

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission :
On Its Own Motion :
 :
Phase 2 of the initial approvals for : 13-0034
FutureGen Industrial Alliance, Inc. :
 :
ORDER

By the Commission:

On December 19, 2012, the Illinois Commerce Commission ("Commission") entered a final order in Docket 12-0544, *Illinois Power Agency Petition for Approval of Procurement Plan*. ("12-0544 Order") In that Order, the Commission stated:

In its Objections, FutureGen describes a two-phase process for obtaining initial approvals. According to FutureGen, Phase 1 would be undertaken by the Commission in the instant proceeding and consist of Commission consideration of approval of the sourcing agreement as to form and the rate formula. As part of Phase 2, FutureGen indicates that it would submit a set of proposed "Preapproved Total Capital Costs" and a proposed rate of return and capital structure (including a debt/equity ratio). The Commission agrees with and adopts this approach, but notes that since the Commission has already approved FutureGen's return on equity and capital structure, these need not be included as Phase 2 issues.

Because FutureGen's two-phase process is approved, the Commission shall immediately initiate a separate proceeding in order to address, as expeditiously as practicable, the remaining contested issues regarding the proposed sourcing agreement. 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. The Commission directs the parties at the outset of the subsequent proceeding to submit issue lists and appropriate docket timeframes to the Administrative Law Judge for resolution. The Commission notes that issues resolved in Phase 1 shall not be relitigated in Phase 2 of the process. (12-0544 Order at pp. 233-234)

The Commission will take this opportunity to initiate the proceeding contemplated by the 12-0544 Order.

The Commission, being fully advised in the premises, is of the opinion and finds that:

- (1) the Commission has jurisdiction over the subject matter of this proceeding;
- (2) the Commission should take administrative notice of the Order entered on December 19, 2012 in Docket 12-0544;
- (3) the Commission should initiate a proceeding 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.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that a proceeding be initiated to determine the issues identified in Finding 3 of this Order.

IT IS FURTHER ORDERED that the Commission takes administrative notice of the Order entered on December 19, 2012 in Docket 12-0544, *Illinois Power Agency Petition for Approval of Procurement Plan*.

IT IS FURTHER ORDERED that a copy of this Order be served on each party to Docket 12-0544.

IT IS FURTHER ORDERED that parties to this proceeding submit issue lists and appropriate docket timeframes to the Administrative Law Judge for resolution.

IT IS FURTHER ORDERED that this Order is not final; it is not subject to the Administrative Review Law.

By Order of the Commission this 9th day of January, 2013.

(SIGNED) DOUGLAS P. SCOTT

Chairman