

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ILLINOIS COMMERCE COMMISSION :
On Its Own Motion :
Phase 2 of the initial approvals of the FutureGen : No. 13-0034
Industrial Alliance, Inc. :

**ISSUES LIST AND RECOMMENDED DOCKET TIMEFRAME
OF COMMONWEALTH EDISON COMPANY**

Commonwealth Edison Company (“ComEd”), through its counsel and pursuant to the Notice of Administrative Law Judge’s Procedural Ruling issued on January 22, 2013 in the above-captioned docket (“ALJ Notice”), submits this issues list and recommended docket timeframes.

1. On January 9, 2013, the Illinois Commerce Commission (“Commission” or “ICC”) issued an Order initiating this proceeding. The Commission’s Order identified the purpose of this proceeding as follows:

to determine the remaining contested issues regarding the proposed sourcing agreement identified in the prefatory portion of this Order, including, but not limited to, the provisions within Section 1-75(d)(3) of the Illinois Power Agency Act [20 ILCS 3855/1-75(d)(3)] that are mandatory for sourcing agreements that are not associated with the initial clean coal facility; the preapproved total capital costs; and Staff’s recommendations for annual audits, reconciliations, and periodic benchmark tests.

ICC Docket No. 13-0034, Order at 2 (January 9, 2013).

2. On January 22, 2013, a Notice of Administrative Law Judge’s Procedural Ruling was filed, requiring that any “issue lists and appropriate docket timeframes” recommended by a party to the proceeding be filed on or before January 30, 2013. ALJ Notice.

3. ComEd notes that the identification of an issue list and further pleadings regarding the terms and provisions of the sourcing agreement is an appropriate next step given

that there are many significant issues remaining to be resolved with respect to the sourcing agreement. For instance, though the Commission's Order in Docket No. 12-0544, as amended by Amending Order on January 29, 2012, specified that only Ameren Illinois Company and ComEd would be signatories to the sourcing agreement, the most recent redline version of the sourcing agreement proffered by FutureGen Industrial Alliance, Inc. ("FutureGen") in Docket No. 12-0544 (which was proffered as an attachment to its Brief on Exceptions, prior to the Commission's Order) included all Alternative Retail Electric Suppliers ("ARES") as signatories to the sourcing agreement. Thus, the sourcing agreement must, at a minimum, be extensively revised to reflect the arrangement ultimately approved, along with the numerous other unresolved issues identified in Docket No. 12-0544. ComEd believes it is appropriate to focus on the terms and provisions of the sourcing agreement at this time, as indicated in the Commission's January 9, 2013 Order in this docket, despite the fact that this proceeding has been deemed a "Phase 2" proceeding.

4. The following items constitute ComEd's initial issues list, but ComEd reserves the right to modify or supplement this list as necessary during this proceeding. ComEd's issues list is intended to be supplemental to the specific issues identified by the Commission in its January 9, 2013 Initiating Order. For the purposes of this issues list, reference is made to the sourcing agreement proposed by FutureGen. The issues list provided herein is based off of the draft sourcing agreement provided by FutureGen on November 21, 2012 in Docket No. 12-0544, as attached to its Verified Brief on Exceptions. ComEd further reserves the right to identify additional issues based on any additional versions of the sourcing agreement proffered during the course of this proceeding. ComEd's initial issues list is as follows:

- 1) Contract Issues:

- i. How should the sourcing agreement that was approved as to form in Docket 12-0544 be revised to reflect that only the utilities will procure output. Among other revisions, the following must also be addressed:
 - a. Remove all references to credit requirements, in particular ¶ 14; and
 - b. Revise cost recovery/regulatory out provisions to address issues unique to this new relationship.
- ii. Which requirements listed in section 1-75(d)(3) of the IPA Act should be included in the agreement.
- iii. The definition of “Forecasted Total Retail Load” must be revised to reflect that such information is not provided by the utilities to the IPA.
- iv. Section 3.1 must be revised to include as a condition precedent that an appropriate cost recovery mechanism has been approved by the ICC and put into effect.
- v. Section 5.2(d) must be revised to put some limit on the length of time an approved price may remain in effect without further ICC review and approval.
- vi. Section 5.2(d)(ix) must be revised to correctly describe the Contract Price Adjustment.
- vii. Section 5.2(i) must be clarified to ensure that the Buyer will in no event be responsible for payment of the contract price if recovery of any such costs is disallowed in any way by the Commission or any other governmental authority.
- viii. Section 5.3 must be deleted.
- ix. Section 6.2 must be revised to:
 - a. Accurately and clearly describe the billing and payment process; and
 - b. Provide for revised settlement amounts in response to revised usage information from PJM or MISO or for other billing errors.
- x. Sections 7.3 and 16.5(b) need to be revised to only require the payment of the undisputed amounts.
- xi. Section 15.2 must be revised to make it an event of default for FutureGen to fail to make the annual filing required by section 5.2.
- xii. Section 24.5 must be revised to include section 5.2 as a section that must remain in effect or else the agreement terminates.

xiii. Exhibit 5.2(d) must be revised to include all components of price.

5. From a procedural and structural standpoint, ComEd believes that workshops would be appropriate and helpful in further identifying contested versus uncontested issues and narrowing or reducing contested issues. Subject to reviewing the issues identified by other parties and agreement by all parties to waive hearings, ComEd is supportive of using comments rather than testimony, believes it would be appropriate to waive hearings, and is open to proceeding on that basis. However, ComEd recognizes that the schedule for this proceeding may be required to include testimony, hearings, and briefs if any party does not agree. 200 Ill. Admin. Code § 525. Further, while ComEd provides for filing optional redline versions of the sourcing agreement in its proposed schedule, those filings are not intended to prevent parties from filing redline versions of the sourcing agreement with their verified comments. Assuming that this proceeding will be conducted using comments with no live cross examination, ComEd proposes the following timeframe for this proceeding:

| Activity | Date | Days Since Last Activity* | Weekday |
|--|--------|---------------------------|---------|
| | | 13-0034 | |
| Order Initiating Proceeding | 9-Jan | | Wed |
| Issues Lists and Proposed Timeframes | 30-Jan | 21 | Wed |
| Expected ALJ Ruling Setting Schedule | 4-Feb | | |
| Responses (not redline) to Issues Lists and Optional Redline Edits to November 21 Draft Sourcing Agreement | 11-Feb | 12 | Mon |
| Workshop 1 (Chicago) | 20-Feb | 9 | Wed |
| Workshop 2 (Springfield) | 27-Feb | 7 | Wed |
| Optional revised Redline Edits to Sourcing Agreement | 8-Mar | 9 | Fri |
| Workshop 3 (Chicago) if needed | 20-Mar | 12 | Wed |
| Contested/Uncontested Issues List | 27-Mar | 7 | Wed |
| Simultaneous Verified Initial Comments | 2-May | 36 | Thur |
| Simultaneous Verified Reply Comments | 16-May | 14 | Thur |
| Simultaneous Surrebuttal Comments | 30-May | 14 | Thur |
| | | | |
| Total Days | | 141 | |

If a party elects evidentiary hearings, or that is the Administrative Law Judge's preference, ComEd recommends the comments filing dates become direct and rebuttal testimony filing dates, that a surrebuttal testimony filing date be inserted for May 23, and a hearing date of May 31, should it be needed. In this event, ComEd recommends a briefing schedule be established at the conclusion of the hearings.

Dated: January 30, 2013

Respectfully submitted,

COMMONWEALTH EDISON COMPANY



By: _____

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