

REPORT OF COMMUNICATIONS WITH THE ILLINOIS POWER AGENCY

This form must be completed and submitted to the Illinois Procurement Policy Board within 30 days for each communication report required by 30 ILCS 500/50-39. Submit reports to:

PROCUREMENT POLICY BOARD
511 W. CAPITOL AVENUE, SUITE 102
SPRINGFIELD, IL 62704

Or you may send a signed, scanned copy via email with "*IPA Communication Report*" in the Subject line to: ppb@illinois.gov

Date of Communication: 8/1/2012 Time of Communication: 11:42 am

Type of Communication:

- Telephone
 In Person
 Electronic (Email, Fax, Etc.) – Attach A Complete Copy of the Entire Communication String
 Written – Attach Copy
 Other



Initiator:

Initiator of Communication: Arlene Juracek
Representing: Illinois Power Agency
Location:
Email Address (if communication was via email) arlene.juracek@illinois.gov
Telephone Number (if telephonic): (312) 814-8106
Is this person a Lobbyist required to register under the Lobbyist Registration Act Yes No
Duration of Call or In-Person Communication:

Recipient(s): *(If there are additional persons involved in the communication, attach an additional sheet that lists the other participants' names, job titles, which entity they represent, email address and/or telephone number, if applicable)*

Recipient One Name: Michael Strong
Recipient Title: Chief Legal Counsel
Representing: Illinois Power Agency
Location: Michael A. Bilandic Building, Suite n-506
160 N LaSalle St Chicago IL
Email Address (if communication was via email) michael.strong@illinois.gov
Telephone Number (if telephonic): (312) 814-4635

Recipient Two Name: Paul Champagne
Recipient Title:
Representing: FutureGen Industrial Alliance, Inc.
Location:
Email Address (if communication was via email) ptchampagne@verizon.net
Telephone Number (if telephonic): (610) 295-7268

Recipient Three Name: Cynthia Fonner Brady
Recipient Title: Assistant General counsel
Representing: Constellation
Location:
Email Address (if communication was via email) cynthia.Brady@constellation.com
Telephone Number (if telephonic):

If any of these additional participants are lobbyists required to register under the Lobbyist Registration Act, **they** must submit a written report to be submitted with this communications report to the Procurement Policy Board that memorializes the communication that includes, but is not limited to (i) the date and time of each communication; (ii) the identity of each person from whom the written or oral communication was received, the individual or entity represented by that person, and any action the person requested or recommended; (iii) the identity and job title of the person to whom each communication was made; (iv) if a response is made, the identity and job title of the person making each response; (v) a detailed summary of the points made by each person involved in the communication; (vi) the duration of the communication; (vii) the location or locations of all persons involved in the communication and, if the communication occurred by telephone, the telephone numbers for the callers and recipients of the communication; and (viii) any other pertinent information.

Communication Details:

Provide a detailed summary of the points made by each person involved in the communication:

Was a response made? If so, complete the following for each person making the response (attach an additional sheet that lists the other respondents' names, job titles, which entity they represent, email address and/or telephone number, if applicable):

Respondent Name:

Respondent Title:

Location:

Telephone Number (if telephonic):

Provide a detailed summary of the response:

See email string

Other pertinent information:

SIGNATURE

A handwritten signature in black ink, appearing to be "J. C. B.", written over a horizontal line.

DATE

Aug. 31, 2012

Name	Employer	party represented	email
Stephen Bennett	Exelon	Exelon	stephen.benett@exeloncorp.com
David Fein	Exelon	Exelon	david.fein@exeloncorp.com

From: "Juracek, Arlene" <Arlene.Juracek@Illinois.gov>
To: "Brady (Fonner), Cynthia" <Cynthia.Brady@constellation.com>; "ptchampagne@verizon.net" <ptchampagne@verizon.net>; "Strong, Michael" <Michael.Strong@Illinois.gov>
Cc: "Bennett, Stephen E:(GenCo)" <stephen.bennett@exeloncorp.com>; "Fein, David" <david.fein@exeloncorp.com>
Sent: Wednesday, August 1, 2012 11:42 AM
Subject: RE: Constellation comments on FutureGen

Thank you for sending these comments expeditiously. The plan is to include the draft PPA as an Appendix to the Procurement Plan that goes out for public comment on August 15. I will certainly indicate in the text of the plan that changes have been made to the original proposed PPA as a result of discussions with the utilities and ARES (especially with respect to recognizing that in a competitive retail marketplace individual utility/ARES market shares are extremely fluid and that ARES more than utilities need price certainty for the reasons cited below (no rider, fixed price offer to retail customers)) , and that discussions are still on-going if we cannot resolve all comments by 8/14.

From: Brady (Fonner), Cynthia [Cynthia.Brady@constellation.com]
Sent: Wednesday, August 01, 2012 9:24 AM
To: ptchampagne@verizon.net; Juracek, Arlene; Strong, Michael
Cc: Bennett, Stephen E:(GenCo); Fein, David
Subject: Constellation comments on FutureGen

All –

Below are comments from Constellation NewEnergy, Inc. regarding the draft PPA. We have not had the opportunity to put them into a redline of the contract but felt that, given timing, it was important to share them now.

As noted by some stakeholders during recent workshops, there remains a question as to whether Alternative Retail Electric Suppliers have to enter into such a PPA but, to the extent that they are required to do so, the below should serve to guide what we would consider to be necessary changes.

Please let us know of any questions that you may have, and we are happy to discuss further.

Thank you,
Cynthia

Cynthia Fonner Brady
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8/31/2012



Overarching comment: This contract seems to have been drafted with a focus on the relationship between FutureGen and regulated utilities. As a result, several of the sections designed to protect buyers seem deficient when applied to competitive suppliers, and should be modified so as to not place competitive suppliers at a disadvantage.

-Explore possibility of format being restructured so that FutureGen sells power directly into the ISO and then recovers the difference between revenues and expenses through some sort of rider/surcharge

Comments on specific contract provisions:

-Article 2 - 5 year extension option should not be at Seller's sole discretion

- Article 3 – Conditions precedent are all within control of Seller. Should include approvals by Illinois Commerce Commission, and competitive suppliers should only take on an obligation if a mirror PPA has been entered into with all utilities and competitive suppliers.

-Article 4 – Buyer should have a termination right if Seller fails to hit COD by given date

-Article 5 – There should be tighter controls around Seller ability to recover costs (e.g., only commercially reasonable, Buyer and Commission audit rights/requirements, Commission approval required). In addition, there needs to be an assurance that the Utilities and competitive suppliers would always pay the same rate (e.g., if cost recovery is denied for the utility, those costs should not be shifted to competitive supply)

- This Article is very focused on Buyer cost recovery for traditional utilities; unless competitive supply is going to be able to recover these costs through some sort of rider/surcharge, more thought needs to be given to when, how, and how often the "Contract Prices" can be changed to give competitive suppliers some certainty when pricing loads for their customers. If this does not happen, it could impact competition or cause competitive suppliers to build a risk premium into their prices to account for this risk. All changes to the Contract Price should have to be approved by the Commission before becoming effective.

-The rate of return should be adjusted downward to reflect typical ROE for this type of product

-Standard of Review Section – Should be updated to reflect the most recent Mobile-Sierra cases and language

-Buyers should have some veto power over changes to project that will materially impact the initial operating budget and thus the amount of recoverable costs

-Article 6 – In several places it says that each Buyer will be required to buy a "proportional share". This needs to be better defined, with consideration given for a competitive market that is likely to see a great deal of load shifting, new market entrants, exits from the market, etc...over this long of a term

-Contract price limitations need to be modified so as to adequately protect competitive suppliers

-Minimum Annual Energy needs tighter provisions around delivery/production obligations.

Section 6.7 – Should explicitly preclude the ability to sell to third-parties who are not "buyers"

Section 6.8 – Financial settlement of the contract is inconsistent with other provisions of the contract and may have Dodd-Frank implications.

Article 14 – If Seller exercises early termination rights, there should there be some refund of costs already paid. Need further internal review regarding credit support.

Article 15 –We will negotiate customary and commercially reasonable lender consent docs, but cannot agree to specific terms now without knowing much if anything about the financing/lender

-Needs specific language of what Buyer would be entitled to in the event of a Seller default. The damages Seller would be entitled to are much more clearly spelled out and should explicitly indicate that a default by one supplier will NOT increase the share of any others.

Article 17 – FM provision should be bilateral and extension for 12 months maximum.

Article 23.2 – Is redundant with Article 23.6 and can be deleted.

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