

**COMMENTS OF SARGAS, INC.  
ON THE ILLINOIS POWER AGENCY'S  
DRAFT 2015 ELECTRICITY PROCUREMENT PLAN**

Sargas, Inc. ("Sargas") submits these comments on the Illinois Power Agency's ("IPA") Draft 2015 Electricity Procurement Plan ("Draft Plan") that was posted on the IPA's website on August 15, 2014, pursuant to Section 16-111.5(d)(2) of the Illinois Public Utilities Act ("PUA") (220 ILCS 5/16-111.5(d)(2)).

**I. Outline of Comments**

Sargas' comments focus on the IPA's existing authority to include a clean coal procurement in the 2015 Plan, and why such inclusion is required by Illinois law.

Sargas' comments focus solely on the Clean Coal portions (Sections 2.9 and 7.6 of the Draft Plan, plus related language) of the Draft Plan. Although Sargas disagrees with the IPA's decision to not include a competitive clean coal procurement in the Draft Plan, Sargas appreciates the IPA's invitation to explain the IPA's authority to include a clean coal procurement in the 2015 Plan. For the convenience of the IPA, the Illinois Commerce Commission ("ICC" or "Commission"), and the parties, Sargas includes a redlined version (including strike-outs) of the relevant portions of the Draft Plan, reflecting Sargas' comments, in Section IV of its comments.

In general, Sargas commends the IPA for issuing a thorough Draft Plan and commends the IPA for including a discussion of the proposed Sargas clean coal facility in the Clean Coal section of the Draft Plan

As the IPA indicates in Section 7.6.2 of the Draft Plan, representatives of Sargas approached the IPA about Sargas' proposed clean coal facility for Mattoon, Illinois. Sargas expressed its desire to compete for a power purchase agreement for the Sargas project as a part

of a competitive clean coal procurement hosted by the IPA. As the IPA indicates in the Draft Plan, Sargas requested that the IPA include a competitive clean coal procurement in the IPA's 2015 power procurement plan. The IPA elected not to include a competitive clean coal procurement in the Draft Plan, stating its concerns about its authority to do so, but invited Sargas to explain the IPA's authority to conduct a procurement for clean coal.

Sargas appreciates the invitation from the IPA to “connect the dots” and discuss the IPA's existing authority to conduct a competitive clean coal procurement. Sargas believes that the IPA's view, as Sargas understands it, is too modest – given its statutory authority in context, as well as the First District Court of Appeals' pronouncements on, and confirmation of IPA authority. As explained more fully in the comments below, Sargas believes that the IPA, having become aware of an eligible clean coal facility, not only has the authority to conduct a competitive clean coal procurement under the IPA Act, but is required to do so in order to satisfy the IPA Act's explicit directive to include clean coal in every annual procurement plan.

Likewise, Sargas believes, based on the clear intent of the Clean Coal Portfolio Standard provisions, as well as the First District Court of Appeals' recent interpretation of those provisions (as well as the Commission's previous interpretation of those provisions) that the IPA's authority over clean coal extends to both Illinois regulated electric utilities and Illinois alternative electric suppliers (“ARES”).

Finally, IPA's provision of a competitive clean coal procurement will further the Illinois statutory objective of providing for a diverse portfolio of energy supply that includes additional “environmentally sustainable power,” and, as the Commission has found previously, will serve

as a hedge against the risk of future federal regulations and legislation imposing limits on carbon emissions.

## **II. Overview of the Sargas Clean Coal Project**

Sargas, a US subsidiary of Sargas AS, a Norwegian technology company, is developing, with the support of Coles Together, Illinois' Department of Commerce and Economic Opportunity (DCEO) and Illinois Clean Coal Review Board (CCRB), a coal-fired power plant at Mattoon with post-combustion carbon capture for additional economic and environmental benefit.

The plant has been designed to burn Illinois coal using Sargas' proprietary fluidized bed and CO<sub>2</sub> capture technology to generate electricity with 99% SO<sub>2</sub> capture, low NO<sub>x</sub> emissions, and 90%-plus carbon capture. Captured CO<sub>2</sub> will be used beneficially for EOR. Combustion and emissions reduction are achieved at a high pressure, in the Sargas process, resulting in better efficiency and reduced component size compared to unpressurized systems. The technology and design implementations result in a modular design approach of increments of approximately 80 megawatts (MW). The initial design of the proposed plant at Mattoon is a single module of ~80 (MW).

The technology proposed for the Sargas project, and for which project feasibility engineering at Mattoon has been done, involves the innovative Sargas ultra clean coal solution technology (hereafter referred to as "Sargas technology"). Sargas technology achieves its remarkable generating and capture efficiencies (greater than 90% of CO<sub>2</sub>) by combining proven industrial processes into an integrated, pressurized system unique to Sargas.

The Sargas technology power plant design uses direct firing of coal into a pressurized fluidized bed. The coal is mixed with limestone or dolomite for high sulfur capture (well-suited to the composition of Illinois coal supplies), with water added to facilitate pumping into the pressurized combustor. Low and uniform combustion temperature results in the formation of very low levels of thermal nitrous oxides (NO<sub>x</sub>), long residence time results in very low carbon monoxide (CO), and almost full utilization of the available atmospheric oxygen, which in turn avoids the need for constructing a separate oxygen plant.

The process includes a CO<sub>2</sub> capture system utilizing an inorganic mineral-based CO<sub>2</sub> adsorbent. Once captured, the sequestration of CO<sub>2</sub> can be accomplished through either geological storage (as is the case for FutureGen 2.0 and ADM), or through the injection into suitable oilfields (for enhanced oil recovery (EOR)), or other alternatives that confer the advantage of the economically beneficial use of CO<sub>2</sub>. Sargas, in consultation with the Illinois Geological Survey (IGS), has determined that it is feasible to use CO<sub>2</sub> effectively for EOR in Illinois oilfields near Salem, Clay City and Sailor Springs, as well as at those in and around Coles County.

CO<sub>2</sub> has been used for EOR in the Permian Basin (located primarily in Texas and portions of Southeastern New Mexico) for several decades. The current high prices for crude oil have led to an increasing use of CO<sub>2</sub> for EOR as well as increasing prices that the oil operators are willing to pay for the CO<sub>2</sub>. Since EOR has not been used in Illinois to date, the development of an infrastructure for the transport and use of CO<sub>2</sub> for EOR has the potential to provide significant economic benefits to regions of Illinois that enjoy commercial scale oil deposits. Sargas has entered into negotiations with the majority of owners and operators of oil fields in

Coles County to secure and develop offtake agreements to use the CO<sub>2</sub> from the Mattoon Sargas plant for EOR at their oil wells. Revenues obtained from CO<sub>2</sub> sales for this purpose will substantially subsidize the price at which generated electricity can be sold.

### **III. Clean Coal in the IPA's Draft Plan**

The IPA's Draft Plan includes an overview of Sargas' proposed clean coal facility, and describes discussions between Sargas representatives and the IPA regarding the potential inclusion of a competitive clean coal procurement in the 2015 Plan. The IPA, however, indicates in the Draft Plan that it has "concerns" about Sargas' proposal to include a competitive clean coal procurement in the 2015 Plan. *See* Draft Plan at 87. In light of those concerns, the IPA invited Sargas to explain how the IPA has the authority and obligation to include a competitive clean coal procurement in the 2015 Plan. *Id.* at 88.

Sargas submits that the IPA has the authority and, indeed, the duty to conduct a competitive clean coal procurement to satisfy the IPA Act's directive to include clean coal in every annual procurement plan. Sargas also believes that the IPA has a duty to begin preparing to meet the 25% clean coal requirement by January 1, 2025 given the length of time required to bring new clean coal facilities on line. The clear intent of the Clean Coal Portfolio Standard provisions in the IPA Act and the Public Utilities Act provide the IPA and the Commission the authority to require both Illinois electric utilities and ARES to purchase electricity from clean coal facilities. Finally, hosting a competitive clean coal procurement will permit the IPA to further additional Illinois statutory objectives of providing for a diverse portfolio of energy

supply that includes additional “environmentally sustainable power,” and will serve as a hedge against the risk of future federal regulations and legislation imposing limits on carbon emissions.

**A. The Draft Plan Is Deficient Because It Fails to Comply with the IPA Act’s Directive to Include Electricity Generated Using Clean Coal and Fails to Meet the IPA Act’s Requirement to Source 25% of the Electricity Used in Illinois from Cost-Effective Clean Coal Facilities.**

IPA Act Section 1-75(d) includes a Clean Coal Portfolio Standard (“CCPS”) for Illinois. *See* 20 ILCS 3855/1-75(d). Section 1-75(d) of the IPA Act also directs that each annual “procurement plan *shall* include electricity generated using clean coal.” 20 ILCS 3855/1-75(d)(1) (emphasis added).

In December 2012, the Commission approved the annual electricity procurement plan (the “2013 Plan”) submitted by the IPA. The 2013 Plan is the first procurement plan to include clean coal. The 2013 Plan indicates that the FutureGen Project, for which the Commission approved a 20-year power purchase agreement, is scheduled to go on line in 2017, which is the fifth and final year of the planning horizon considered in the 2013 Plan. *See* 2013 Plan at 79. The IPA’s 2014 annual procurement plan did not include any clean coal in addition to the FutureGen Project’s power purchase agreement. The current five-year planning horizon, therefore, includes no new clean coal.

The CCPS also includes a stated objective “that by January 1, 2025, 25% of the electricity used in the State shall be generated by cost-effective clean coal facilities.” 20 ILCS 3855/1-75(a). The decision by the Illinois First District Court of Appeals (“First District”) affirming the Commission’s Final Order that approved the FutureGen Project’s power purchase

agreement acknowledged the CCPS' 25% clean coal requirement: "The legislature *established* that by January 1, 2025, '25% of the electricity used in the State shall be generated by cost-effective clean coal facilities.'" *Commonwealth Edison Co. v. Illinois Commerce Commission*, 2014 Ill App (1<sup>st</sup>) 130544 (July 22, 2014) ("*ComEd*"), at 4, quoting 20 ILCS 3855/1-75(d)(1). (Emphasis added.)

The IPA's decision not to include a clean coal project or a clean coal mechanism, such as a competitive clean coal procurement, in the Draft Plan renders it deficient for at least two reasons: (1) the Draft Plan fails to satisfy IPA Act Section 1-75(a)'s requirement to include clean coal in each procurement plan, and (2) the IPA has not properly prepared to "ramp up" toward a 25% clean coal requirement that is scheduled to apply in just over 10 years.

The Draft Plan is silent as to the IPA's requirement to include clean coal in each procurement plan. The Draft Plan references the FutureGen Project, and states that it is projected to generate electricity in 2017. Draft Plan at 86. However, the Draft Plan contains no clean coal for the five-year planning horizon beginning in 2018, and the Draft Plan is silent about this glaring omission.

The Draft Plan also is silent about how the IPA intends to account for the 25% by 2025 requirement. In fact, the Draft Plan incorrectly refers to the 25% requirement as an "aspirational goal," which is contradicted by both the language in the IPA Act as well as the First District's opinion, which states that the General Assembly "established" the 25% requirement by 2025. *See ComEd*, 2014 Ill App (1<sup>st</sup>) 130544 (July 22, 2014), at 4.

The IPA Act calls for 25% clean coal by January 1, 2025, barely 10 years from now, which is a very short period of time considering the permitting and construction of a clean coal

facility is likely to take six to seven years. Unlike Illinois' Renewable Portfolio Standard ("RPS"), for which the IPA Act includes a reference to a specific list of percentages with a corresponding year by which that percentage must be met, e.g., 9% by June 1, 2014 and 10% by June 1, 2015, working up to 25% by the year 2025, 20 ILCS 3855/1-75(c), the only percentage found in Section (d) of Section 1-75 of the IPA Act is the 25% by 2025. 20 ILCS 3855/1-75(d)(1).

The absence of a corresponding "percentage ladder" for the CCPS similar to the one found in the RPS presents questions and confusion for complying with the CCPS. Illinois' electric utilities and ARES regularly comply with the RPS because the RPS provisions include a mandate to purchase a percentage of renewable energy *by a certain date*. The lack of a similar mandate (or interim deadlines) in the CCPS presents no urgency for the electric utilities and ARES to purchase electricity from clean coal facilities.

Under the IPA Act and the PUA, however, the IPA has both the authority and discretion to adopt its own interim deadlines and percentages as a means to clear up the confusion associated with complying with the CCPS.<sup>1</sup> Just over 10 years away from the January 1, 2025

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<sup>1</sup> Indeed, in addition to managing the statutorily-mandated percentage ladders for the RPS, the IPA already employs laddering in other ways:

In the past, the Agency has procured or hedged power for the utilities to meet a forecast of the average hourly load in each of the on-peak and off-peak periods. The Agency has addressed the volatility in power prices by "laddering" its purchases: hedging a fraction of the forecast two years ahead, another fraction one year ahead, and a third fraction shortly before the beginning of the delivery year. Even if pricing two years ahead were extremely advantageous, the Agency does not purchase its entire forecast that far ahead because the forecast is itself uncertain. It is therefore important to understand the sources of uncertainty in the forecasts.



deadline, the IPA and the Commission have only approved approximately 168 MW of nameplate capacity for clean coal in Illinois (from the FutureGen Project). This is less than 1% of Illinois' annual consumption -- far short of the 25% requirement, and given a realistic seven year plant development time, renders the State at risk of violating the 25% requirement, given the effective three year "cushion" remaining.

The First District Court lent a great deal of deference to the authority of the Commission to interpret, manage and implement statutory provisions pertaining to the CCPS. The First District first noted that "[c]ourts give substantial deference to the Commission's decisions for it is an administrative body with expertise in the area of public utilities, and thus is qualified to interpret highly technical evidence," *ComEd*, 2014 Ill App (1<sup>st</sup>) 130544 (July 22, 2014), at 7, citing *United Cities Gas Co. v. Illinois Commerce Comm'n*, 163 Ill. 2d 1, 12 (1994). The court also emphasized that "courts appreciate an agency's experience and expertise in a given area and therefore will give substantial deference to its interpretation of an ambiguous statute it administers and enforces," *Id.*, citing *Illinois Consolidated Telephone Co. v. Illinois Commerce Comm'n*, 95 Ill. 2d 142, 152-53 (1983), and that although they are "not binding on the courts, an agency's interpretations are an informed source for ascertaining the legislature's intent in enacting the statute" *Id.* (citation omitted).

With reference to these standards, the First District found that the Illinois General Assembly granted the IPA and the Commission more authority than usual when it comes to

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Draft Plan at 27. The IPA Act does not direct the IPA to employ such laddering techniques. The IPA could therefore take the same approach toward meeting the 25% clean coal requirement to minimize price uncertainty.

procuring electricity from clean coal facilities: “This legislative intent is reflected in the clean coal portfolio standard which, by its terms, grants the Illinois Power Agency and the Commission more authority in the procurement of electricity from such sources.” *Id.* at 12, citing (*Knolls Condominium Ass’n v. Harms*, 202 Ill. 2d 450, 459 (2002)). The First District also “acknowledge[d] the Commission's experience and expertise in this area” and gave “substantial deference to its interpretation of an ambiguous statute it administers and enforces.” *Id.* at 13.

Based on the First District’s ruling, then, the IPA could exercise its broad discretion under the CCPS provisions to begin enforcing the ARES’ obligation to source electricity from clean coal facilities in preparation for compliance with the 25% requirement by 2025. Section 16-115(d)(5) of the PUA clearly requires each ARES to purchase electricity from clean coal facilities according to the percentage outlined in Section 1-75(d) (or 25% by 2025). The IPA could choose to exercise its discretion under the PUA and IPA Act to establish deadlines in advance of January 1, 2025 for meeting that requirement, just as the IPA has already exercised its discretion by “laddering” purchases as a price hedge. Draft Plan at 27. Read together with Section 1-75(a) of the IPA Act – each procurement plan shall include clean coal – both the PUA and IPA Act provisions relating to clean coal provide the IPA with a mechanism to include clean coal in the current five-year planning window. Hosting a competitive procurement would be the most cost-effective mechanism for getting that done.

**B. The IPA Act and Public Utilities Act Confer Upon the IPA the Authority to Bind Both Utilities and ARES to a Power Purchase Agreement Resulting from a Competitive Clean Coal Procurement.**

In the Draft Plan, the IPA expresses “concerns” over Sargas’ proposal to include a competitive clean coal procurement in the 2015 Plan on the grounds that the IPA may not have

the authority to bind both Illinois utilities and ARES to the results of such a procurement. Draft Plan at 87. These concerns are not well-founded – the IPA Act and PUA do confer upon the IPA the power to conduct a competitive procurement and bind both electric utilities and ARES.

Generally speaking, the IPA Act’s procurement provisions apply to the “eligible retail customers” of Ameren and ComEd: Section 1-75(a) of the IPA Act directs the IPA to “develop procurement plans and conduct competitive procurement processes in accordance with the requirements of Section 16-111.5 of the Public Utilities Act for the eligible retail customers of electric utilities that on December 31, 2005 provided electric service to at least 100,000 customers in Illinois.” 20 ILCS 3855/1-75(a). In other words, the IPA was designed primarily to procure power on an annual basis for the customers of Ameren and ComEd, not for the customers of the ARES, who compete in a largely unregulated environment.

Unlike the FutureGen Project, which was able to proceed under the special Retrofit Provision of the CCPS since it involves a retrofit and repower of a coal-fired facility previously owned by an Illinois utility, a greenfield project like Sargas’ proposed clean coal project has no express statutory language to point to as a basis for compelling the ARES to purchase its electricity. Both the Commission and the First District Court of Appeals found that the Retrofit Provision, because it expressly references ARES, provide a basis for support for requiring both the utilities and ARES to purchase power from a retrofitted clean coal facility.

While it is clear through the various CCPS statutory provisions that the General Assembly intended to grow the use of clean coal by imposing the 25% requirement by 2025, the mechanisms for growing the industry, with the exception of the initial clean coal facility and repowered and retrofitted facilities, are not clearly articulated. The statutory scheme as a whole,

however, confers discretion upon the IPA and the Commission to work toward and achieve the statutory requirement of 25% by 2025.

Section 16-115 of the PUA governs certification of ARES. Section 16-115(d)(5) states in part:

That the [ARES] applicant will procure renewable energy resources in accordance with Section 16-115D of this Act, and ***will source electricity from clean coal facilities***, as defined in Section 1-10 of the Illinois Power Agency Act, ***in amounts at least equal to the percentages set forth in subsections (c) and (d) of Section 1-75 of the Illinois Power Agency Act.***

220 ILCS 5/16-115(d)(5) (emphasis added). Section 16-115(d)(5) goes on to state that “[f]or purposes of this Section:”

(iii) the required source of electricity generated by clean coal facilities, ***other than the initial clean coal facility***, shall be limited to the amount of electricity that can be procured or sourced at a price at or below the benchmarks approved by the Commission each year in accordance with item (1) of subsection (c) and items (1) and (5) of subsection (d) of Section 1-75 of the Illinois Power Agency Act[.]

220 ILCS 5/16-115(d)(5)(iii) (emphasis added). (Note that subsections (d)(5)(i) and (ii) were purposefully left blank.) Moreover, the IPA Act, cross referencing the ARES’ certification provisions of the PUA, specifically directs the IPA to consider electricity generated from clean coal facilities during the procurement planning process:

***Pursuant to such procurement planning process***, the owners of such [clean coal] facilities may propose to the Agency sourcing agreements with utilities and ***alternative retail electric suppliers*** required to comply with subsection (d) of this Section and item (5) of subsection (d) of Section 16-115 of the Public Utilities Act, covering electricity generated by such facilities.

20 ILCS 3855/1-75(d)(5) (emphasis added).

Indeed, the First District found that the IPA and the Commission have the authority to require both Illinois’ regulated utilities and ARES to purchase from clean coal facilities, and the IPA reads that decision too narrowly. The First District specifically rejected the ARES’

argument that the IPA Act and the PUA only apply to the customers of Illinois' electric utilities.

*ComEd*, 2014 Ill App (1<sup>st</sup>) 130544 (July 22, 2014) at 11.] To the contrary, the First District

found that the IPA Act gives the IPA and the Commission broad authority over the ARES:

The legislature clearly found the use of electricity generated by clean coal facilities important for both utilities and ARES. Both parties must utilize such electricity in their supply to customers, and when the electricity comes from retrofitted clean coal facilities, procurement by utilities and ARES must meet the same benchmarks set forth in section 1-75(d) (5). This legislative intent is reflected in the clean coal portfolio standard which, by its terms, grants the Illinois Power Agency and the Commission more authority in the procurement of electricity from such sources. *See Knolls*, 202 Ill. 2d at 459 (where both a general statutory provision and a specific statutory provision address the same subject, "the specific provision controls and should be applied").

*Id.* at 12. By contrast to the IPA's conservative approach to its authority in the Draft Plan, then, the First District Court of Appeals found that the IPA and the Commission have "*more* authority in the procurement of electricity from" clean coal sources. *Id.* (emphasis added.)

Section 16-115(d)(5) of the PUA leaves little doubt that ARES must purchase electricity from clean coal facilities.<sup>2</sup> Section 16-115(d)(5)(iii) of the PUA limits the amount of electricity generated by clean coal facilities that the ARES are required to purchase to the percentages in section 1-75(d). The only percentage set forth in Section 1-75(d), apart from the initial clean

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<sup>2</sup> In fact, in the Final Order in Docket 12-0544, the Commission expressed incredulity that the ARES would complain about this requirement:

In Illinois, ARES are subject to an application process and review before certification, as well as ongoing annual reporting requirements. In granting such certification, the Commission must find that the applicant for ARES certification will source electricity from clean coal facilities. All Illinois ARES have been on notice prior to their certification regarding the clean coal sourcing requirement, and it is at least disingenuous for them to suggest now that a condition of certification (to which they all seem to have willingly acceded to gain access to the Illinois market) is now somehow unfair and unexpected. The General Assembly can impose requirements on ARES, and did so once it opened the market to electric competition.

Final Order, Docket 12-0544, at 232.

coal facility, is 25% by 2025. By the time the Draft Plan goes into effect in 2015, the IPA will have less than 10 years to meet the 25% clean coal requirement. The IPA Act and PUA, as interpreted by the First District Court of Appeals, afford the IPA the clear mandate to begin ramping up for the January 1, 2025 deadline. Since nothing in the CCPS or PUA limits the IPA from doing so, the IPA's failure to plan for the January 1, 2025 deadline, given the realistic plant development times mentioned above, makes it likely the 2015 Plan as written will render its efforts to be out of compliance with the IPA Act and the PUA.

To meet its various obligations concerning clean coal power procurement, the IPA not only has the authority to conduct a competitive clean coal procurement, it has an obligation to do so, and thereby comply with the IPA Act's and PUA's CCPS mandated provisions. Including a competitive clean coal procurement in the 2015 procurement plan will ensure compliance with those CCPS provisions and is necessary to a realistic possibility of meeting the January 1, 2025 clean coal deadline.

**C. Clean Coal Can Serve as a Hedge against Regulatory Carbon Constraints and Will Promote a Diverse Portfolio of Energy Supply**

In approving the IPA's recommendation to include a clean coal component in the 2013 procurement plan, the Commission found that the clean coal electricity in that plan helped satisfy its statutory obligations to promote a "diverse" "portfolio" of energy supply." Final Order, Docket No. 12-0544 at 225.

The Commission also found that including clean coal in the 2013 plan would "serve as a reasonable hedge against "future carbon risk, particularly as it relates to providing a continued market for the use of Illinois coal, an abundant State resource." *Id.* Conducting a competitive clean coal procurement will further contribute to the State's diverse energy portfolio and will

provide an additional hedge against future carbon use restrictions at the federal level. In addition, this would seem to be a particularly prudent approach, given various impending regulatory schemes that will impose clean-coal-like restrictions on all coal-fired electric generation.

#### **IV. Sargas' Proposed Competitive Clean Coal Procurement**

Consistent with the CCPS provisions of the IPA Act, and the clean coal provisions of the PUA, and with the enumerated objective of those provisions for the State of Illinois to source 25% of its electricity from clean coal facilities by 2025, Sargas proposes that the IPA include a competitive procurement of up to 100 MW of electricity generated by clean coal facilities that capture and sequester CO<sub>2</sub> emissions. Sargas proposes that the IPA award a 20-year power purchase agreement for the successful participant(s) in the procurement process. Those successful would enter into a power purchase agreement(s) with both of Illinois' electric utilities and ARES certified to sell electricity in Illinois. The terms of the power purchase agreement are to include the following:

- 20-year term;
- Accommodation of cost differentials with regard to the statutory rate cap.

To qualify to participate in the for the competitive clean coal procurement, prospective bidders must meet the following criteria:

- Site control – a bidder must have executed option agreement or ownership of property rights sufficient to construct a clean coal facility;

- CO2 storage rights or EOR rights – a bidder must have executed option agreements or ownership of sufficient pore space for EOR, or other acceptable sequestration.
- Carbon capture rate as required by statute;
- Fuel input as required by statute;
- Electricity output as required by statute;
- Project financial credibility.

## V. Sargas’ Proposed Changes to the Language in the Draft Plan

Sargas proposed changes to the indicated sections of the Draft Plan appear underlined, or “red-lined” (with insertions and deletions indicated), below:

### Executive Summary

The Plan recommends a continuation of the procurement strategy for electricity adopted for 2014 (Chapter 7). This conclusion is based on the IPA’s analysis of the load forecast scenarios (Chapter 3), the position of the supply portfolio (Chapter 4), and the IPA’s analysis of the risks associated with serving electric load and various factors of power procurement (Chapter 6). That analysis of risks carefully examines the concept of the Agency procuring full requirements products, rather than the IPA’s traditional approach of procuring standard blocks of power. Once again, the IPA concludes that a full requirements approach in lieu of standard blocks does not best serve the interests of the eligible retail customers that the IPA is directed by the General Assembly to serve. The Plan includes a proposal to conduct a fall procurement event for energy efficiency as a supply resource for delivery starting in the summer of 2016, and a spring competitive procurement event for clean coal electricity (Chapter 7). The Plan also recommends a procurement of Solar Renewable Energy Credits (“SRECs”) and Renewable Energy Credits (“RECs”) from distributed generation resources (Chapter 8).

### 1.1 Power Procurement Strategy

The Agency also recommends the procurement of energy efficiency as a supply resource in fall 2015 for delivery starting in June 2016. This proposed procurement is intended to reduce the



overall cost of procuring supply for eligible retail customers. In addition, the Agency recommends a competitive clean coal procurement event to be conducted during the spring of 2015 to comply with the clean coal portfolio standard provisions of the IPA Act and Public Utilities Act.

## 1.5 The Action Plan

8. Approve a competitive clean coal procurement for up to 125 MWh to be implemented through a 20-year power purchase agreement (or agreements) in April 2015.

## 2.3 Procurement Plan Requirements

Include cost-effective renewable and clean coal resources and demand-response products, as discussed below.

### **2.9 Clean Coal Portfolio Standard**

In the The IPA Act, the General Assembly established that by January 1, 2025, contains an aspirational goal that cost-effective clean coal resources will account for 25% of the electricity used in Illinois must be generated by cost-effective clean coal facilities. by January 1, 2025. As a part of these requirementsgoal, the each annual Plan must also include electricity generated from clean coal facilities. While there is a broader definition of “clean coal facility” contained in the definition section of the IPA Act, Section 1-75(d) describes two special cases: the “initial clean coal facility” and “electricity generated by power plants that were previously owned by Illinois utilities and that have been or will be converted into clean coal facilities (“retrofit clean coal facility”). Currently, there is no facility meeting the definition of an “initial clean coal facility,” that the IPA is aware of, that has announced plans to begin operations within the next five years. In Docket No. 12-0544, the Commission approved inclusion of FutureGen 2.0 as a retrofit clean coal facility starting in the 2017 delivery year; the Illinois Appellate Court recently upheld the cost recovery mechanism used in that docket’s Order. Additional discussion of the Clean Coal Portfolio Standard is located in Section 7.6 of the Plan.

### **7.6 Clean Coal**

In the The IPA Act, the General Assembly established that by January 1, 2025, contains an aspirational goal that cost-effective clean coal resources will account for 25% of the electricity used in Illinois must be generated by cost-effective clean coal facilities. by January 1, 2025. As a part of these requirementsgoal, the each annual Plan must also include electricity generated from clean coal facilities. While there is a broader definition of “clean coal facility” contained in the definition section of the IPA Act, Section 1-75(d) describes two special cases: the “initial clean coal facility” and “electricity generated by power plants that were previously owned by Illinois utilities and that have been or will be converted into clean coal facilities (“retrofit clean coal facility”). Currently, The IPA is unaware of any facility meeting the

definition of an “initial clean coal facility” that has announced plans to begin operations within the next five years.

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The Agency does not have direct a mechanism for considering sourcing agreements from a standard, non-delineated “clean coal facility” for inclusion in its Plan, and Sargas has not submitted sourcing agreements to the Agency for consideration. Instead, as the IPA understands it, Sargas has requested that the Agency include a competitive clean coal procurement in its 2015 Procurement Plan. In Sargas’s view, again as the IPA understands it, the Agency’s authority to conduct a competitive clean coal procurement for projects such as Sargas stems from the broad language of the clean coal portfolio standard as manifest in Section 1-75(d)(1) of the IPA Act.

~~The IPA has concerns with this proposal.~~ The clean coal portfolio standard contains a rate cap requiring a maximum 2.015% average net increase to ratepayers for sourcing agreements with clean coal facilities executed pursuant to the IPA’s Plan. Based on representations made by FutureGen in February 2013, FutureGen 2.0’s expected rate impact would be 1.32%, or approximately 65% of the statutory limit. Sargas has represented having a cost structure lower than FutureGen that is roughly half the size; assuming sourcing agreements similar to FutureGen’s, and assuming the accuracy of FutureGen’s rate impact representations, it is possible that both projects could fit under this threshold.

However, FutureGen 2.0 was approved by the Commission as a “retrofitted clean coal facility” as defined by Section 1-75(d)(5) of the IPA Act. That section provides in relevant part as follows:

*The Agency and the Commission shall consider sourcing agreements covering electricity generated by power plants that were previously owned by Illinois utilities and that have been or will be converted into clean coal facilities, as defined by Section 1-10 of this Act. Pursuant to such procurement planning process, the owners of such facilities may propose to the Agency sourcing agreements with utilities and alternative retail electric suppliers required to comply with subsection (d) of this Section and item (5) of subsection (d) of Section 16-115 of the Public Utilities Act, covering electricity generated by such facilities.*

(emphasis added). 1-75(d)(5) of the IPA Act provides an express mechanism for the IPA’s consideration of sourcing agreements between alternative retail electric suppliers and owners of retrofitted clean coal facilities. However, for a non-retrofitted greenfield “clean coal facility,” such as Sargas, the IPA Act contains no such direct mechanism for considering sourcing agreements involving ARES.

The IPA Act's Clean Coal Portfolio Standard provisions, combined with related provisions in the Public Utilities Act, do provide a general mechanism to the IPA for procuring electricity generated from clean coal facilities. Section 1-75(d)(1) of the IPA Act requires that each annual procurement plan "shall include clean coal." As mentioned in Section 2.9, in December 2012, in Docket 12-0544, the Commission approved a procurement plan that contained a sourcing agreement for the FutureGen 2.0 Project, which was scheduled to begin operations in 2017, the final year of that plan's planning horizon. The current 5-year planning horizon contains no clean coal project or procurement. The IPA Act also includes a legislative directive that 25% of the electricity generated in the State of Illinois come from clean coal facilities by January 1, 2015, which will be barely 10 years from the date on which this procurement plan is approved by the Commission.

Considering that owners of at least one potentially eligible clean coal facility have approached the IPA, and in light of the IPA Act's requirement to include clean coal in every procurement plan and its directive to source 25% of electricity in Illinois from clean coal facilities by January 1, 2025, the IPA intends to exercise the considerable discretion conferred to it by the Clean Coal Portfolio Standard provisions of both the IPA Act and the Public Utilities Act to host a competitive clean coal procurement for up to 125 MWh of nameplate capacity during the spring of 2015. To be eligible to participate in the clean coal procurement, bidders must own or operate a clean coal facility to be constructed and on line during the current five-year planning period, and must satisfy the minimum requirements identified in the table on Appendix \_\_\_\_\_. Any winning bidder or bidders must meet clean coal benchmarks and must not cause the clean coal portfolio standard's rate cap requiring a maximum 2.015% average net increase to ratepayers to be exceeded.

In addition, a winning bidder or bidders of the competitive clean coal procurement will be entitled to enter into a 20-year sourcing agreement. The basic terms of the sourcing agreement must be consistent with the table attached as Appendix \_\_\_\_\_. The sourcing agreement will be competitively neutral, meaning that it will apply to both Illinois' electric utilities and ARES certified to operate in Illinois by the Commission.

~~As the IPA conducts procurement events only on behalf of utilities' eligible retail customers absent express authority to the contrary, the Agency believes that any "clean coal facility" sourcing agreements considered under the general provisions of Section 1-75(d)(1) would run only between the facility owner and the utilities to supply eligible retail customers. With a significantly smaller and migrant customer base responsible for covering sourcing agreement costs, any sourcing agreement produced through a competitive "clean coal facility" procurement would either violate the statutory rate cap or cover only a small portion of the project's output. As a result, the Agency believes it would not be possible or wise to conduct a competitive procurement to solicit sourcing agreements for a "clean coal facility."~~

~~Based on this review, the Agency believes that Sargas's best path to a sourcing agreement covering the full output of its proposed clean coal facility would be through express statutory~~

~~authority developed by the Illinois General Assembly. Nonetheless, the Agency invites Sargas, Inc. and its team to provide comments on the IPA's draft 2015 Procurement Plan and to participate in the resulting plan approval process before the Illinois Commerce Commission. Sargas may have a different legal theory supporting inclusion of its proposal or may offer an alternative interpretation of judicial precedent and governing law, and the IPA looks forward~~

## VI. Conclusion

Sargas compliments the IPA regarding the considerable effort associated with the development of the Draft Plan and the complexity of issues associated with it. Sargas appreciates the opportunity to provide comments on the Draft Plan, and Sargas believes that its comments demonstrate conclusively that the IPA possesses the authority and the obligation to include a competitive clean coal procurement in the 2015 Power Procurement Plan. Sargas looks forward to working with the IPA to finalize the development and implementation of the clean coal provisions of the Plan.

**Dated: September 15, 2014**

Respectfully submitted,

SARGAS, INC.



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Paul D. Gandola  
President

