the authority to “grant any application [for a change of control] under this subsection in whole or in part and with modification and upon terms and conditions as it deems necessary or appropriate.”⁵ The Commission is not given such authority by KRS 278.020(1) or KRS 278.216. To the contrary, the Commission is limited in KRS 278.020(1) to a determination of whether public convenience and necessity requires the proposed construction and is limited in KRS 278.216 to an assessment of site compatibility.

Efforts to expand the Commission’s statutory authority have uniformly been rejected both by the courts and this Commission. In 1946, the Court of Appeals held that the Commission did not have the authority to determine who should be entitled to bid on franchises under KRS 278.020(3), but only whether there is need and demand for the public service in question.⁶ In 1954, the Court of Appeals held that, under the version of KRS 278.020 then in effect, when considering approval of a sale of a utility, the Commission had the authority only to determine whether a proposed purchaser is ready, willing and able to provide adequate service and did not have the authority to determine whether public ownership is more beneficial than

⁵ KRS 278.020(5).

⁶ *Public Service Commission v. Blue Grass Natural Gas Co.*, 303 Ky. 310, 197 S.W.2d 765, 768 (1946).

private ownership or under whose ownership the lowest rates may be achieved.⁷ Recently, the Commission declined the invitation to expand its authority under one sentence of a statute by reference to another sentence of the statute. In *In the Matter of: Paddock at Eastpoint, LLC, Louis K. Klemenzen and St. Joseph Catholic Orphan Society v. Louisville Gas and Electric Company*,⁸ the Complainants sought to have a good faith requirement imposed on an applicant for a CPCN. The Commission responded as follows:

While the statute clearly imposes a good faith requirement on a certificate holder, it does not impose it on an applicant. The Commission does not have the authority to take a statutory requirement from one sentence and impose it by analogy on another. If such requirement is to be added to the statute, that authority rests solely with the General Assembly.⁹

When the Commission limited the scope of this proceeding in its Order of March 4, 2005, it acted within the scope of the authority conferred upon it expressly or by necessity or by fair implication. That is the limit of its authority. It, therefore, acted properly and reconsideration of that action is not warranted.

Since reconsideration of the Order of March 4, 2005, should be denied, the Motion to Compel Discovery Responses should also be denied because the discovery requests at issue there seek information that this Commission has ruled is beyond the scope of this proceeding.

⁷ *Public Service Commission v. Cities of Southgate, Ky.*, 268 S.W.2d 19, 21 (1954).

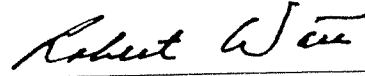
⁸ Case No. 2004-00293, Order of January 27, 2005.

⁹ *Id.* at 7.

For all of the foregoing reasons, the Companies respectfully submit that the Motions of IBEW and the Trades Council for Reconsideration and to Compel Discovery Responses should be denied.

Dated: April 14, 2005

Respectfully submitted,



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Counsel for Louisville Gas and Electric
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Petition for Confidential Protection was served on the following persons on the 14th day of April, 2005, U.S. mail, postage prepaid:

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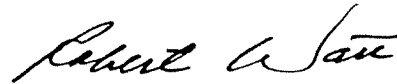
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Counsel for Louisville Gas and Electric
Company and Kentucky Utilities
Company

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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

O R D E R

Louisville Gas and Electric Company and Kentucky Utilities Company ("Applicants") filed a joint application for approval to construct a 750 MW super-critical pulverized coal-fired generating unit at their Trimble County Generating Station on December 17, 2004. On February 21, 2005, the International Brotherhood of Electrical Workers, Local 2100 and the Greater Louisville Building and Construction Trades Council ("Intervenors") moved for full intervention in this case. As part of that filing, Intervenors gave notice that they intended "to seek the Commission's Order that any construction contract secure the construction and related work to the economic benefit of the local area."

On March 4, 2005, in granting the motion to intervene, the Commission pointed out that:

EXHIBIT

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[T]his case is an application for a Certificate of Convenience and Necessity under KRS 278.020 and an application for a Site Compatibility Certificate under KRS 278.216. Neither of those sections raises rate case issues such as cost of labor. The Commission shares [Intervenors'] concern for local investment and the Commonwealth's business and employment wellbeing. This case, however, does not appear to be the correct forum to raise those issues. *** The Commission therefore finds that [Intervenors] must limit the issues they address in this case to those properly before the Commission.

On April 8, 2005, Intervenors filed a motion to reconsider that March 4, 2005 Order and a related motion to compel responses to certain discovery questions. On April 13, 2005, the Attorney General filed in support of Intervenors' motions. On April 14, 2005, the Applicants filed in opposition to Intervenors' motions.

Motions to reconsider Commission rulings are governed by KRS 278.400. The first part of that statute reads: "After a determination has been made by the commission in any hearing, any party to the proceedings may, within twenty (20) days after the service of the order, apply for a hearing with respect to any of the matters determined. Service of a commission order is complete three (3) days after the date the order is mailed." Hence, Intervenors' motion to reconsider is not timely.

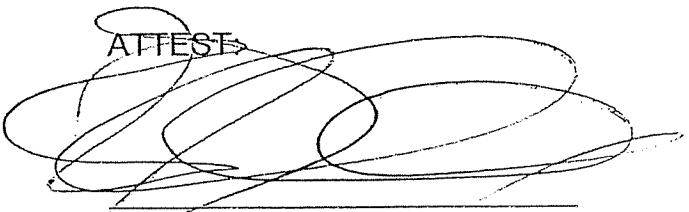
The Commission finds that the motion to reconsider should be denied. The accompanying motion to compel is dependent upon the Commission granting the motion to reconsider. The Commission will therefore not address the merits of the motion to compel and finds that it should also be denied.

IT IS THEREFORE ORDERED that Intervenors' motion to reconsider and motion to compel filed on April 8, 2005 are denied.

Done at Frankfort, Kentucky, this 19th day of April, 2005.

By the Commission

ATTEST



Executive Director

Case No. 2004-00507



Ernie Fletcher
Governor

LaJuana S. Wilcher, Secretary
Environmental and Public
Protection Cabinet

Christopher L. Lilly
Commissioner
Department of Public Protection

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Mark David Goss
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Louisville, KY 40202

April 19, 2005

RE: Case No. 2004-00507

We enclose one attested copy of the Commission's Order in the above case.

Sincerely,

Beth O'Donnell
Executive Director

BOD/sa
Enclosure

COMMONWEALTH OF KENTUCKY
BEFORE THE KENTUCKY PUBLIC SERVICE COMMISSION

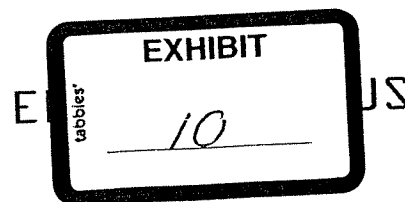
In the Matter of:

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

DIRECT TESTIMONY OF LARRY L. ROBERTS
STATE DIRECTOR
KENTUCKY STATE BUILDINGS
AND CONSTRUCTION TRADES COUNCIL

FILED: APRIL 22, 2005



Q. Please state your name, position and business address.

A. My name is Larry L. Roberts. I am State Director of the Kentucky State Building and Construction Trades Council. My business address is 5247 U.S. 127 N., Frankfort, KY 40601.

Q. What is the State Building and Construction Trades Council?

A. We are an organization of six area councils, representing a total of 72 local craft unions. The Trades Council represents various building and construction trade affiliates that include the following: Boilermakers; Bricklayers; Carpenters; Electrical Workers; Elevator Constructors; Glaziers; Insulators; Asbestos Workers; Iron Workers; Laborers; Operating Engineers; Pipefitters; Plumbers; Plasterers and Cement Masons; Sprinkler Fitters; Roofers; Sheet Metal Workers and Teamsters. The Trades Council collectively represents approximately 35,000 Kentucky workers. It is this group of workers that is the repository of collective skill, trade and technical knowledge that is utilized for major construction projects. The Trades Council has historically performed the major utility construction work in the area under the auspices of project labor agreements with Cinergy, Eastern Kentucky Power, TVA and utilities in Western Kentucky. The Trades Council affiliates are currently involved in the installation of a scrubber at Clifty Creek in Indiana, and have been involved in the construction of Spurlock Station for Eastern Kentucky Power, TVA work at Kentucky Dam, the Cash Creek Project in Henderson. Other projects that the Building Trades have recently performed include the UPS hub expansion and the Churchill Downs expansion. Both were performed under project labor agreements. Most recently, the construction of the Spurlock Generating Facility, of Eastern Kentucky power was completed. This was built utilizing Kentucky labor.

Q. How does the role of the State Council differ from that of the local affiliate councils?

A. In my role as State Director, I concentrate on issues that impact the state's economic development overall. We are actively involved in working with state government,

legislators and administrative bodies for the purpose of coordinating resources and troubleshooting problems that affect Kentucky's ability to remain competitive, as well as insure utilization of Kentucky employees for all major projects constructed in the state. The Trimble County Plant is the type of project that has a state-wide impact. It is of such a magnitude that we would expect to draw on craft workers from across the state, as far away as Paducah, Northern Kentucky and Ashland. The project not only impacts the LG&E service territory, but because of the involvement of the Public Service Commission, and the fact that the construction financing will be drawn from the local resource of rate payers, the project has implications for state government as well as the economic development issues involving the state at large.

Q. How does the Trades Council help keep Kentucky competitive, from an economic development standpoint, with regard to major construction projects?

A. The Trades Council is the primary organization in the state that takes the responsibility for insuring that Kentucky has a well qualified, properly trained and skilled workforce in place to meet the needs of sophisticated major construction. The affiliates of the Trades Council pay for, design, direct and maintain approximately 35 apprentice training programs around the state. Each of these training programs is craft specific, with the purpose of insuring that properly trained and qualified employees are available, at all times, to meet the needs of Kentucky employers and construction projects. These apprentice programs actively recruit and identify young men and women to train. The programs are sophisticated, intensive and work the students through levels of apprentice training until they achieve journeymen status. Even as journeymen, the programs undertake continuing education with regard to safety, technology and new developments in the craft. The Trades Councils and their affiliates, are actively involved in maintaining low cost health insurance coverage, enforcing and developing appropriate drug policies and insuring appropriate pension options in order to retain individuals in the construction trades industry.

Q. How does a project like Trimble County 2 impact the ability of Kentucky to sustain the development of a qualified workforce?

A. The State Council, along with its affiliates, take a long-range view toward meeting the present and future construction needs of the state. Construction has been identified, on a national level, as one of the top ten growth industries in the next decade. At the same time, shortages of skilled craft labor are already occurring, and are projected to continue during this growth period. Projects such as Trimble County present a two-fold opportunity. It allows for utilization of the trained workforce in place. It also allows for the recruiting of new and additional employees, allowing the training to continue because of the ongoing need, over a period of three to four years, that the construction provides. Major projects such as Trimble County are essential for consolidating all of the sophisticated skill sets necessary for Kentucky to have a sophisticated construction workforce, and to providing opportunities to attract talented new workers into the trades because of the prospect of ongoing and long term career opportunities.

Q. Does Kentucky currently have the necessary labor and craft resources in order to build the TC2 project on time and on budget?

A. Yes. We know this from recent examples of projects of an equivalent nature. Particularly, I refer to the Spurlock Generating station with Eastern Kentucky Power. This 278 megawatt generating facility took almost three years to construct, with a cost of approximately 500 million. The project was completed with over 1 million man hours of labor, and was performed without any lost time due to injuries – an outstanding safety record of which we are proud. The project was done under a Project Labor Agreement, which allowed us to fully utilize all of the Kentucky craft resources available. At a press conference which occurred in April of this year, representatives from Gov. Fletcher's office praised the on time/on budget completion of the project as a tribute to the Kentucky labor force that built it. Similar major projects, such as the UPS expansion hub and the

Churchill Downs construction projects were also performed under a Project Labor Agreement, which successfully utilized Kentucky employee resources.

Q. What is the issue of utilization of out of state employees with regard to Kentucky major construction projects?

A. In recent years, Kentucky workers have been adversely impacted by this development. What we have seen is that certain major construction firms, which reside outside of the Commonwealth, have developed their own workforce resources drawn from states and regions across the country. Because these major contractors are successful in securing significant amounts of capital construction work, they have been successful in developing craft resources that are drawn from many different states. This allows these contractors to identify the lowest possible labor cost, for various craft specialties, and secure major construction work through low bids. Once secured, the contractor imports labor resources to the detriment of the local work force. Rather than utilizing the Commonwealth's pool of skilled and experienced craft employees, we have seen several projects in which Kentucky workers remain idle while the parking lots of the project are filled with vehicles bearing out of state license plates. This has been an increasing problem that the State Trades Council and local affiliate councils have been dealing with.

Q. What is the economic impact of such construction practices?

A. The most obvious one is the disparity of having major construction projects happening locally and the surrounding communities not benefitting by the payroll and financial resources that are being poured into the project. We have seen situations where qualified craft workers are drawing unemployment benefits while out of state workers perform construction in their backyards. We have seen situations where efforts by our local councils to deal with out of state contractors have been rebuffed, with a refusal to consider the use of local labor resources. At the heart of the matter is a deterioration in local standards with regard to wages and benefits. These major general contractors utilize

employees without the benefit of paying medical insurance or pension contributions. They also are able to find the lowest possible wage rates, capitalizing on difficult economic situations in other states. The irony of this is that these projects are often subsidized with either government money or government regulated money, such as in utility construction. Projects are built either with taxpayer money, or with revenues by local utility rate payers. By allowing the construction process to import migrant labor, these projects are undercutting not only local wage standards, but losing cite to the long term welfare of citizen-workers in Kentucky in terms of maintaining appropriate medical insurance coverages and having long range retirement benefits. These projects also deprive the state and local communities of direct economic benefits. Out of state employees do not pay state income taxes. They avoid local occupational tax. The revenues are shipped out of state and spent in communities other than the local ones. The projects do not support local purchasing power, which is plowed back into the economy. This practice of importing migrant labor also discourages the recruitment of local talent into the construction trades, and depresses the ability of apprentice programs to produce qualified journeymen workers.

Q. What are recent examples of this occurring?

A. The Henderson Utility Commission approved the use of an out of state contractor for the installation of scrubbers at the Henderson Municipal Power Company. The out of state contractor came in with the lowest bid. The Utility Commission was unaware that the contractor would import out of state labor. This resulted in a major controversy for that community. The Owensboro Building and Construction Trades Council had many members that were available for work and remained idle while public dollars are being spent to pay out of state laborers. There was a public outcry, public hearings and a heated debate about what had occurred. The Commissioners professed a lack of knowledge that this would occur, and further pled that they were obligated to accept the low cost bid for the project.

A similar situation began to develop in Muhlenberg County when Peabody Coal Company announced plans to build a merchant plant. The project was supported by local, state and national political figures. It then became apparent that Peabody was considering the award of the construction project to an out of state contractor that utilized its own imported workforce. This led to a public outcry, including involvement of political figures such as Mitch McConnell. Unfortunately, the project was shelved. It appeared this would be a major issue of contention because of the potential of repeating what had happened in Henderson.

Q. What role is the Trades Council advocating that LG&E play to insure that the economic impact of TC2 is concentrated in Kentucky?

A. LG&E is in a position to select a contractor for TC2 that will pledge to utilize Kentucky employment resources. A review of documents from a previous case vividly illustrates the issue. I have reviewed the construction proposals which were presented to LG&E in Case No. 2000-112, *Application of Kentucky Utilities Company and LG&E for Certificate of Public Convenience and Necessity to Construct Selective Catalytic Reduction Control Technologies*.¹ One of the bids was from Contractor A² for construction of scrubbers at Trimble County, Brown 3, Ghent 1 and Ghent 2. The proposal highlighted the ability of these contractor resources to draw upon their own workforce:

Contractor A has over 20,000 craft resources in its craft employee data base. We have maintained a successful presence from coast to coast and have existing craft resources in your region. In addition, Contractor A's organization continuously tracks over 4000 craft employees with fossil plant experience for temporary/outage work.
(p. 00062)

¹I have reviewed the Confidentiality Agreement and agree to abide by its terms with regard to the documents reviewed.

²Counsel for LG&E and the undersigned have conferred pursuant to the Confidentiality Agreement, and agreed to protect the identities of contractors by referring to them as Contractor A and B.

The proposal goes on to state, "During the last 10 years, over 105,000 employee requisitions have been filled for journeymen, helpers and laborers." (p. 00088) The Contractor A proposal also specified the project would be built non-union.

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

To effectively meet the resource demands associated with constructing 13 SCRs over the next four years, Contractor B has always placed a strong emphasis on communicating with labor. Contractor B is committed to utilizing union labor and many of our management personnel sit on influential committees that determine policy for apprentice programs, safety, training, etc. (p. 000194)

The proposal goes on to identify local labor pool resources: "The combined total labor pool is approximately 600 and we feel confident that these resources can support our requirements." The proposal makes the following observation regarding local labor resources: "These labor organizations actively participate in common arc, safety and drug testing programs to maintain a reliable and cost effective workforce." (p. 000195) LG&E was faced with a choice of selecting a contractor that would import a major portion of its labor, versus a contractor that was fully committed to utilizing local employees. Predictably, LG&E chose the non-union proposal of Contractor A. These major construction projects were characterized by imported laborers, leaving many skilled Kentucky craftsmen idle while the work was being performed over several years.

The Trades Council believes that LG&E has a public responsibility and fiduciary duty to insure that the economic impact of the TC2 project be concentrated in Kentucky.


Q. Does this conclude your testimony?

A. Yes.

VERIFICATION


COMMONWEALTH OF KENTUCKY)
) SS:
COUNTY OF JEFFERSON)

The undersigned **LARRY L. ROBERTS**, being duly sworn, deposes and says he is State Director of the Kentucky State Building and Construction Trades Council, and that he has personal knowledge of the matters set forth in the foregoing testimony, and the answers contained therein are true and correct to the best of his information, knowledge and belief.


LARRY L. ROBERTS

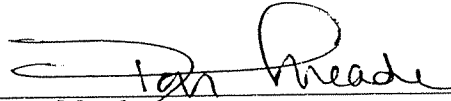
Subscribed and sworn to before me, a Notary Public in and before said County
and State, this 21 day of April, 2005.

My Commission expires: July 13, 2007


Notary Public

Respectfully submitted,

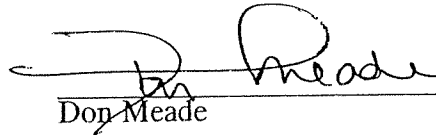
PRIDDY, ISENBERG, MILLER & MEADE, PLLC

A handwritten signature in dark ink, appearing to read "Don Meade", written over a horizontal line.

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**Counsel for IBEW, Local 2100 and
Greater Louisville Building and Construction
Trades Council**

CERTIFICATE OF SERVICE

It is hereby certified that on the 21 day of April, 2005, an original and 10 copies of the foregoing motion was mailed to the Public Service Commission, P. O. Box 615, 211 Sower Blvd., Frankfort, KY 40602-0615, and a true copy thereof was mailed to the attached service list.

A handwritten signature in dark ink, appearing to read "Don Meade", written over a horizontal line.
Don Meade

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

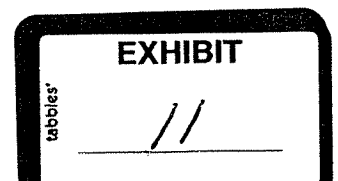
JOINT APPLICATION OF LOUISVILLE GAS)	
AND ELECTRIC COMPANY AND KENTUCKY)	
UTILITIES COMPANY FOR A CERTIFICATE)	CASE NO.
OF PUBLIC CONVENIENCE AND NECESSITY,)	2004-00507
AND A SITE COMPATIBILITY CERTIFICATE,)	
FOR THE EXPANSION OF THE TRIMBLE)	
COUNTY GENERATING STATION)	

* * * * *

**LOUISVILLE GAS AND ELECTRIC COMPANY'S
AND KENTUCKY UTILITIES COMPANY'S MOTION TO
STRIKE DIRECT TESTIMONY OF LARRY L. ROBERTS**

Louisville Gas and Electric Company and Kentucky Utilities Company (collectively, the "Companies") respectfully submit this Motion to Strike the Direct Testimony of Larry L. Roberts because it addresses issues which the Commission has ruled are beyond the scope of this case.

On February 21, 2005, the International Brotherhood of Electrical Workers, Local 2100 ("IBEW"), and the Greater Louisville Building and Construction Trades Council ("Trades Council") moved for full intervenor status in this case. By Order of March 4, 2005, the Commission noted that this case involves an application for a Certificate of Public Convenience and Necessity under KRS § 278.020 and an application for a Site Compatibility Certificate under KRS § 278.216. (March 4, 2005 Order, p. 2). In light of that fact, the Commission ruled that this case is not the correct forum to raise issues such as cost of labor, local investment and the Commonwealth's business and employment well-being. (March 4, 2005 Order, p. 2). Accordingly, although the Commission granted full intervenor status to the IBEW and the Trades

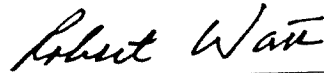


Council, it did so with the caveat that they limit the issues they address to issues properly before the Commission in this case. The IBEW and the Trades Council moved for reconsideration of that limitation, but their motion was denied by Order of April 19, 2005.

In filing the Direct Testimony of Larry L. Roberts, the IBEW and the Trades Council have addressed the very issues that the Commission has held are not to be addressed in this case. For example, Mr. Roberts offers an answer to the question, "How does a project like Trimble County 2 impact the ability of Kentucky to sustain the development of a qualified workforce?" This question and others call for answers that squarely address the exact issues the Commission has deemed to be outside the scope of this case. Therefore, the Companies respectfully request the Commission strike the testimony of Mr. Roberts.

Dated: April 28, 2005

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion to Strike was served on the following persons on the 28th day of April, 2005, U.S. mail, postage prepaid:

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Counsel for Louisville Gas and Electric
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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

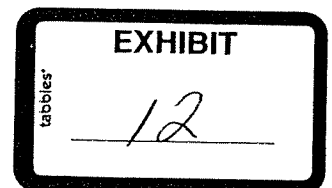
In the Matter of:

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

O R D E R

Louisville Gas and Electric Company and Kentucky Utilities Company ("Applicants") filed a joint application for approval to construct a 750 MW super-critical pulverized coal-fired generating unit at their Trimble County Generating Station on December 17, 2004. On February 21, 2005, the International Brotherhood of Electrical Workers, Local 2100 and the Greater Louisville Building and Construction Trades Council ("Intervenors") moved for full intervenor status in this case. As part of that filing, Intervenors gave notice that they intended "to seek the Commission's Order that any construction contract secure the construction and related work to the economic benefit of the local area." On March 4, 2005, the Commission granted the motion to intervene, but found that the Intervenors "must limit the issues they address in this case to those properly before the Commission."

On April 22, 2005, Intervenors prefiled the testimony of Larry L. Roberts. On April 28, 2005, Applicants moved to strike that testimony in its entirety on the basis that



the questions "call for answers that squarely address the exact issues the Commission has deemed to be outside the scope of this case."

Initially, the Commission notes that the Motion to Strike is overly broad. The first two pages of the Roberts testimony are introductory and do not deal with any of the controverted issues. With regard to the remainder of the testimony, the Commission recognizes that the subjects Roberts explores may be close to the line discussed in the Commission's March 4, 2005 Order. The problem in this case, however, is that we cannot draw that line as precisely and distinctly as the Applicants urge. Unmistakably, the March 4, 2005 Order rejected Intervenor's intention "to seek the Commission's Order that any construction contract secure the construction and related work to the economic benefit of the local area."

Nevertheless, the Kentucky State Board on Electric Generation and Transmission Siting ("Siting Board") will soon have before it a parallel application from the Illinois Municipal Electric Agency and the Indiana Municipal Power Agency ("Municipal Agencies"), Case No. 2005-00152,¹ for this same generating plant. The Siting Board has different standards and jurisdiction than does the Commission, and we believe it is important that Orders from the two sister agencies not be in direct conflict.

One of the factors that the statutes require the Siting Board to consider in reaching a decision is "[t]he economic impact of the facility upon the affected region and the state." KRS 278.710(1)(c). In prior cases, to meet that criterion, the Siting Board has imposed conditions in its final Orders such as the following from the application of

¹ Case No. 2005-00152, Notice of Intent to File an Application For Approval of the Illinois Municipal Electric Agency and the Indiana Municipal Power Agency 25% Ownership of the Proposed Trimble County Merchant Electric Generating Facility.

Estill County Energy Partners, LLC ("ECEP"): "ECEP shall make reasonable efforts to hire workers, vendors, and contractors from the local area." Condition H from Appendix A, October 12, 2004, Order in Case No. 2002-00172.² In the present case, the Commission has contracted with BBC Research & Consulting to provide a review and evaluation of the site assessment reports of both the Applicants in this case and the Municipal Agencies in the Siting Board case. That report includes the following recommendation: "LG&E should encourage its contractors to consider hiring locally qualified construction workers, where possible." Recommendation 11 from Section D, April 11, 2005, BBC Review and Evaluation of Trimble County Unit 2 Site Assessment Report.

The Commission specifically points out that the Roberts testimony does not seek an Order "that any construction contract secure the construction and related work to the economic benefit of the local area," but simply supports the issue of local employment generally. While the testimony may come very close to the line, that line, as noted earlier, is not as precise and distinct in this case as argued by the Applicants. Under the circumstances, the Commission believes it should admit the testimony and give it appropriate weight in the decision-making process. The Commission therefore finds that the Motion to Strike should be denied.

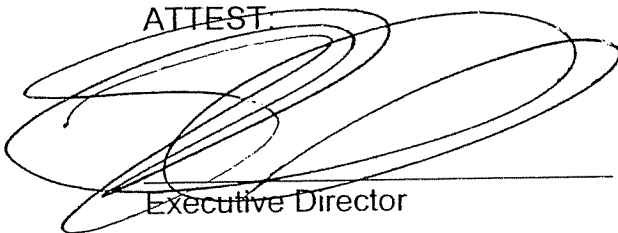
IT IS THEREFORE ORDERED that Applicants' Motion to Strike the prefiled testimony of Larry L. Roberts is denied.

² Case No. 2002-00172, The Application of Estill County Energy Partners, LLC, For a Certificate to Construct a Coal Combustion/Electric Generating Facility.

Done at Frankfort, Kentucky, this 12th day of May, 2005.

By the Commission

ATTEST

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

Executive Director

Case No. 2004-00507

**COMMONWEALTH OF KENTUCKY
BEFORE THE KENTUCKY 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

**IBEW AND TRADES COUNCIL ANSWERS TO
LOUISVILLE GAS AND ELECTRIC COMPANY AND
KENTUCKY UTILITIES COMPANY DATA REQUESTS**

Come the Intervenors, Greater Louisville Building and Construction Trades Council (Trades Council) and International Brotherhood of Electrical Workers, Local 2100 (IBEW), and for their answers to LG&E and KU's data requests, state as follows:

1. What is the purpose of the testimony of Larry L. Roberts ("Mr. Roberts")?

ANSWER: The testimony of Mr. Roberts has the primary purpose of exposing to public scrutiny LG&E/KU contracting practices which are irresponsible and which do not serve the public interest with which the PSC is charged to protect. The testimony has the further purpose of demonstrating to the PSC how it has been an unwitting partner to fiscally irresponsible decisions by LG&E/KU by blessing contracting practices which undermine economic development efforts in the Commonwealth, tax rate payers for construction costs that subsidize non-union out of state workers and rob local workers of local jobs. Mr. Roberts' testimony brings to light the reality of such pernicious practices by demonstrating that LG&E/KU, in Case 2000-112, purposefully selected a contractor that had the stated objective of utilizing out of state workers, and to further demonstrate to the Commission that LG&E/KU is presently following the exact same model of decision making in the award of construction contracts for TC2. Mr. Roberts' testimony is designed to demonstrate that without PSC supervision, LG&E/KU will continue rogue contracting

EXHIBIT

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practices that do tangible injury to the Commonwealth, as well as rate payers, by denying local jobs for local workers.

Mr. Roberts' testimony has the further purpose of:

- (1) Demonstrating the impact of loss of local jobs for local workers on the state's ability to maintain and develop a highly trained cadre of skilled craftsmen, in order for the state to remain competitive;
- (2) Demonstrate the social implications of permitting contracting practices which undermine wages, health and retirement benefits for rate payers/citizens;
- (3) Demonstrate the irony of importing migrant labor, which deprives local workers of local jobs, and requiring rate payers to underwrite such practices;
- (4) To demonstrate the capacity of the Trades Council to produce qualified workers to insure on time, safe, quality construction.

2. In page one of this testimony, Mr. Roberts refers to work done with Cinergy, East Kentucky Power, TVA and utilities in Western Kentucky, including some current projects, under the "auspices" of a project labor agreement ("PLA"). For each such project within the last seven (7) years, including any ongoing project:

- a. Produce a copy of the PLA;
- b. Provide the estimated or budgeted project labor rates without the PLA and the actual costs with the PLA; and
- c. List the number of Kentucky workers and the number of non-Kentucky workers utilized or employed.

ANSWER: (a) A copy of PLAs are produced.

- (b) Neither the State Council or affiliates have access to that information.
- (c) The State Council does not maintain this data, nor is it collected and retained at the level of the area Councils. Nevertheless, efforts are being made to compile

necessary data from each of the participating Council Unions. This answer will be supplemented, to the extent possible, when the information is available.

3. On what basis does Mr. Roberts claim that Kentucky State Building and Construction Trades Council ("State Trades Council") is the "primary organization in the state that takes the responsibility for insuring that Kentucky has a well qualified, properly trained and skilled workforce in place to meet the needs of sophisticated major construction?"

a. Please provide all references and documents which support that claim.

ANSWER: Mr. Roberts testimony – that the Kentucky State Building and Construction Trades Council is the primary organization that represents all of the unions with apprentice programs that produce a qualified, trained and skilled work force – is justified in that it is collectively the largest, most extensive organization in the state dedicated exclusively to the recruitment, training, certification, retention and professional improvement of skilled craft employees. No other organization is more successful in a state wide mission of providing workers that are uniformly trained, skilled and up to date on technology and safety issues. Representing approximately 35,000 Kentucky workers, the State Trades Council and affiliates are involved in joint industry panels and committees, and engaged in the legislative process to develop necessary regulatory and certification standards. A 1997 study, comparing union and non-union apprentice training programs in Kentucky, demonstrated that although there were nearly five times more non-union apprentice programs than union programs, the number of people actually trained, graduated, retained by the union programs were more than double those of the non-union program. The number of apprentices achieving journeyman status was three times more for the union programs than the non-union combined. The report also demonstrated that the number of minority apprentices were more than double in union programs versus non-union. Similarly, a 2005 study comparing union – non-union success rates in Kentucky demonstrated that non-union programs only graduated 21 % of those enrolled, with no craft graduating even one-third of its apprentices.

a. Attached are the following: (1) A Final Report on Associated Builders and Contractors Apprenticeship Training: Flawed and Failing Programs; (2) Apprentice Training in Kentucky: A Comparison of Union and Non-Union Programs in the Building Trades; (3) The Builder: Building Trades Report Uncovers Failures of ABC Apprenticeship Programs.

4. Will the State Trades Council permit Kentucky union workers to be directly hired by a selected Engineering Procurement and Construction ("EPC") bidder for TC2 if no PLA is entered into by KU and LG&E? If not, explain in detail why not?

ANSWER: The State Trades Council, nor any of its affiliate Trades Councils, has any regulation or membership requirement that prohibits its members from working on construction projects that are not covered by a project labor agreement.

5. If there are not enough qualified Kentucky union workers to meet the project schedule and needs of TC2, will the State Trades Council bring in workers from out of state to meet the needs of the project? Please explain the answer.

ANSWER: Yes. One of the benefits of a project labor agreement is that in the rare event where workers from Kentucky locals are unable to fill 100% of manpower needs, cooperative relationships between Trades Councils in other states permit drawing upon additional resources to provide qualified workers to back fill any positions. Workers are sometime drawn from Southern Indiana and Southern Ohio.

6. Does the Trades Council possess any information that the Peabody project described on page 6 of Mr. Roberts' testimony was "shelved" because of the use of imported" workers? If so, provide all such information, including the production of any documents evidencing same.

ANSWER: No.

7. On what basis does Mr. Roberts claim, on page 3 of his testimony, that a PLA allows full utilization of "all of the Kentucky craft resources available?"

a. Please provide all references and documents which support that claim.

ANSWER: Primary emphasis is placed by affiliated Trades Councils of employing local workers for local jobs. It is the responsibility of each individual union local to provide the necessary craft manpower for a specific project. For example, if Local 369 of the International Brotherhood of Electrical Workers, in Louisville, exhausted its membership roster for available work, it would coordinate with other IBEW locals in eastern, western and northern Kentucky to supply sufficient electricians. Through this process, employees across the state have the best opportunities at securing available work.

a. None.

8. Provide all information, including documents evidencing same, which establishes that the use of a PLA increases the utilization of Kentucky craft resources over that utilization for the same project without a PLA.

ANSWER: With regard to these proceedings, the comparison is between a contractor that commits to fully utilize Kentucky employees, through a PLA, as opposed to a contractor that commits to use migrant labor as a cost cutting strategy. The documentary evidence of this would be the RFPs from Case No. 2000-112, Application of KU and LG&E for Certificate of Public Convenience and Necessity to Construct Selective Catalytic Production Controlled Technologies, which is referenced in Mr. Roberts' testimony. As demonstrated in Roberts' testimony, the issue is controlled by LG&E's selection of a contractor. One contractor promotes a nationwide roster of available labor resources, while another promises to coordinate with local labor to insure staffing of the project. A PLA, which would be executed between LG&E and the Greater Louisville Trades Council, would insure that primary job opportunities are first filled from the memberships of Kentucky local unions. Without a PLA, a contractor is free to import migrant labor from the cheapest source, without paying health insurance or retirement benefits. As demonstrated from the studies produced in question 3, the majority of qualified workers and journeymen are the product of union training programs and members in union locals.

9. Provide all evidence which supports Mr. Roberts' claim, on page 7 of his testimony, that the referenced construction projects left "many skilled Kentucky craftsmen idle while the work was being performed over several years."

ANSWER: Since Trades Councils were rejected as labor resources by these projects, they are not in possession of empirical data. The experience of affected various local unions demonstrated high rates of idle workers, as well as workers traveling out of jurisdiction to find work, during the period in which these projects were being constructed. Firsthand observation of the number of out of state license plates on cars used by construction workers was also persuasive. The Trades Council has solicited reports on this issue from its various member unions, and will supplement this response when received.

10. Please state whether Mr. Roberts has performed a study or analysis which supports his answer to the second question on page 3 of his testimony which states that Kentucky labor and craft resources are sufficient to complete the TC2 project on time and on budget.

- a. If such a study has been performed, please provide such study or analysis and any and all documents relating to same.

ANSWER: No study or analysis has been performed. Yet recent experience of Kentucky Trades Councils demonstrate their ability to marshal sufficient labor resources to insure on time/on budget/safe construction. These goals were achieved in the 1 billion dollar UPS expansion, the completion of the Spurlack Generating Station in April 2004 for Eastern Kentucky Power, the completion of the Churchill Downs expansion and the current work at McAlpine Locks on the Ohio River, which is on schedule and on budget.

In Case No. 2000-112, Application of Kentucky Utilities Company and LG&E for Certificate of Public Convenience and Necessity to Construct Selective Catalytic Reduction Control Technologies, one of the RFP general contractor responses, which favored the use of local

union labor, specifically estimated available labor resources and concluded “with confidence” that there was sufficient skilled craft workers to support construction on LG&E scrubber projects.¹

11. Please state whether Mr. Roberts has performed any studies or analyses that supports the position stated in his answer to the first question on page 4 of his testimony that Kentucky workers have been adversely impacted by the use of out of state employees. If so, please provide any such studies or analyses and any and all documents relating to same.

ANSWER: No

12. Please state whether Mr. Roberts has performed any studies or analyses that support his answer to the second question on page 4 of his testimony regarding the economic impact of the use of out of state employees on major Kentucky construction projects. If so, please provide any such studies or analyses and any and all documents relating to same.

ANSWER: No

13. On page 4 of his testimony, Mr. Roberts states, “We have seen situations where qualified craft workers are drawing unemployment benefits while out of state workers perform construction in their backyards.” With respect to that testimony, please provide all details of such situations, including, but not limited to:

- a. The identity of the construction project.
- b. The time and date;
- c. The location;
- d. The type of labor involved; and
- e. All documents that support the statement.

ANSWER: Trades Council efforts to secure local jobs for local workers were rejected for the Thoroughbred Project at Peabody Coal, the Henderson Generating Station Project and LG&E regarding work on scrubbers at various sites. These have been the primary examples where contractors – including one of the major contenders for the present TC2 Plant – have utilized

¹This RFP was referred to as Contractor B in Intervenor’s Motion to Reconsider, page 7.

significant migrant resources to undercut the bidding process and deprive local workers of local jobs.

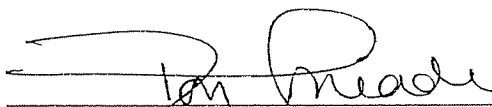
14. On page 4 of his testimony, Mr. Roberts states, "We have seen situations where efforts by our local councils to deal with out of state contractors have been rebuffed, with a refusal to consider the use of local labor resources." With respect to that testimony, please provide all details of such situations, including, but not limited to:

- a. The identity of the construction project;
- b. The identity of the out of state contractors in each instance;
- c. The time and date;
- d. The location;
- e. The type of labor involved; and
- f. All documents that support the statement.

ANSWER: See Answer to 13.

Respectfully submitted,

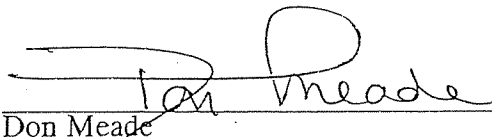
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CERTIFICATE OF SERVICE

It is hereby certified that on the 20 day of May, 2005, an original and 10 copies of the foregoing motion was mailed to the Public Service Commission, P. O. Box 615, 211 Sower Blvd., Frankfort, KY 40602-0615, and a true copy thereof was mailed to the attached service list.



Don Meade