

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

---

<b>ILLINOIS COMMERCE COMMISSION</b>	)	
<b>On Its Own Motion</b>	)	
	)	
<b>Phase 2 of Approvals for the Sourcing Agreement for the FutureGen 2.0 Project</b>	)	<b>Docket No. 13-0034</b>

---

**PROPOSED LIST OF ISSUES AND SCHEDULE OF  
FUTUREGEN INDUSTRIAL ALLIANCE, INC.**

The FutureGen Industrial Alliance, Inc. (“FutureGen Alliance”), by and through its undersigned counsel, pursuant to the Administrative Law Judge’s (“ALJ”) Order dated January 22, 2013, respectfully submits its list of issues to be considered in this Phase 2 proceeding, as well as a proposed schedule. In support of thereof, the FutureGen Alliance states as follows:

1. In an Order dated December 19, 2012 (“Final Order”), the Commission approved the Illinois Power Agency’s Procurement Plan for 2013. As part of that Final Order approving the Procurement Plan, the Commission also approved the sourcing agreement (“Sourcing Agreement”) submitted by the FutureGen Alliance for the FutureGen 2.0 project. (Final Order at 235.)

2. In approving the Sourcing Agreement, the Commission approved the pro forma terms and conditions of the Sourcing Agreement; the formula rate structure; the term of the agreement (20 years); the capital structure and allowed rate of return on equity appropriate for determining the fixed level payment in the Sourcing Agreement;

ICC Staff's proposed structure under which the FutureGen Alliance will contract only with Commonwealth Edison Company ("ComEd") and Ameren Illinois Company d/b/a Ameren Illinois ("Ameren"), and directed that project costs would be recovered through a new tariff or modification of an existing tariff through a competitively neutral charge. (Final Order at 232-36.)

3. The Sourcing Agreement also establishes certain key deadlines, including a 60-day deadline for the Alliance and the IPA's Procurement Administrator to submit estimates of pre-approved capital costs to the Commission, and a 180-day deadline for the Commission to decide on the amount of pre-approved capital costs that may be included in the calculation of the fixed project payment of the formula rate.

4. On January 9, 2013, on its own motion, the Commission entered an initiating Order ("Initiating Order") which opened the present docket. The Initiating Order is designed to open a new proceeding to "determine the remaining contested issues regarding the proposed sourcing agreement identified in the prefatory portion of this Order . . . ." (Initiating Order at 2.)

5. In its Initiating Order, the Commission referenced language from its Final Order, which indicated that the Commission had adopted a two-phase process for approval of the FutureGen sourcing agreement. (*Id.* at 1.) That same language from the Final Order included the following passage which identified the issues to be addressed in this Phase 2 proceeding:

The issues shall include, but not be limited to: the provisions within Section 1-75(d)(3) of the IPA Act 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.

*Id.* It is noteworthy that none of the issues identified by the Commission for this Phase 2 proceeding require modification of the pro forma terms of the Sourcing Agreement, but rather are issues relating to the implementation of the Sourcing Agreement.

6. In its Initiating Order, the Commission also recited language from the Final Order directing “the parties at the outset of the subsequent proceeding to submit issue lists and appropriate docket timeframes to the Administrative Law Judge for resolution.” *Id.*

7. Pursuant to and consistent with the Commission's Initiating Order, as well as the ALJ's Order dated January 22, 2013, the FutureGen Alliance submits the following issues to be considered in the instant Phase 2 proceeding:

- Which provisions within Section 1-75(d)(3) of the IPA Act are mandatory for sourcing agreements not associated with the initial clean coal facility;
- Submission of estimates pre-approved capital costs by the FutureGen Alliance and the IPA's Procurement Administrator for the FutureGen 2.0 project;
- ICC Staff's recommendations for annual audits, recommendations, and periodic benchmark tests for the FutureGen 2.0 project; and
- Establishment of a tariff as to form for the recovery of the costs associated with the FutureGen 2.0 project for ComEd and Ameren.

8. The FutureGen Alliance submits the foregoing list of issues in consideration of and mindful of the following statement provided by the Commission in

the Final Order: “The Commission notes that issues resolved in Phase 1 shall not be relitigated in Phase 2 of the process.” (Final Order at 234.)

9. The FutureGen Alliance submits the following proposed schedule for implementation and resolution of the issues listed above:

- **January 30:** Parties to submit issues list and proposed schedule
- **February 7:** ALJ to identify final issues list and case schedule
- **February 19:** FutureGen Alliance to submit its estimate of pre-approved capital costs; IPA Procurement Administrator to submit an estimate of pre-approved capital costs
- **Feb. 22:** Parties to submit initial filings relating to all other issues
- **Feb. 28:** ALJ hosts status conference/issues workshop
- **March 8:** Responses to initial filings due
- **March 15:** Replies to Responses due
- **March 29:** ALJ issues Proposed Order
- **April 17:** Commission votes on ALJ’s Proposed Order at previously-scheduled bench session in Springfield (or, alternatively, Commission votes on Proposed Order at May 1<sup>st</sup> meeting); Commission issues Final Order shortly thereafter
- **June 28:** ComEd and Ameren execute final version of sourcing agreement with FutureGen Alliance (or, alternatively, July 15)

10. The foregoing proposed schedule is consistent with meeting key deadlines for the FutureGen 2.0 project, including project milestones and deadlines established by the U.S. Department of Energy, as well as the September 2015 deadline for spending all American Recovery and Reinvestment Act funds. Any significant delays in the schedule presented above will undoubtedly place the \$1 billion in federal stimulus funds currently dedicated to the FutureGen 2.0 project in serious jeopardy.

11. In addition, the foregoing proposed schedule also is consistent with and accounts for deadlines included in the language of the Sourcing Agreement, which was approved by the Commission in the Final Order.

WHEREFORE, the FutureGen Industrial Alliance, Inc. respectfully requests that the Commission adopt the list of issues presented above as the issues to be decided in this Phase 2 proceeding, and adopt the schedule proposed above as the schedule for resolving and implementing such issues.

Respectfully Submitted,

FUTUREGEN INDUSTRIAL ALLIANCE, INC.

By: \_\_\_\_\_

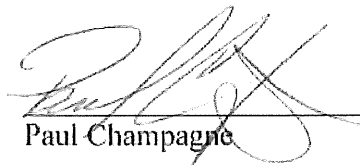
  
One of Its Attorneys

Kyle C. Barry  
McGUIREWOODS LLP  
1 Old State Capitol Plaza - Suite 410  
Springfield, IL 62701  
[kbarry@mwc llc.com](mailto:kbarry@mwc llc.com)  
(217) 527-1280 (office)  
(217) 527-1290 (fax)

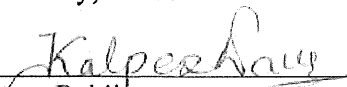
Elias "Louie" Mossos  
McGUIREWOODS LLP  
77 West Wacker Drive - Suite 4100  
Chicago, IL 62601  
[emossos@mwc llc.com](mailto:emossos@mwc llc.com)  
(312) 849-8100  
(312) 849-3690

**VERIFICATION**

I, Paul Champagne, President of PKM Energy Consulting, LLC acting in the capacity as Chief Development Officer for the FutureGen Industrial Alliance, Inc., hereby state that I have read the foregoing Proposed Issues and Schedule of the FutureGen Industrial Alliance, Inc. to the Illinois Power Agency's Power Procurement Plan, and that the facts stated therein are true and correct to the best of my knowledge and belief.

  
Paul Champagne

Subscribed and Sworn to  
Before me this 30 day  
of January, 2013.

  
Notary Public

My commission expires: 6/16/2013

