

**BEFORE THE ILLINOIS COMMERCE COMMISSION
STATE OF ILLINOIS**

The Illinois Commerce Commission)
On Its Own Motion)
)
Phase 2 of the Initial Approvals for)
FutureGen Industrial Alliance, Inc.)

ICC Docket No. 13-0034

**VERIFIED REPLY COMMENTS
ON BEHALF OF
THE COALITION OF ENERGY SUPPLIERS**

The Coalition of Energy Suppliers ("CES"), by its counsel Quarles & Brady LLP, respectfully submits the following Comments in reply to the parties' March 20, 2013 Initial Comments and April 10, 2013 Response Comments relating to the March 8, 2013 Submission by FutureGen Industrial Alliance, Inc. ("FutureGen") of the Revised Sourcing Agreement ("FutureGen Revised Draft Sourcing Agreement").¹

Counterparties to the FutureGen Sourcing Agreement

In its December 19, 2012 Final Order in ICC Docket No. 12-0544, the Illinois Commerce Commission ("Commission") adopted the "alternative proposal" from the Commission Staff ("Staff") regarding the designation of counterparties to the FutureGen Sourcing Agreement. The Commission concluded:

Accordingly, the Commission adopts Staff's alternative proposal by which FutureGen will contract only with ComEd and Ameren.

(ICC Docket No. 12-0544, Dec. 19, 2012 Final Order at 237.)

¹ The March 8, 2013 and April 10, 2013 filings contained a variety of titles. For consistency, all of the March 8, 2013 filings are referred to herein by the filing party's name followed by "Initial Comments" and all of the April 10, 2013 filings are referred to herein by the filing party's name followed by "Response Comments."

As noted in CES's Initial and Response Comments, with respect to the issue of counterparties, the FutureGen Revised Draft Sourcing Agreement appears to conform to the Commission's direction that **only ComEd and Ameren** are to be counterparties to the Sourcing Agreement. It appears that all references to Retail Electric Suppliers and/or Alternative Retail Electric Suppliers (collectively, "RESs") have been appropriately removed from the document, and it is CES's understanding of FutureGen's position that FutureGen does not intend any party other than FutureGen, ComEd, and Ameren to be bound by terms and conditions of the FutureGen Revised Draft Sourcing Agreement. (*See* CES Initial Comments at 2; CES Response Comments at 1-2.)

Based on the parties' Response Comments, it continues to be the case that no party is advancing any position that is contrary to or in conflict with the approach under which the parties to the Sourcing Agreement are FutureGen, ComEd, and Ameren only. Additionally, no party takes issue with FutureGen's multiple statements confirming that only ComEd and Ameren are to be counterparties to the Sourcing Agreement. (*See* FutureGen Initial Comments at 7-8; CES Response Comments at 1-2.) Accordingly, CES does not have any suggested modifications to the FutureGen Revised Draft Sourcing Agreement relating to the counterparty issue at this time.

Annual Audits and Annual Reconciliation Proceedings

The Commission Staff continues to advocate that the FutureGen project should be subject to annual audits and annual reconciliation proceedings. (*See* Staff Initial Comments at 6-8; Staff Response Comments at 9-10.) For the reasons stated in CES's Response Comments, CES continues to agree with Staff's suggestion for annual Commission oversight and review proceedings. (*See* CES Response Comments at 3-4.)

Confidential Treatment of the IPA Benchmark Study

The IPA takes the position that the "Benchmark Methodology" that is contained in an IPA-procured Benchmark Study should be maintained as confidential. (*See* IPA Initial Comments at 4-5.) As noted in CES's Response Comments, the IPA's rationale for confidential treatment is factually and legally unconvincing. (*See* CES Response Comments at 4-7.) CES notes that Staff similarly finds that the "there is not a clearly compelling reason for confidentiality" of the Benchmark Methodology. (Staff Response Comments at 8.) Staff likewise agrees that because the benchmark at issue in this case does *not* have anything to do with a competitive procurement process, there is no need to treat the Benchmark Methodology as confidential. (*See id.*; *see also* CES Response Comments at 6-7.) Finally, Staff echoes CES's view that the applicable statutory scheme does not provide for confidential treatment of the FutureGen benchmark:

Finally, the law is clear that the benchmarks used in the context of competitive procurement events for standard electricity products and renewable energy resources have to be treated confidentially by the Commission, ICC Staff, Procurement Monitor, Procurement Administrator, and IPA (see, for example, 220 ILCS 5/16-111.5(e)(3)), but no such requirement exists for Section 1-75(d)(5) clean coal facility benchmarks.

(Staff Response Comments at 8-9; *see also* CES Response Comments at 6-7.)

Accordingly, CES respectfully requests that the Commission critically evaluate the IPA's position on the confidentiality of the FutureGen-related Benchmark Methodology.

Reservation of Rights and Conclusion

As the Commission is aware, CES respectfully disagrees generally with the Commission's approval of the FutureGen project as presented in the IPA's 2013 Annual Procurement Plan, and further respectfully disagrees with any language in the Commission's Final Order suggesting that the Commission possesses the legal authority to require RESs to

enter into a Sourcing Agreement with FutureGen. Based upon the submission of the FutureGen Revised Draft Sourcing Agreement in its current form in the instant proceeding, and consistent with the Initial Comments of FutureGen and the other parties, those issues do not require further discussion in the instant Reply Comments. However, CES reserves the right to address those issues (and to seek discovery and present evidence and information) if those issues are discussed or implicated by other parties' additional submissions or evidence in the instant proceeding or in any other related proceeding.

CES also reserves the right to raise issues, seek discovery, and present evidence and information relating to any Commission decision (in this proceeding or any other) concerning further approval of any aspect of the FutureGen project beyond the specific language of the FutureGen Revised Draft Sourcing Agreement.

Finally, CES respectfully requests that the Commission critically analyze the IPA's request that the FutureGen-related Benchmark Methodology be deemed confidential.

Respectfully submitted,

THE COALITION OF ENERGY SUPPLIERS

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STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

VERIFICATION

Christopher J. Townsend, being first duly sworn, on oath deposes and says that he is one of the attorneys for the Coalition of Energy Suppliers, that he has read the above and foregoing Verified Reply Comments, knows of the contents thereof, and that the same is true to the best of his knowledge, information, and belief.

Christopher J. Townsend

Subscribed and sworn to me
this ____ of April 2013.
