

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission)
On Its Own Motion)
) ICC Docket No. 13-0034
Phase 2 of the initial approvals of)
FutureGen Industrial Alliance, Inc.)

**PROPOSED ISSUES LIST AND SUGGESTED SCHEDULE
ON BEHALF OF THE ILLINOIS POWER AGENCY**

The Illinois Power Agency (“IPA”), pursuant to the Administrative Law Judge’s (“ALJ”) Order dated January 22, 2013, respectfully submits this Proposed Issues List and Suggested Schedule in the above-captioned Docket.

I.

ISSUES LIST

The IPA recommends that the Illinois Commerce Commission (“Commission”) take evidence on and resolve the following issues, some of which were identified in the Commission’s Final Order in ICC Docket No. 12-0544:

- **Mandatory provisions within Section 1-75(d)(3) of the IPA act that are not associated with the initial clean coal facility** – This item was explicitly raised by the Final Order, and appears to remain in controversy unless a resolution arises in a workshop (see below). (See ICC Docket No. 12-0544, Final Order dated December 19, 2012 at 234.)
- **Preapproved total capital costs** – This item was explicitly raised by the Final Order. (See ICC Docket No. 12-0544, Final Order dated December 19, 2012 at 234.) The IPA notes that it has provided cost benchmark information to Staff pursuant to Section 1-75(d)(5) of the IPA Act, which (while protected from disclosure to litigants) will inform any Commission determination of reasonableness.
- **Staff's recommendations for annual audits, reconciliations, and periodic benchmark tests** – This item was explicitly raised by the Final Order. (See ICC Docket No. 12-0544, Final Order dated December 19, 2012 at 234.)
- **The nature of ARES obligations to Ameren and ComEd regarding FutureGen contracts** – This item was not explicitly raised in the Final Order, but a similar sub-

issue is being raised in a joint Motion for Clarification filed by FutureGen, Ameren, and ComEd in ICC Docket No. 12-0544. The IPA is not sure that the parties agree on the mechanics of Staff's "Alternative Proposal." (See ICC Docket No. 12-0544, Final Order dated December 19, 2012 at 236-237 (describing Staff's "Alternative Proposal").)¹ To the extent that consensus does not exist, the IPA believes that the parties should address ARES role.

- **Equitable and Competitively Neutral Allocation of Costs** – This item was not explicitly raised in the Final Order, but the IPA is not sure if all parties agree on the proper mechanisms for equity and competitive neutrality. To the extent that consensus does not exist, the IPA believes that the parties should address any impediments to competitive neutrality or equitable allocation of costs under the Sourcing Agreement.

II.

SUGGESTED SCHEDULE

The IPA is flexible with regard to scheduling, but understands that other parties – most notably the FutureGen Alliance – may face external deadlines. Although the IPA is willing to work with the parties on the exact dates, the IPA does recommend the following structure for the schedule:

- FutureGen circulates a Word version of the Sourcing Agreement attached to its Reply Brief on Exceptions in ICC Docket No. 12-0544, as modified by the Commission's Final Order (if at all) as soon as possible (*Suggested date: 2/6/13*).
- Staff (with assistance, if requested, from the IPA) holds a workshop to attempt to narrow issues on the list. The parties should come prepared by having reviewed: (1) The Commission's Final Order in ICC Docket No. 12-0544, (2) FutureGen's updated Sourcing Agreement, and (3) the other parties' Issues Lists. Unless requested by the parties, the IPA does not anticipate more than a single day of workshops would be necessary (*Suggested date: 2/13/13*).
- If outstanding issues remain after the workshop, parties file 2-3 rounds of simultaneous verified comments, with supporting redline changes to the Sourcing Agreement to be served along with the comments (*Suggested dates: 2/27/13, 3/13/13, and 3/22/13 (if necessary)*). The IPA recommends verified comments over testimony

¹ The IPA is aware that Applications for Rehearing currently before the Commission in ICC Docket No. 12-0544 raise questions regarding Staff's Alternative Proposal. In the interest of advancing the issue, the IPA recommends that parties be allowed to comment with an understanding that any positions in this docket do not waive any legal rights to arguments in post-Final Order review of ICC Docket No. 12-0544.

because the IPA anticipates several legal arguments will arise, which will be more efficient to address in verified comments rather than testimony and briefing.

- The ALJ releases the Proposed Order at a time convenient to the ALJ, taking into account any party's external deadlines, and the parties file two rounds of Exceptions with supporting redline changes to the Sourcing Agreement.
- The Commission would target action by June 15, 2013.

WHEREFORE the IPA respectfully requests that the ALJ consider the IPA's Proposed Issues List and Suggested Schedule.

Respectfully submitted,

ILLINOIS POWER AGENCY

By: /s/ Michael R. Strong
One of its Attorneys

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NOTICE OF FILING

Please take notice that on January 30, 2013, the undersigned, an attorney, caused the Petition to Intervene on Behalf of the Illinois Power Agency to be filed via e-docket with the Chief Clerk of the Illinois Commerce Commission in the above-referenced proceeding:

January 30, 2013

/s/ Michael R. Strong
Michael R. Strong

CERTIFICATE OF SERVICE

I, Michael R. Strong, an attorney, certify that copies of the foregoing document(s) were served upon the parties on the Illinois Commerce Commission's service list as reflected on eDocket via electronic delivery from 160 N. LaSalle Street, Suite C-504, Chicago, Illinois 60601 on January 30, 2013.

/s/ Michael R. Strong
Michael R. Strong