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COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

COMMITTEE ON EDUCATION AND THE WORKFORCE

September 18, 2012

Jon Wellinghoff
Chairman
Federal Energy Regulatory Commission
888 First Street, NE, Room 11H
Washington, DC 20426

Dear Chairman Wellinghoff:

I write to request that the Federal Energy Regulatory Commission (FERC) investigate any and all agreements between the owners of the Prairie State Generating Company (PSGC), such as American Municipal Power (AMP), and the owners' member municipalities such as Cleveland Public Power, that are related to the generation, transmission and sale of electric power from the newly constructed Prairie State coal plant located in Marissa, Illinois. While several technical and policy matters have already been before the Commission, there remain unaddressed fundamental problems with the financial stability and the long-term reliability of the plant. There are further questions about whether the electric rates being charged consumers are fair and reasonable.

Currently, municipalities and electric coops across the Midwest have signed on to the Prairie State coal plant project and incurred debt for the $4.9 billion in known, but growing project costs. This amounts to over $11.7 billion in principal and interest payments, including a $900 million federal subsidy under the Build America Bond program. The debt incurred covers the cost of the plant, the Lively Grove mine and at least the Jordan Grove ashfill. The Institute for Energy Economics and Financial Analysis estimates that Clevelanders alone are on the hook for $19 million above and beyond what they would have paid had Cleveland Public Power simply bought electricity on the open market. The full project affects 2.5 million ratepayers across 8 states.

Peabody Energy Corporation was the initial developer of the 1,582 MW Prairie State Energy Campus (PSEC) coal-fired power plant. However, beginning as early as 2001, Peabody began an aggressive campaign with promises of long-term low-cost power to induce joint municipal power agencies in states throughout the Midwest to participate in the project. This campaign induced eight power agencies, including AMP, to agree to collectively take on approximately 95 percent of the ownership interest in the project. Peabody now retains only a 5 percent interest in the Prairie State project and has the right to sell even that small ownership share after five years.

The power agencies, in turn, entered into long-term "take-or-pay" contracts, and in some cases, "take-and-pay" contracts, with 217 municipalities and 17 electric coops in Virginia, Ohio, Kentucky, Indiana, Illinois, Michigan, Missouri and West Virginia. Under the take-or-pay contracts, communities are obligated to pay for PSEC whether or not the plant generates any power. Cleveland Public Power and 67 other municipalities signed onto the plant pursuant to their relationship with AMP in Ohio. Under these contracts the utilities' customers will unwittingly bear most of the risk of the venture in the event that new costs must be covered.

Already the price of electricity from the plant is far above that promised to communities when they signed on. It will continue to be more expensive than the going market price for power in the region for the foreseeable future. One recent study put the excess power costs at up to double the originally promised price, which is likely to be underestimated since the plant is reported to be operating at diminished capacity. Initial estimates for the price of power assumed that the plant would be operating at 85% capacity. However, unconfirmed accounts of extended periods of outages in one unit of the plant's operations raise the possibility that the plant is operating at substantially less than 85% capacity.

The cost increases were mostly foreseeable and preventable had the sellers or buyers provided full disclosure and/or done their due diligence. It is likely that the financial weaknesses of the proposed plant were well known to Peabody and PSGC as it developed the project and then sold to state and local governments:

First, it was widely known that new coal plants were a bad financial risk. Peabody and AMP both canceled plans to build other coal plants because of rising costs between 2004 and the present. The cost of PSEC rose from $1.7 billion to its current price of $4.9 billion during this period. PSGC rejected warnings from government financial officers, consultants, and others about the rising costs.

The increase in the price of electricity from the plant is driven largely by massive increases in the capital costs of the plant, including the mine and ashfill. The plant has already suffered from construction defects which caused a major delay in opening one of the units, and it is apparently suffering from additional operational problems. <u>The debt and debt service on the plant will now be a permanent part of the increased price of electricity charged to consumers</u>.

Second, Peabody's poor management of the mine is driving up costs. The plant and project were sold to communities by Peabody Energy as part of package that included a purported thirty year supply of cheap coal from the Lively Grove mine near the plant. The mine was owned by Peabody Energy. Peabody secured permits from the State of Illinois. After the sale of Peabody's interest in the plant, Peabody remained under contract with PSGC to oversee mine construction and operations. Peabody's plan to mine coal at the Lively Grove facility was rejected by the Mine Safety and Health Administration (MSHA). While the matter is still unresolved at MSHA, if Peabody adheres to the MSHA ruling the coal reserves at Lively Grove would only serve the plant for 22 years. It is disclosed in bond documents that Peabody stands ready to sell PSGC yet another coal reserve. Even if Peabody reaches an accommodation with MSHA the risk will remain with the communities long after Peabody exits the contract and its investment. The real cost of electricity for Prairie State communities is therefore not fully disclosed to participants.

Third, Peabody's poor management of the ashfill is driving up costs. The plant and project were sold to communities by Peabody Energy as part of a package which included the Jordan Grove ashfill, a "permitted" site. The site came with a purported 23 year useful life. Upon investigation, PSGC learned that the ashfill had only a useful life of 12 years. PSGC has purchased a new site and is currently in the permit review process. The cost of full and complete ashfill capacity is not currently known but is part of the cost of PSGC's electricity that will be passed on to customers.

The current market for power is producing electricity at prices far below that of the Prairie State plant. While the plant was supposed to be a hedge against high prices, it is now a source of upward pressure on prices. Rather than an asset that can help keep electricity prices down, it is a liability that makes publicly provided power less competitive. Communities that should be benefitting in the form of lower rates, improved services or financial relief are now pressed to use, market and sell expensive electricity at a loss.

The damage is already being experienced. Earlier this year communities throughout the Midwest have been saddled with bills from the Prairie State plant to pay for electricity they have never received. Local systems were paying hundreds of thousands per month out of reserves for electricity **not** received and then buying actual electricity on the market at additional costs. Cleveland, for example, paid $250,000 per month in March, April, and May for debt service with no electricity received.

I am requesting that FERC conduct a full investigation of the Prairie State energy deal, and related transactions that are subject to FERC's jurisdiction. As part of such an investigation, it will be essential to know whether the public power agencies are currently in compliance with FERC regulations concerning the reporting of any outages of the PSGC particularly for the months of June and July 2012; whether PSGC is currently in compliance with PJM and MISO regulations concerning the bidding of power in the market; what the current practices are for each of the public power entities to apportion costs among its member communities; and what the current practices are for each of the public power entities concerning the availability of reserve power and procedures for dispatching reserve power.

After a team is assembled, please contact my office to schedule a meeting in which we discuss PSGC. My staff and I stand ready to assist in any way possible to ensure the protection of the Midwest ratepayer.

Sincerely,

Dennis J. Kucinich

Dennis J. Kucinich
Member of Congress