

IN THE CIRCUIT COURT OF KANE COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

THOMAS M. HARTWELL
CIRCUIT COURT CLERK
KANE COUNTY, IL

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ENTERED

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Joe MARCONI, Adelina MARCONI
Richard A. BENSON, Louis M. BENSON
Daniel J. SOLIZ, Margret M. SOLIZ,
Mary POPIEL, John WULFF,
and Emil GOELLNER, individually
and on behalf of others similarly situated,

Plaintiffs,

v.

Case No.

14L

386

INDIANA MUNICIPAL POWER AGENCY,
IMPA SERVICES CORPORATION,
RAJESHWAR G. RAO,
SARGENT & LUNDY, LLC.,
and SKELLY AND LOY, INC.,

Defendants,

and

PEABODY ENERGY INC.,
PRAIRIE STATE GENERATING COMPANY,
LLC., PRAIRIE STATE ENERGY CAMPUS
MANAGEMENT, INC., LIVELY GROVE
ENERGY PARTNERS, LLC., NORTHERN
ILLINOIS MUNICIPAL POWER AGENCY,
ILLINOIS MUNICIPAL ELECTRIC AGENCY,
AMERICAN MUNICIPAL POWER AGENCY –
OHIO, INC., KENTUCKY MUNICIPAL POWER
AGENCY, MISSOURI JOINT MUNICIPAL
ELECTRIC UTILITY COMMISSION, PRAIRIE
POWER, INC., SOUTHERN ILLINOIS POWER
COOPERATIVE, CMS ENTERPRISES
COMPANY, WISCONSIN PUBLIC POWER,
INC., WOLVERINE POWER SUPPLY
COOPERATIVE, INC., BECHTEL CORP.,
R.W. BECK, INC. k/n/a SCIENCE
APPLICATIONS INTERNATIONAL CORP.;
CITY OF ROCHELLE; CITY OF GENEVA;
and CITY OF BATAVIA,

Respondents in Discovery.

NOTICE
BY ORDER OF COURT THIS CASE IS HEREBY
SET FOR CASE MANAGEMENT CONFERENCE
BEFORE THE ABOVE NAMED JUDGE
ON 11-6-14
AT 9 A.M., P.M.
FAILURE TO APPEAR MAY RESULT IN THE
CASE BEING DISMISSED OR AN ORDER OF
DEFAULT BEING ENTERED.

PLAINTIFF'S CLASS ACTION COMPLAINT

Plaintiffs, Joe Marconi, Adelina Marconi, Richard A. Benson, Louis M. Benson, Daniel J. Soliz, Margret M. Soliz, Mary Popiel, John Wulff, and Emil Goellner, individually and on behalf of all other similarly situated individuals, bring this class action against Defendants, Indiana Municipal Power Agency, an Indiana joint power agency, IMPA Service corporation, an Indiana corporation, Rajeshwar G. Rao (hereinafter referred to as "Raj Rao"), an Indiana resident, Sargent & Lundy, L.L.C., an Illinois limited liability company, and Skelly and Loy, Inc., a Pennsylvania corporation, and in support thereof state as follows:

NATURE OF THE CASE

1. This is a ratepayer class action based upon negligent misrepresentations.
2. Specifically, this action is based on IMPA, IMPA Service Corporation, Raj Rao, and others' negligent misrepresentations with respect to the construction, operation, and other aspects of the Prairie State Energy Campus and the cost of electricity generated there, Sargent & Lundy, LLC's negligent investigation into the financial risks associated with the Prairie State Energy Campus, specifically the equipment and operation of the generating plant, and Skelly and Loy's negligent investigation into financial risks associated with the Prairie State Energy Campus, specifically the quantity and quality of the coal at the Prairie State Energy Campus.

THE PARTIES

3. Plaintiffs, Joe Marconi, Adelina Marconi, Richard A. Benson, Louis M. Benson, Daniel J. Soliz, Margret M. Soliz, Mary Popiel, John Wulff, and Emil Goellner (hereinafter referred to collectively as "Plaintiffs"), are business and property owners of Batavia, Illinois and ratepayers for the cost of the electricity generated at the Prairie State Energy Campus (hereinafter referred to as "PSEC").

4. Defendant, Indiana Municipal Power Agency (hereinafter referred to as “IMPA”), is an Indiana joint power agency, organized and existing under the laws of the State of Indiana, and transacting and doing business in Illinois and across the country. IMPA is a partial owner of the PSEC, and served as a consultant for the Northern Illinois Municipal Power Agency (hereinafter referred to as “NIMPA”) from 2004 to 2012.

5. Defendant, IMPA Service Corporation (hereinafter referred to as “ISC”), is an Indiana corporation, organized and existing under the laws of the State of Indiana, and transacting and doing business in Illinois and across the country. ISC is a subsidiary of IMPA and provides consulting services to the City of Batavia and NIMPA with respect to their involvement in PSEC.

6. Defendant, Rajeshwar G. Rao (hereinafter referred to as “Raj Rao”), is an Indiana resident and the CEO and President of Indiana Municipal Power Agency and ISC, and served as the Chairman of the Prairie State Generating Company’s Management Committee from 2007-2013.

7. Defendant, Sargent & Lundy, L.L.C. (hereinafter referred to as “Sargent & Lundy”), is an Illinois Limited Liability Company, organized and existing under the laws of the State of Illinois, and transacting and doing business in Illinois and across the country. Sargent & Lundy provided consulting services to IMPA and NIMPA with respect to their involvement in PSEC.

8. Defendant, Skelly and Loy, Inc. (hereinafter referred to as “Skelly and Loy”), is a Pennsylvania Corporation, organized and existing under the laws of the State of Pennsylvania, and transacting and doing business in Illinois and across the country. Skelly and Loy provided consulting services to IMPA and NIMPA with respect to their involvement in PSEC.

9. Respondent in Discovery, Peabody Energy Inc. (hereinafter referred to as “Peabody”), is a Delaware corporation, organized and existing under the laws of the State of Delaware, and transacting and doing business in Illinois and across the country. Peabody is the world's largest private-sector coal-mining company with its primary business consisting of mining, selling, and distributing coal. Peabody has had ownership interest in numerous high-sulfur coal reserves in southern Illinois. At the present time, Peabody owns 5.06% of PSEC through its subsidiary Lively Grove Energy Partners, LLC.

10. Respondent in Discovery, Prairie State Generating Company, LLC (“PSGC”), was a wholly-owned subsidiary of Peabody incorporated in the State of Delaware that is responsible for managing the construction and operation of PSEC. PSGC is now owned by Prairie State Energy Campus Management, Inc. Raj Rao was the chairman of the PSGC Management Committee.

11. Respondent in Discovery, Prairie State Energy Campus Management, Inc. (hereinafter referred to as “PSEC Management”) is an Indiana not-for-profit corporation, organized and existing under the laws of the State of Indiana, and transacting and doing business in Illinois and across the country. PSEC Management is controlled by the owners of PSEC.

12. Respondent in Discovery, Lively Grove Energy Partners, LLC. (hereinafter referred to as “Lively Grove Energy”), is a Delaware Corporation organized and existing under the laws of the State of Delaware, and transacting and doing business in Illinois and across the country. Lively Grove Energy is a subsidiary of Peabody. Through Lively Grove Energy, Peabody owns a 5.06% interest in the PSEC.

13. Respondent in Discovery, Northern Illinois Municipal Power Agency, is a joint municipal power agency, organized and existing under the laws of the state of Illinois, and

transacting and doing business in Illinois and across the country, whose members include the City of Rochelle, Illinois, the City of Geneva, Illinois, and the City of Batavia, Illinois. NIMPA owns a 7.6% interest in PSEC.

14. Respondent in Discovery, Illinois Municipal Electric Agency (hereinafter referred to as “IMEA”), is a joint municipal power agency, organized and existing under the laws of the State of Illinois, and transacting and doing business in Illinois and across the country. IMEA owns a 15.7% interest in PSEC.

15. Respondent in Discovery, American Municipal Power - Ohio, Inc. (hereinafter referred to as “AMP”), is a joint municipal power agency, organized and existing under the laws of the state of Ohio, and transacting and doing business in Illinois and across the country. AMP owns a 23.26% interest in PSEC.

16. Respondent in Discovery, Kentucky Municipal Power Agency (hereinafter referred to as “KMPA”), is a joint municipal power agency, organized and existing under the laws of the state of Kentucky, and transacting and doing business in Illinois and across the country. KMPA owns a 7.82% interest in PSEC.

17. Respondent in Discovery, Missouri Joint Municipal Electric Utility Commission (hereinafter referred to as “MJMEUC”), is a joint municipal power agency, organized and existing under the laws of the state of Missouri, and transacting and doing business in Illinois and across the country. MJMEUC owns a 12.33% interest in PSEC.

18. Respondent in Discovery, Prairie Power, Inc. (hereinafter referred to as “PPI”), is an electricity cooperative, organized and existing under the laws of the state of Illinois, and transacting and doing business in Illinois and across the country. PPI owns an 8.22% interest in PSEC.

19. Respondent in Discovery, Southern Illinois Power Cooperative (hereinafter referred to as “SIPC”), is an electricity cooperative, organized and existing under the laws of the state of Illinois, and transacting and doing business in Illinois and across the country. SIPC owns a 7.90% interest in PSEC.

20. Respondent in Discovery, CMS Enterprises Inc. (hereinafter referred to as “CMS”), is a Michigan corporation, organized and existing under the laws of the State of Michigan, and transacting and doing business in Illinois and across the country. At one point, CMS was a co-developer with Peabody in the PSEC Project through Lively Grove Energy.

21. Respondent in Discovery, Wisconsin Public Power, Inc. (hereinafter referred to as “WPPI”), is a joint municipal power agency, organized and existing under the laws of the State of Wisconsin, and transacting and doing business in Illinois and across the country. At one point, WPPI intended to have an equity interest in the PSEC Project.

22. Respondent in Discovery, Wolverine Power Cooperative (hereinafter referred to as “Wolverine”), is an electricity cooperative, organized and existing under the laws of the State of Michigan, and transacting and doing business in Illinois and across the country. At one point, Wolverine intended to have an equity interest in the PSEC Project.

23. Respondent in Discovery, Bechtel Corporation (hereinafter referred to as “Bechtel”), is a Nevada corporation, organized and existing under the laws of the State of Nevada, and transacting and doing business in Illinois and across the country. Bechtel served as the lead construction and engineering firm during the development of PSEC.

24. Respondent in Discovery, R.W. Beck, Inc., (hereinafter referred to as “R.W. Beck”), was acquired by Science Applications International Corporation (hereinafter referred to

as “SAIC”), in 2009. SAIC is a Virginia Corporation, organized and existing under the laws of the State of Virginia, and transacting and doing business in Illinois and across the country. Prior to being acquired by SAIC, R.W. Beck provided consulting services to AMP and KMPA with respect to their involvement in PSEC.

25. Respondent in Discovery, the City of Rochelle (hereinafter referred to as “Rochelle”), is a municipality within the State of Illinois and is a member of NIMPA.

26. Respondent in Discovery, the City of Geneva (hereinafter referred to as “Geneva”), is a municipality within the State of Illinois and is a member of NIMPA.

27. Respondent in Discovery, the City of Batavia (hereinafter referred to as “Batavia”), is a municipality within the State of Illinois and is where the putative class members pay for electricity.

JURISDICTION & VENUE

28. This Court has jurisdiction over the present action under the Illinois Code of Civil Procedure 735 ILCS 5/2-209(a)(1) (2) and (3), because at all times relevant to this Complaint, Defendants, either individually or through their agents, officers or representatives, transacted business in the State of Illinois relating to the allegations herein; committed tortious acts within the State of Illinois as alleged herein; caused injuries to Plaintiffs that arose out of the tortious acts that occurred within the State of Illinois as alleged herein; and owned, used, or possessed real estate situated within the State of Illinois relating to the allegations herein.

29. This Court has jurisdiction over the Respondents in Discovery under the Illinois Code of Civil Procedure 735 ILCS 5/2-209(a)(1) and (3), because at all times relevant to this Complaint, Respondents in Discovery, either individually or through their agents, officers or representatives, transacted business in the State of Illinois relating to the allegations herein; and

owned, used, or possessed real estate situated within the State of Illinois relating to the allegations herein.

30. Venue is proper in Kane County under Section 5/2-101 of the Illinois Code of Civil Procedure because Plaintiffs reside in this County, Defendants have transacted substantial business in Kane County, Illinois, and Kane County, Illinois is where the majority of transactions relating to the allegations herein occurred.

FACTUAL ALLEGATIONS

31. Beginning in the 1990s and continuing into the 2000s, Peabody mines in southern Illinois began exporting high-sulfur coal, which was unsaleable in the United States, to China and other Asian countries.

32. In 2001, Peabody announced plans to construct a mine-mouth, pulverized-coal-fueled power generating facility with two units adjacent to its existing high-sulfur coal reserves in southern Illinois called the Prairie State Energy Campus (hereinafter referred to as the “PSEC”). The construction of PSEC was part of a scheme by Peabody to create a market for its high-sulfur, high-ash coal reserves in Southern Illinois.

33. PSEC consists of a nominal 1,620 megawatt (“MW”) two unit coal-fired electric generating facility (the “Generating Facility”), with an adjacent high-sulfur coal mine without washing station (the “Lively Grove Mine”), a coal combustion waste disposal facility, and other ancillary support equipment located in Washington, St. Clair and Randolph Counties, Illinois (hereinafter referred to as the “PSEC Project”).

34. Peabody sold the PSEC Project as a source of affordable, reliable, long term (30 year and longer), environmentally friendly electricity available to 2.5 million ratepayers and businesses in eight (8) states.

35. On May 17, 2004, IMPA signed a letter of intent with Peabody to acquire partial ownership in PSEC.

36. Also on May 17, 2004, the Batavia City Council passed a resolution to hire IMPA Services Corporation (“ISC”), a subsidiary of IMPA, to study at least six electric supply options to replace Batavia’s then existing contract for power from Commonwealth Edison (hereinafter referred to as “ComEd”) that was set to expire in 2007. Among these options was participation in the PSEC Project. On information and belief, City Council members were not told that the consulting firm had already signed a letter of intent to participate in PSEC.

37. On September 13, 2004, Raj Rao presented the ISC Power Supply Study of the six electrical supply options to the City of Batavia. The results of the study recommended participation in the PSEC Project at levels of 40 to 50 MW.

38. On September 16, 2004, IMPA presented the PSEC Project to NIMPA, outlining the details of participation. These details included that thirty years of coal had been dedicated to the project. The total estimated cost of the 1620 MW project, including coal reserves and mine, was \$2.754 billion.

39. On October 11, 2004, NIMPA signed a Management Services Agreement with IMPA. The agreement specifically provided that IMPA personnel would perform management, consulting, advisory and operations services with respect to NIMPA’s: (i) general management and operations matters; (ii) analysis, negotiation and selection of third-party long-term and short-term power supply arrangements, which may include purchased power agreements and/or the acquisition of ownership or other interests in electric generating facilities and associated facilities; (iii) development and implementation of electric utility-related services to be provided by NIMPA to its members; staffing needs and recommendations for use of third-party

consultants, including financial advisors and bond counsel; and (v) participation in regional transmission organization (“RTO”) energy markets and utilization of other services provided by RTOs.

40. Under this agreement, Raj Rao’s compensation was set at \$150/hour.

41. As part of this agreement, IMPA officials regularly attended NIMPA board meetings and provided input on proposed electric projects.

42. Under the agreement establishing NIMPA, the Batavia City Council must approve participation in all contracts and projects entered into by NIMPA. NIMPA is a project agency, meaning that it undertakes obligations to supply power and energy or related services to members only when requested by its members to do so.

43. On October 18, 2004, the Batavia City Council approved the NIMPA-Peabody Prairie State Project Committee Agreement. This included the funding of Batavia’s share of development costs of \$39,809.

44. As part of this agreement, the Batavia City Council approved payment of its share of the Sargent & Lundy technical due diligence study of the power plant and the Skelly & Loy technical due diligence study of the coal mine (hereinafter referred to as the “Due Diligence Studies”).

45. The Due Diligence Studies were intended to provide the project participants with important corroborative information and analysis regarding the proposed design and construction of the power plant, as well as the status, quality and quantity of the coal reserves.

46. The Due Diligence Studies were relied upon as part of the primary deliberative process which Batavia undertook in making its decision whether or not to participate in the PSEC Project.

47. On February 7, 2005 the Batavia City Council authorized the continued support of participation of NIMPA in the PSEC Project and funded an additional share of development costs of \$900,000.

48. On December 19, 2005, the Batavia City Council authorized the continued support of NIMPA participation in the PSEC Project and funded an additional share of development costs of \$381,500.

49. On August 7, 2006, the Batavia City Council authorized the continued support of participation of NIMPA in the PSEC Project and funded an additional share of development costs of \$540,366. At this time, Batavia had invested a total of \$1,861,675 in the PSEC project.

50. In October of 2006, Peabody signed an agreement with CMS to co-develop the PSEC Project through Lively Grove Energy. As part of this arrangement, CMS would serve as lead developer, construction manager, and operator of the Generating Facility while Peabody would serve as lead developer of the Lively Grove Mine. Through Lively Grove Energy, CMS and Peabody would each own a 15% interest in the PSEC project. Financial close of the project was contingent upon Peabody and CMS being able to secure long-term power purchase agreements for a substantial portion of CMS and Peabody's share of the project's output.

51. At all relevant times in the remainder of these facts, Peabody participated and maintained its ownership interest in the PSEC project through Lively Grove Energy.

52. On October 14, 2006, Bechtel signed a letter of intent for development of PSEC. Bechtel would provide engineering and procurement services for Prairie State's power-related facilities and would work with Prairie State to negotiate the terms of an engineering procurement-construction contract. The letter of intent would cover a six month exclusivity

period from October of 2006 to April 1 of 2007, at which time the EPC contract was to be executed.

53. On November 6, 2006, the Batavia City Council approved the Prairie State Project Power Sales Agreement between NIMPA and Batavia. Under this “take or pay” agreement, Batavia became obligated to purchase from NIMPA 50 MW of electric capacity and energy which was to be generated by the to-be-built PSEC. The 50 MW represents 3.125% of the total 1620 MW PSEC project.

54. Under this agreement, NIMPA bills the City of Batavia its pro rata costs of NIMPA’s 6.64%% investment in PSEC. PSEC costs, by this 3.125% pro rata share, flow from PSEC through NIMPA, through the City of Batavia, to Batavia ratepayers. These costs, in addition to Batavia’s portion of NIMPA’s debt payments, make up part of the Batavia ratepayer’s electric bills.

55. Under this agreement, Batavia ratepayers are charged for Batavia’s pro-rata costs of PSEC and related debt whether PSEC produces power or not.

56. Under this agreement, if PSEC is not providing NIMPA its entitlement share of electricity, NIMPA must purchase additional power from a separate source, and Batavia is required to pay for that additional power in addition to its pro rata share of PSEC costs and debt payments.

57. Under this agreement, if Batavia does not need all of its entitlement share of electricity, it must sell it. If Batavia is forced to sell electricity from PSEC, it generally must do so at a loss, as the cost of the electricity from PSEC is more expensive than the price at which Batavia can sell that electricity in the wholesale market at any given time.

58. Under this agreement, Batavia retained the right to withdraw from the project, in which case it would still be obligated to make any payments NIMPA had committed to up to the point of withdrawal.

59. Under this agreement, were Batavia to withdraw, it would lose the right to be reimbursed for money paid up to the point.

60. As of November 6, 2006, Batavia had spent over \$1.8 million on development costs. No new project cost or partner information was provided at this time.

61. On information and belief, Defendants projected that PSEC would operate at an average 85% capacity factor (at a minimum) from the moment it began commercial operations.

62. A generating facility's capacity factor measures how much power the plant actually produces versus how much it would produce if it were to operate at 100% power for all of the hours of a single month or year, or a series of months or years.

63. By January of 2007, Peabody and CMS had reduced their equity interest in PSEC to 12.6% each or 25% combined, and discussions were being held to reduce the contractual minimum for Peabody/CMS to around 19% combined. On information and belief, at this time, Defendants were still advising that there would be a "capped" price EPC contract for PSEC based on the letter of intent with Bechtel.

64. On March 21, 2007, IMPA conveyed to NIMPA that Bechtel reported that all outstanding bids for equipment and subcontractors had been received. IMPA conveyed that PSGC and Bechtel had entered into negotiations to finalize the EPC contract, with the goal to have a lump sum price and a signed EPC contract in the second quarter of 2007. While the costs remained unsettled at this time, there was no mention that the contract would not be "capped." At this time NIMPA was advised that no action should be required by governing bodies in April. On

information and belief, no mention was made of a potential withdrawal of CMS Energy. At this time, PSGC continued to negotiate with a number of groups regarding ownership in PSEC.

65. By April of 2007, CMS withdrew from its agreements with Peabody. CMS disclosed in a SEC filing that its withdrawal was the direct result of the PSEC Project being unable to meet CMS' investment criteria, including the level of power purchase agreements for CMS' share of output from PSEC.

66. CMS spokesman, Jeff Holyfield, was quoted in the Grand Rapids Press as stating that CMS "couldn't make sure [their] return expectations could be met without higher-than-planned risks."

67. Due to the withdrawal of CMS as an equity partner of Lively Grove Energy, Peabody assumed CMS' equity interest in the PSEC Project, thus increasing its own equity interest from approximately 12.5% to 25%.

68. On information and belief, after CMS withdrew from the PSEC Project, IMPA and ISC imposed arbitrarily short decision deadlines on various targeted municipalities, including Batavia, to determine their level of involvement in the PSEC Project.

69. On April 5, 2007 (Easter weekend), only fifteen days after the March 21, 2007 NIMPA meeting where it was told that no action would be required in April, the Batavia City Council was informed that while final project financing was to occur in October of 2007, it was now necessary for NIMPA to confirm by April 30, 2007 its commitment to undertake that financing. Therefore, it was conveyed that it was now necessary for Batavia to authorize another ordinance authorizing project financing before the end of the month.

70. On April 10, 2007, Raj Rao presented an update of the PSEC Project to the City of Batavia Public Utilities Committee (hereinafter referred to as the "Committee"). During this

presentation, it was conveyed for the first time to the Committee that three major changes had occurred in the PSEC Project: (1) CMS had withdrawn, leaving the project without an experienced owner/operator; (2) the “capped” or “fixed” price EPC contract had been replaced by a “non-binding indicative price” modified EPC contract; and (3) the boilers at the project had been changed to TXU boilers, which were originally designed for washed PRB coal, not unwashed Illinois-Herrin No. 6 coal.

71. At the April 20, 2007 presentation, the Committee was told that due to recent changes (rapid price fluctuations in materials) in the construction market, contractors were very reluctant to provide fixed cost proposals before the major equipment contracts were committed to. It was conveyed that an EPC contract was available at a cost of approximately a half billion-dollar premium. To save this premium, the project was now expected to have a modified EPC contract.

72. Under the modified EPC contract, the partners would procure the major equipment consisting of the boiler, steam turbine and the pollution control equipment. Commitments for the equipment would be acquired through purchase orders which would include cancellation fees should the project not proceed.

73. The Committee was also told that Batavia was being asked to provide its approval now because NIMPA was being required by an agreement with other PSEC Project owners to commit to funding for development, equipment and associated cancellation for the remainder of the month, and was also being required to commit to its current percentage share of the Project with formal Board action by April 30, 2007.

74. The Committee was further told that the commitments were necessary in order to enable the Prairie State Project owners to secure major equipment purchases and execute the necessary engineering and construction contracts prior to the anticipated October financing date.

75. In addition, the Committee was told that failure to secure these commitments would create costly delays and significantly diminish the economic value of the PSEC Project and therefore, it was necessary for the Batavia City Council to approve another Ordinance authorizing project financing associated with the project before the end of April 2007.

76. During his April 10, 2007 presentation, Raj Rao conveyed that the total EPC cost under the modified EPC contract was estimated at \$3.5 billion. This estimate included Bechtel's indicative non-binding price of \$2.95 billion for EPC and a still to be determined price for major equipment. It was stated that the final price for the equipment would be known by the end of the week once ongoing negotiations with bidders had been completed. It was also stated that the labor cost was only an estimate and that Bechtel was in the process of negotiating with various labor groups in the area.

77. Specifically, at this time, Rao informed the Committee that the cost of power from PSEC would be approximately \$46 per megawatt-hour.

78. It was reiterated to the Committee that NIMPA's participation in the PSEC project was dependent upon the approval of Batavia and the other NIMPA municipalities.

79. It was conveyed to the Committee that Batavia's commitment was necessary at this time (as opposed to October) due to the escalated cancellation charges that would be incurred by NIMPA and the other project participants once they entered into the equipment purchase orders.

80. It was conveyed to the Committee that if NIMPA entered the equipment purchase orders without Batavia's commitment, and were then forced to back out due to the failure of Batavia to subsequently commit, the cost of the cancellation charges associated with the purchase orders of the pieces of major equipment would be incurred, of which NIMPA would owe 6.64%.

81. It was conveyed that given the dramatic step up in exposure to NIMPA and the participating municipalities because of the purchase orders for the new equipment, all of the municipalities were being asked to authorize moving ahead with the project on this basis.

82. It was conveyed to the Committee that if it did not commit to the project at this time, the \$1.8 million paid by Batavia in development costs would be lost.

83. During the question and answer session of the meeting, Alderman Nelson, from Geneva, stated that "it was a little overwhelming" going over the documents that were just received the previous Sunday/Monday and then reviewing other documents of what was previously agreed to. Alderman Nelson asked for clarification regarding that fact that if the purchase order would not be agreed to, it would effectively kill the project because Prairie State would lose the slot for the rotor.

84. In response to Alderman Nelson, Raj Rao confirmed that the word used was "fatal" and stated that if by April 17th NIMPA was not part of the project, then NIMPA was "out." Raj Rao stated that if NIMPA did not participate, then the remaining members could claim or divide NIMPA's share or ask someone else to take NIMPA's place. Raj Rao stated that if steps were not taken during the month of April to move forward the steam turbines would be delayed for nine months and that would mean the entire project would have to be postponed and costs would increase.

85. On April 16, 2007, the Batavia City Council affirmed its commitment to purchase a 50 MW entitlement share of the PSEC Project power and energy pursuant to the Power Sales Agreement and withdrew its reservation of right by subsequent ordinance to (i) revoke its declaration of intent to purchase its Entitlement Share of the PSEC Project; or (ii) reduce its declared Entitlement Share of the PSEC Project.

86. By affirming its commitment to the “take-or-pay” contract for 50 MW, Batavia became obligated to pay for 50 MW whether or not PSEC generates any power.

87. After April of 2007 (Batavia’s deadline for commitment), Peabody and other PSEC project participants continued to market and sell ownership in PSEC to other entities.

88. On May 7, 2007, the Batavia City Council consented to the acquisition of five (5) additional entitlement shares of PSEC.

89. On October 26, 2007, an IMPA Board of Commissioners meeting was held during which Raj Rao stated that IMPA would continue to take a lead role in the management of the PSEC Project to protect the \$650 million invested in the project.

90. By December 2007, Peabody had sold approximately 95% of the ownership interest in the PSEC Project to joint municipal power agencies. American Municipal Power - Ohio, Inc., Illinois Municipal Electric Agency, Kentucky Municipal Power Agency, Missouri Joint Municipal Electric Utility Commission, NIMPA, Prairie Power Inc., IMPA and Southern Illinois Power Cooperative contracted for interest as tenants in common.

91. Through Lively Grove Energy, Peabody has an option to sell its remaining 5.06% interest five years after PSEC’s substantial completion date (2012) or upon vote by a majority of the non-Peabody owners.

92. In addition to further divesting its interest in the PSEC Project, Peabody sold its wholly owned subsidiary, PSGC, to Prairie State Management.

93. Defendants had knowledge as early as 2005 that \$46 per MWh was not attainable, when the Wisconsin Public Power, Inc., (“WPPI”) had signed a letter of intent to purchase a 6% share of PSEC. This agreement provided that WPPI would pay a fixed price for power from PSEC.

94. After Wisconsin regulators approved WPPI’s participation as an owner, Peabody sued WPPI, claiming that the fixed price purchase power agreement had been voided. In the lawsuit, Peabody argued that the \$45/MWh fixed price purchase power agreement would result in a “windfall” for WPPI and would be a financial burden for PSEC. WPPI withdrew from the PSEC Project and the proposed purchase power agreement was voided as part of the settlement between the parties.

95. In the lawsuit, Peabody claimed as fact that “WPPI knew that, during the course of 2005, the total estimated cost of the Project had increased significantly.”

96. The price of power generated at PSEC is, and in the future will continue to be, significantly more expensive than the \$46/MWh represented by Defendants when enticing Batavia to enter into the long-term take-or-pay agreement to buy power. Nor, for the foreseeable future, is the price of power from PSEC likely to be competitive with the price of purchasing power from the wholesale energy and capacity markets.

97. The two major reasons why the price of providing power from PSEC has increased significantly above \$46 per MWh are (1) a substantial increase in the cost of construction; and (2) poorer-than-expected operating performance.

98. The estimated total cost of construction for PSEC has increased from \$2.754 billion in 2004, to \$4.095 billion in 2007, to \$4.933 billion in 2010, and to \$5.1 billion as of 2013. The current estimated cost of construction for PSEC is unknown.

99. These increases reflect the industry-wide experience where, starting in the years before 2005, the costs of constructing new coal-fired power plants began to increase significantly, and was thus known to Defendants in 2007 when Defendants were pressuring Batavia to finalize its commitment to the PSEC Project.

100. Specifically, during 2007, while Defendants were pressuring Batavia to finalize its commitment to the PSEC Project, several major industry reports warned of the skyrocketing construction costs of coal plants. While these reports were no doubt closely watched by industry insiders, Defendants did not provide this information to Batavia.

101. In June of 2007, Standard and Poor's issued a report entitled "Increasing Construction Costs Could Hamper U.S. Utilities' Plans to Build New Power Generation."

102. In September of 2007, the Brattle Group, one of the leading electric industry analysts, wrote a report entitled "Rising Utility Construction costs: Sources and Impact." The report was issued by the Edison Foundation, an affiliate of the Edison Electric Institute, the trade association for electric utilities in the United States. The report's leading substantive sentence was: "The rate increase pressures arising from elevated fuel and purchase power prices continue. However, another major cost drive that was not explored in previous work will impact rates, namely, the substantial increases in the costs of building utility infrastructure projects." These utility infrastructure projects included new coal-fired power plants like PSEC.

103. AMP, a partner in the PSEC Project, in a May 2007 filing with the Ohio Power Siting Board for their proposed (and later cancelled) Meigs County coal plant, noted that the

price increases being experienced in the expected construction costs of coal-based electric generation “are staggering.” AMP noted that “price increases of 10% in a single six month period are being reported. Using this data on other projects as an estimate, a one month delay in a \$2 billion project is over \$33 million.

104. The increased costs of construction during this time period are reflected in the cancelation of numerous coal plant construction plans, including, but not limited to: Peabody cancelling plans for the construction of the Mustang Energy Project in Mustang, New Mexico in 2006; Indeck Energy canceling the Elwood Energy Center in Illinois in September of 2006; Westar Energy’s deferment of a new 600 MW coal power plant in December of 2006 due to significant increases in estimated capital costs; the cancellation of plans for eight (8) new coal power plants by Texas Utility Services in early 2007; the Florida Public Service Commission’s rejection of the permit of Florida Power & Light due to uncertainty over costs in July of 2007; Tenaska’s cancellation of a 660 MW Electric Generating Plant in Oklahoma due to rising costs.

105. Defendants failed to convey any of this information while they were urging Batavia to sign the take-or-pay contract for PSEC.

106. On June 6, 2012, nearly a year after the proposed completion date, Unit 1 was substantially completed and commenced commercial operation. In November of 2012, Unit 2 was substantially completed and commenced commercial operation.

107. PSEC has never achieved a plant net capacity factor of 85% during any month since the Project began commercial operations in June 2012.

108. PSEC’s average capacity factor over its first 20 months of operation was only 58.7%. This included only a 60% capacity factor during the calendar year 2013.

109. Defendants projected 85% capacity factor for the PSEC Project ignored the likelihood that the plant's operating performance during the early years of operation would be significantly lower, as new power plants typically experience such reduced generation during their initial shakedown years.

110. Additional capacity for storage of the coal ash wastes produced by PSEC will also be required. The cost of acquiring this additional ashfill capacity will be passed on to Batavia's ratepayers and will mean further increases in the cost of power from PSEC.

111. Contrary to what Batavia was told, it was known to Defendants that the poor quality of the high sulfur, high ash, unwashed coal would lead to shutdowns and reduced operational efficiency. On information and belief, the poor quality of the high sulfur, high ash, unwashed coal has indeed led to such shutdowns and reduced operational capacity.

112. Contrary to what Batavia was told, it was known to Defendants that significant pieces of equipment purchased for the PSEC Project were not state of the art or designed and manufactured specifically for use at the PSEC, but rather were purchased second hand from cancelled power plants. This includes the boilers, which were purchased from a cancelled power plant in Texas and were designed for burning washed PRB coal, not Prairie State's unwashed coal.

113. What began as a fixed price EPC contract with Fluor Daniel in April of 2004 had changed to a "capped price" EPC contract with Bechtel by November of 2006, to an "indicative price" EPC contract by January of 2007, to a "non-binding indicative price" EPC contract by April of 2007, and finally to a "target price" EPC by August of 2007.

114. Peabody's ownership interest in PSEC through Lively Grove Energy decreased from 20% April of 2006, to 15% in November of 2006, to 12.5% in January of 2007.

115. After CMS's withdrawal in April of 2007, Peabody's individual ownership interest in PSEC through Lively Grove Energy increased to 25% as it assumed CMS's interest. By August of 2007, Peabody's interest had decreased to 19%, and by April of 2008 it had decreased to 5.06%, where it currently stands today. Peabody has an option to sell its remaining 5.06% interest five years after PSEC's substantial completion date or upon vote by a majority of the non-Peabody owners.

116. NIMPA's cost of power from PSEC from January 2012 to May 2014 was \$52.3 million higher than it would have been if the price for power from PSEC had been \$46/MWh, as Raj Rao told the Batavia City Council it would be on April 10, 2007. \$19.8 million of this increased cost figure has been passed on to the City of Batavia for payment by the Plaintiff class members.

117. NIMPA's cost of power from PSEC from January 2012 to May 2014 was \$55 million more than it would have cost NIMPA to buy the same amount of capacity and energy from the wholesale markets. \$20.8 million of this increased cost figure has been passed on to the City of Batavia for payment by the Plaintiff class members.

118. Approximately \$4.35 million of the increased costs already incurred by NIMPA will be passed on to the Plaintiff class members in the near future.

119. NIMPA's monthly cost of power from PSEC exceeded \$100/MWh in the months of May, July, October and November of 2013 and in March and April of 2014. For instance, in November of 2013, the cost of power from PSEC reached a rate of \$179.92/MWh.

120. On July 1, 2014, the City of Batavia raised its sales tax by .50% (from 7.5% to 8%). The proceeds of this sales tax increase are to support a City of Batavia Electric Utility rate increase.

CLASS ACTION ALLEGATION

121. Plaintiffs seek to bring this case as a class action pursuant to Illinois Code of Civil Procedure 735 ILCS § 5/2-801, et seq., on behalf of the Plaintiffs individually and in a representative capacity on behalf of all utility users in Batavia, Illinois that have purchased electricity generated by the Prairie State Energy Campus.

122. The Municipal Electric Utility (“MEU”) is the department of Batavia responsible for the generation and/or purchase, distribution, and sale of all electrical energy within the corporate limits of the city.

123. Utility users in Batavia do not have the option to opt out of the MEU, and thus cannot purchase electricity, a necessity of every-day life, from any other source.

124. Plaintiffs’ proposed class is defined as those ratepayers within Batavia who were charged by the Batavia Municipal Electric Utility department for electricity generated at PSEC since its opening.

125. The class is so numerous that joinder of all individual members in one action is impractical. Batavia’s population is 26,045 with 9,554 total households according to census data collected in 2010. These figures do not include those individuals or organizations that own and operate businesses within Batavia but do not reside within Batavia city limits.

126. As detailed herein relating to the issues of fact and law, Plaintiffs’ proposed class presents questions of fact and law common to members of the class which predominate over questions affecting only individual members as required by 735 ILCS 5/2-801(2). These common questions include, but are not limited to:

- a. Whether Defendants negligently misrepresented the construction costs required to complete PSEC.
- b. Whether Defendants negligently misrepresented the economic risks associated with target price construction contracts.

- c. Whether Defendants negligently misrepresented the length of time it would take to complete construction of PSEC.
- d. Whether Defendants negligently misrepresented the ultimate per megawatt hour cost of providing power generated at PSEC.
- e. Whether Defendants negligently misrepresented the actual amounts of power that can be expected to be generated at PSEC.
- f. Whether Defendants negligently misrepresented the viability of high-sulfur, high-ash coal as an energy source.
- g. Whether Defendants negligently misrepresented the maintenance issues and operating performance problems associated with burning unwashed coal.
- h. Whether Defendants negligently misrepresented that the equipment used at PSEC would be state of the art and designed and manufactured specifically for use at PSEC;
- i. Whether Defendants negligently misrepresented the necessity of Batavia approving final commitment to the PSEC project by April of 2007.
- j. Whether Defendants negligently omitted the impact on the PSEC project of not having an experienced power plant builder/operator after CMS' withdrawal from the project.
- k. Whether Defendants negligently omitted the skyrocketing costs of construction for coal fueled power plants while they were pressuring Batavia to commit to the PSEC project.
- l. Whether Defendants negligently omitted that they had knowledge as early as 2005 that a \$46 per MWh cost of power from PSEC was not attainable and that the cost of providing power from the Project would be more expensive.
- m. Whether Defendants negligently omitted the risk to Batavia of obtaining too much of its power from a single source - PSEC.

127. Plaintiffs will fairly and adequately protect the interest of the class members as required by 735 ILCS 5/2-801(3). Plaintiffs have no interest that conflict with the interests of class members. Plaintiffs have retained counsel experienced in handling ratepayer class actions. Neither Plaintiffs nor their counsel have any interests that might cause them not to pursue this claim vigorously.

128. Plaintiffs' proposed class is an appropriate method for the fair and efficient adjudication of this controversy as contemplated by 735 ILCS 5/2-801. The claims of Plaintiffs and the class are identical, as they are all based on the uniform conduct of Defendants, namely the negligent misrepresentations and omissions previously stated in paragraph 126. The prosecution of separate actions by individual class members could create a risk of inconsistent or varying adjudications with respect to individual members that would establish incompatible standards of conduct. Management of the class claims is likely to present significantly fewer difficulties than those presented in many individual claims. Moreover, the identities of the class members may be obtained from Defendant's records, rendering identification of the class something capable of ministerial review.

COUNT I
(IMPA – Negligent Misrepresentation)

129. Plaintiffs incorporate by reference each and every allegation set forth in the preceding paragraphs as though fully set forth herein.

130. While determining its involvement in the PSEC Project, the City of Batavia relied on the representations made by IMPA regarding the risks associated with the PSEC Project.

131. IMPA is in the business of providing information.

132. IMPA owed a duty to Plaintiffs and class members to convey accurate information in connection with the PSEC Project.

133. IMPA breached this duty when it:

- a. negligently misrepresented the construction costs required to complete PSEC.
- b. negligently misrepresented the economic risks associated with target price construction contracts.
- c. negligently misrepresented the length of time it would take to complete construction of PSEC.

- d. negligently misrepresented the ultimate per megawatt hour cost of providing power generated at PSEC.
- e. negligently misrepresented the actual amounts of power that can be expected to be generated at PSEC.
- f. negligently misrepresented the viability of high-sulfur, high-ash coal as an energy source.
- g. negligently misrepresented the maintenance issues and operating performance problems associated with burning unwashed coal.
- h. negligently misrepresented that the equipment used at PSEC would be state of the art and designed and manufactured specifically for use at PSEC;
- i. negligently misrepresented the necessity of Batavia approving final commitment to the PSEC project by April of 2007.
- j. negligently omitting the impact on the PSEC project of not having an experienced power plant builder/operator after CMS' withdrawal from the project.
- k. negligently omitting the skyrocketing costs of construction for coal fueled power plants while they were pressuring Batavia to commit to the PSEC project.
- l. negligently omitting that as early as 2005 that a \$46 per MWh cost of power from PSEC was not attainable and that the cost of providing power from the Project would be more expensive.
- m. negligently omitting the risk to Batavia of obtaining too much of its power from a single source - PSEC.

134. IMPA's breach has proximately caused damage to Plaintiffs and class members, including but not limited to the following;

- a. Causing a substantial increase in the electric rates paid by the Plaintiff class members following PSEC's opening in 2012, rates which will remain increased for the remainder of the contract period.
- b. Causing the City of Batavia to raise its sales tax by .50% (7.5% to 8%) to support an Electric Utility rate increase, which is currently being paid by Plaintiff class members;
- c. Causing Batavia to be bound, for at least decades, to an unaffordable and unreliable source of power that is draining the city's resources, directly damaging the quality of life for the Plaintiff class members.

- d. Damaging the reputation of Batavia so as to discourage both business and residential investment in the city, which has destabilized the economy of Batavia, directly damaging the quality of life for the Plaintiff class members;
- e. And in such other ways as the proof adduced at trial establishes.

WHEREFORE, Plaintiffs, individually and on behalf of the class, request that this Court enter judgment in their favor and against IMPA and award actual and punitive damages as determined at trial, attorneys' fees, costs and such further relief as this court deems just and proper.

COUNT II
(ISC – Negligent Misrepresentation)

135. Plaintiffs incorporate by reference each and every allegation set forth in the preceding paragraphs as though fully set forth herein.

136. While determining its involvement in the PSEC Project, the City of Batavia relied on the representations made by ISC regarding the risks associated with the PSEC Project.

137. ISC is in the business of providing information.

138. ISC owed a duty to Plaintiffs and class members to convey accurate information in connection with the PSEC Project.

139. ISC breached this duty when it:

- a. negligently misrepresented the construction costs required to complete PSEC.
- b. negligently misrepresented the economic risks associated with target price construction contracts.
- c. negligently misrepresented the length of time it would take to complete construction of PSEC.
- d. negligently misrepresented the ultimate per megawatt hour cost of providing power generated at PSEC.
- e. negligently misrepresented the actual amounts of power that can be expected to be generated at PSEC.

- f. negligently misrepresented the viability of high-sulfur, high-ash coal as an energy source.
- g. negligently misrepresented the maintenance issues and operating performance problems associated with burning unwashed coal.
- h. negligently misrepresented that the equipment used at PSEC would be state of the art and designed and manufactured specifically for use at PSEC;
- i. negligently misrepresented the necessity of Batavia approving final commitment to the PSEC project by April of 2007.
- j. negligently omitting the impact on the PSEC project of not having an experienced power plant builder/operator after CMS's withdrawal from the project.
- k. negligently omitting the skyrocketing costs of construction for coal fueled power plants while they were pressuring Batavia to commit to the PSEC project.
- l. negligently omitting that as early as 2005 that a \$46 per MWh cost of power from PSEC was not attainable and that the cost of providing power from the Project would be more expensive.
- m. negligently omitting the risk to Batavia of obtaining too much of its power from a single source - PSEC.

140. ISC's breach has proximately caused damage to Plaintiffs and class members, including but not limited to the following;

- a. Causing a substantial increase in the electric rates paid by the Plaintiff class members following PSEC's opening in 2012, rates which will remain increased for the remainder of the contract period.
- b. Causing the City of Batavia to raise its sales tax by .50% (7.5% to 8%) to support an Electric Utility rate increase, which is currently being paid by Plaintiff class members;
- c. Causing Batavia to be bound, for at least decades, to an unaffordable and unreliable source of power that is draining the city's resources, directly damaging the quality of life for the Plaintiff class members.
- d. Damaging the reputation of Batavia so as to discourage both business and residential investment in the city, which has destabilized the economy of Batavia, directly damaging the quality of life for the Plaintiff class members;
- e. And in such other ways as the proof adduced at trial establishes.

WHEREFORE, Plaintiffs, individually and on behalf of the class, request that this Court enter judgment in their favor and against ISC and award actual and punitive damages as determined at trial, attorneys' fees, costs and such further relief as this court deems just and proper.

COUNT III
(Raj Rao – Negligent Misrepresentation)

141. Plaintiffs incorporate by reference each and every allegation set forth in the preceding paragraphs as though fully set forth herein.

142. While determining its involvement in the PSEC Project, the City of Batavia relied on the representations made by Raj Rao regarding the risks associated with the PSEC Project.

143. Raj Rao is in the business of providing information.

144. Raj Rao owed a duty to Plaintiffs and class members to convey accurate information in connection with the PSEC Project.

145. Raj Rao breached this duty when he:

- a. negligently misrepresented the construction costs required to complete PSEC.
- b. negligently misrepresented the economic risks associated with target price construction contracts.
- c. negligently misrepresented the length of time it would take to complete construction of PSEC.
- d. negligently misrepresented the ultimate per megawatt hour cost of providing power generated at PSEC.
- e. negligently misrepresented the actual amounts of power that can be expected to be generated at PSEC.
- f. negligently misrepresented the viability of high-sulfur, high-ash coal as an energy source.
- g. negligently misrepresented the maintenance issues and operating performance problems associated with burning unwashed coal.

- h. negligently misrepresented that the equipment used at PSEC would be state of the art and designed and manufactured specifically for use at PSEC;
- i. negligently misrepresented the necessity of Batavia approving final commitment to the PSEC project by April of 2007.
- j. negligently omitting the impact on the PSEC project of not having an experienced power plant builder/operator after CMS' withdrawal from the project.
- k. negligently omitting the skyrocketing costs of construction for coal fueled power plants while they were pressuring Batavia to commit to the PSEC project.
- l. negligently omitting that as early as 2005 that a \$46 per MWh cost of power from PSEC was not attainable and that the cost of providing power from the Project would be more expensive.
- m. negligently omitting the risk to Batavia of obtaining too much of its power from a single source - PSEC.

146. Raj Rao's breach has proximately caused damage to Plaintiffs and class members, including but not limited to the following;

- a. Causing a substantial increase in the electric rates paid by the Plaintiff class members following PSEC's opening in 2012, rates which will remain increased for the remainder of the contract period.
- b. Causing the City of Batavia to raise its sales tax by .50% (7.5% to 8%) to support an Electric Utility rate increase, which is currently being paid by Plaintiff class members;
- c. Causing Batavia to be bound, for at least decades, to an unaffordable and unreliable source of power that is draining the city's resources, directly damaging the quality of life for the Plaintiff class members.
- d. Damaging the reputation of Batavia so as to discourage both business and residential investment in the city, which has destabilized the economy of Batavia, directly damaging the quality of life for the Plaintiff class members;
- e. And in such other ways as the proof adduced at trial establishes.

WHEREFORE, Plaintiffs, individually and on behalf of the class, request that this Court enter judgment in their favor and against Raj Rao and award actual and punitive damages as determined at trial, attorneys' fees, costs and such further relief as this court deems just and proper.

COUNT IV
(Sargent & Lundy, L.L.C. - Negligent Misrepresentation)

147. Plaintiffs incorporate by reference each and every allegation set forth in the preceding paragraphs as though fully set forth herein.

148. At all times material herein, Sargent & Lundy knew that municipalities such as Batavia would rely on its analysis of the risks associated with the PSEC Project, and that it was foreseeable that any negligence in regards to this analysis would cause harm to the Plaintiff class members.

149. While determining its involvement in the PSEC Project, the City of Batavia relied on IMPA and NIMPA's hired consulting firm, Sargent & Lundy, to identify any risks associated with the PSEC Project.

150. Sargent & Lundy is in the business of providing information.

151. Sargent & Lundy owed a duty to Plaintiffs and class members to convey accurate information in connection with the PSEC Project.

152. Sargent & Lundy breached this duty when it negligently misrepresented the construction cost and operating performance of the PSEC, as well as other economic risks associated with entering into a long-term take-or-pay contract for power from the PSEC Project.

153. Sargent & Lundy's breach has proximately caused damage to Plaintiffs and class members, including but not limited to the following;

- a. Causing a substantial increase in the electric rates paid by the Plaintiff class members following PSEC's opening in 2012, rates which will remain increased for the remainder of the contract period.
- b. Causing the City of Batavia to raise its sales tax by .50% (7.5% to 8%) to support an Electric Utility rate increase, which is currently being paid by Plaintiff class members;

- c. Causing Batavia to be bound, for at least decades, to an unaffordable and unreliable source of power that is draining the city's resources, directly damaging the quality of life for the Plaintiff class members.
- d. Damaging the reputation of Batavia so as to discourage both business and residential investment in the city, which has destabilized the economy of Batavia, directly damaging the quality of life for the Plaintiff class members;
- e. And in such other ways as the proof adduced at trial establishes.

WHEREFORE, Plaintiffs, individually and on behalf of the class, request that this Court enter judgment in their favor and against Sargent & Lundy, L.L.C. and award actual and punitive damages as determined at trial, attorneys' fees, costs and such further relief as this court deems just and proper.

COUNT V
(Skelly and Loy, Inc. - Negligent Misrepresentation)

154. Plaintiffs incorporate by reference each and every allegation set forth in the preceding paragraphs as though fully set forth herein.

155. At all times material herein, Sargent & Lundy knew that municipalities such as Batavia would rely on its analysis of the risks associated with the PSEC Project, and that it was foreseeable that any negligence in regards to this analysis would cause harm to the Plaintiff class members.

156. While determining its involvement in the PSEC Project, the City of Batavia relied on IMPA and NIMPA's hired consulting firm, Skelly and Loy, to identify any risks associated with the PSEC Project.

157. Skelly and Loy is in the business of providing information.

158. Skelly and Loy owed a duty to Plaintiffs and class members to convey accurate information in connection with the PSEC Project.

159. Skelly and Loy breached this duty when it negligently misrepresented the status, quality, and quantity of the coal at PSEC, as well as other economic risks associated with entering into a long-term take-or-pay contract for power from the PSEC Project.

160. Skelly and Loy's breach has proximately caused damage to Plaintiffs and class members, including but not limited to the following;

- f. Causing a substantial increase in the electric rates paid by the Plaintiff class members following PSEC's opening in 2012, rates which will remain increased for the remainder of the contract period.
- g. Causing the City of Batavia to raise its sales tax by .50% (7.5% to 8%) to support an Electric Utility rate increase, which is currently being paid by Plaintiff class members;
- h. Causing Batavia to be bound, for at least decades, to an unaffordable and unreliable source of power that is draining the city's resources, directly damaging the quality of life for the Plaintiff class members.
- i. Damaging the reputation of Batavia so as to discourage both business and residential investment in the city, which has destabilized the economy of Batavia, directly damaging the quality of life for the Plaintiff class members;
- j. And in such other ways as the proof adduced at trial establishes.

WHEREFORE, Plaintiffs, individually and on behalf of the class, request that this Court enter judgment in their favor and against Skelly and Loy, Inc. and award actual and punitive damages as determined at trial, attorneys' fees, costs and such further relief as this court deems just and proper.

COUNT VI

(Peabody Energy, Inc., Prairie State Generating Company, LLC., Prairie State Energy Campus Management, Inc., Lively Grove Energy Partners, LLC., Northern Illinois Municipal Power Agency, Illinois Municipal Electric Agency, American Municipal Power – Ohio, Inc., Kentucky Municipal Power Agency, Missouri Joint Municipal Electric Utility Commission, Prairie Power, Inc., Southern Illinois Power Cooperative, CMS Enterprises Company, Wisconsin Public Power, Inc., Wolverine Power Supply Cooperative, Inc., Bechtel Corporation, R.W. Beck, Inc., n/k/a Science Applications International Corp., City of Rochelle, City of Geneva and City of Batavia, as Respondents in Discovery)

Plaintiffs, Joe Marconi, Adelina Marconi, Richard A. Benson, Louis M. Benson, Daniel J. Soliz, Margret M. Soliz, Mary Popiel, John Wulff, and Emil Goellner, individually and on behalf of all other similarly situated individuals, complains against the Respondents in Discovery, Peabody Energy, Inc., a Delaware Corporation; Prairie State Generating Company, LLC, a Delaware corporation; Prairie State Energy Campus Management, Inc., an Indiana not-for-profit corporation; Lively Grove Energy Partners, LLC., a Delaware corporation; Northern Illinois Power Agency, an Illinois joint municipal power agency; Illinois Municipal Electric Agency, an Illinois joint municipal power agency; American Municipal Power – Ohio, Inc., an Ohio joint municipal power agency; Kentucky Municipal Power Agency, a Kentucky joint municipal power agency; Missouri Joint Municipal Electric Utility Commission, a Missouri joint municipal power agency; Prairie Power, Inc., an Illinois electricity cooperative; Southern Illinois Power Cooperative, an Illinois electricity cooperative; CMS Enterprises Company, a Michigan Corporation; Wisconsin Public Power, Inc., a Wisconsin joint municipal power agency; Wolverine Power Supply Cooperative, Inc., a Michigan electricity cooperative; Bechtel Corporation, a Nevada Corporation; R.W. Beck, Inc. n/k/a Science Applications International Corporation, a Virginia corporation; the City of Rochelle; the City of Geneva; and the City of Batavia, as follows:

161. Based upon information and belief the Respondents in Discovery, Peabody Energy, Inc., Prairie State Generating Company, LLC.; Prairie State Energy Campus Management, Inc.; Lively Grove Energy Partners, LLC.; Northern Illinois Power Agency; Illinois Municipal Electric Agency; American Municipal Power – Ohio, Inc.; Kentucky Municipal Power Agency; Missouri Joint Municipal Electric Utility Commission; Prairie Power, Inc.; Southern Illinois Power Cooperative; CMS Enterprises Company; Wisconsin Public Power, Inc.; Wolverine Power Supply Cooperative; Bechtel Corporation; R.W. Beck, Inc. n/k/a Science Applications International Corporation; the City of Rochelle; the City of Geneva; and the City of Batavia are aware of information relevant to the facts alleged in this Complaint and are being named as Respondents in Discovery pursuant to 735 ILCS 5/2-402.

162. On information and belief, numerous confidentiality agreements exist between Defendants and the Respondents in Discovery, thus making the naming of them as Respondents in Discovery necessary.

163. Plaintiffs attach to this Complaint, Interrogatories and Requests for Production to be answered by the Respondents in Discovery, attached as Exhibit A.

WHEREFORE, Plaintiffs, individually and on behalf of all other similarly situated individuals, request that the Respondents in Discovery, respond to discovery and appear for depositions initiated pursuant to the provisions of the applicable Illinois Statutes.

Respectfully submitted,



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Counsel for Plaintiffs

IN THE CIRCUIT COURT OF KANE COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Joe MARCONI, Adelina MARCONI)
Richard A. BENSON, Louis M. BENSON)
Daniel J. SOLIZ, Margret M. SOLIZ,)
Mary POPIEL, John WULFF,)
and Emil GOELLNER, individually)
and on behalf of others similarly situated,)

Plaintiffs,)

v.)

Case No.

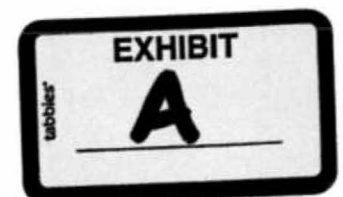
INDIANA MUNICIPAL POWER AGENCY,)
IMPA SERVICES CORPORATION,)
RAJESHWAR G. RAO,)
SARGENT & LUNDY, LLC.,)
and SKELLY AND LOY, INC.,)

Defendants,)

and)

PEABODY ENERGY INC.,)
PRAIRIE STATE GENERATING COMPANY,)
LLC., PRAIRIE STATE ENERGY CAMPUS)
MANAGEMENT, INC., LIVELY GROVE)
ENERGY PARTNERS, LLC., NORTHERN)
ILLINOIS MUNICIPAL POWER AGENCY,)
ILLINOIS MUNICIPAL ELECTRIC AGENCY,)
AMERICAN MUNICIPAL POWER AGENCY –)
OHIO, INC., KENTUCKY MUNICIPAL POWER)
AGENCY, MISSOURI JOINT MUNICIPAL)
ELECTRIC UTILITY COMMISSION, PRAIRIE)
POWER, INC., SOUTHERN ILLINOIS POWER)
COOPERATIVE, CMS ENTERPRISES)
COMPANY, WISCONSIN PUBLIC POWER,)
INC., WOLVERINE POWER SUPPLY)
COOPERATIVE, INC., BECHTEL CORP.,)
R.W. BECK, INC. k/n/a SCIENCE)
APPLICATIONS INTERNATIONAL CORP.;)
CITY OF ROCHELLE; CITY OF GENEVA;)
and CITY OF BATAVIA,)

Respondents in Discovery.)



**PLAINTIFFS' FIRST SET OF INTERROGATORIES TO RESPONDENT IN
DISCOVERY**

Plaintiffs, Joe Marconi, Adelina Marconi, Richard A. Benson, Louis M. Benson, Daniel J. Soliz, Margret M. Soliz, Mary Popiel, John Wulff, and Emil Goellner, individually and on behalf of all other similarly situated individuals, by its attorneys, Childress Duffy, Ltd., pursuant to Illinois Supreme Court Rule 213 serves on Respondent, the following Interrogatories to be answered within 28 days:

DEFINITIONS

1. As used herein, the words "document" and "documents" mean each written, typed, printed, lithographed, recorded, transcribed, taped, electronically stored, digitized, disked, filmed, or graphic matter of every kind, however produced or reproduced, including originals or copies of originals not in existence or available, all drafts or partial copies, wherever located, and including all Electronic Data, correspondence, letters, emails, envelopes, memoranda, requests for information, telegrams, telexes, cables, reports, records, studies, tests, inspections, working papers, handwritten notes, diaries, charts, spreadsheets, photographs, negatives, sketches, drawings, blueprints, videos, moving pictures, graphs, indices, submittals, data sheets, databases, conversations, statements, minutes, notations (including notes or memorandum of conversations), telephone conversations in whatever form, agreements, contracts, drafts of agreements or contracts, proposed agreements or contracts, specifications, addenda, suggestions, comments, instructions, warnings, notices, manuals, periodicals, pamphlets, brochures, catalogues, bulletins, schedules, price lists, invoices, and other documentation.

2. The term "Electronic Data" as used herein, shall be construed as the following types of electronic data and data compilations in the custody and/or control of (Respondent):

- a. All electronic mail and information about electronic mail sent or received by (Respondent);
- b. All databases containing any reference and/or information;
- c. All activity logs on any computer system which may have been used to process or store electronic data containing information;
- d. All word processing files and file fragments, including metadata, containing information;
- e. All electronic data files and file fragments created by application programs that process financial, accounting and billing information;

- f. All electronic data files and file fragments from electronic calendars and scheduling programs that contain information about the above-listed subjects;
- g. All electronic mail from third-party sources (e.g., Hotmail, Yahoo! Mail, etc.); and
- h. All electronic or automated claims handling systems or software.

3. The terms “and” and “or” as used herein, shall, where the context permits, be construed to mean “and/or” as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

4. The terms “You”, “Your” and “Respondent” refer to (Respondent), its predecessors, successors, subsidiaries, affiliated entities, officers, directors, employees, agents and anyone acting on its behalf or at its direction.

5. The term “contract” means any contract, agreement, letter of intent, or reservation agreement, confidential or not, executed or received by Respondent related to the construction, ownership, design, planning, marketing, supervising, consulting, managing, or any other services related to the constructing, design, operation, or management of PSEC.

6. The term “involvement” means the construction, ownership, design, planning, marketing, supervising, consulting, managing, or any other services related to the constructing, design, operation, or management of PSEC.

7. The term “PSEC” refers to the 1,528 MW twin unit coal-fired electric generating facility, with an adjacent high-sulfur coal mine without washing mine-mouth, a coal combustion waste disposal facility, and other ancillary support equipment located in Washington and St. Clair Counties, Illinois called the Prairie State Energy Campus.

8. The term “IMEA” refers to the Illinois Municipal Electric Agency.

9. The term “IMPA” refers to the Indiana Municipal Power Agency.

10. The term “ISC” refers to the IMPA Service Corporation, a subsidiary of IMPA.

11. The term “NIMPA” refers to the Northern Illinois Municipal Power Agency.

12. The term “PSGC” refers to the Prairie State Generating Company.

13. The term “Lively Grove mine” refers to the high-sulfur coal mine without washing mine-mouth adjacent to PSEC in southern Illinois.

INTERROGATORIES

1. Please provide the name of all individuals who were consulted or who participated in answering or furnishing information used in answering any of these interrogatories.

ANSWER:

2. Please provide the name of the individual from Respondent's organization who was Respondent's senior ranking individual responsible for PSEC and whether the individual is still employed at Respondent's organization. If the individual is no longer employed at Respondent's organization, please provide the last known address of the individual.

ANSWER:

3. Please state whether Respondent entered into any contract regarding PSEC.

ANSWER:

4. If your answer to the foregoing interrogatories is in the affirmative, please state:

- a. the date(s) of the contract(s);
- b. the title of the contract(s); and
- c. the parties to the contract(s).

ANSWER:

5. Please state whether Respondent entered into any confidential agreements regarding PSEC.

ANSWER:

6. If your answer to the foregoing interrogatory is in the affirmative, please state:

- a. the date(s) of the confidential agreement(s);
- b. the title of the confidential agreement(s); and
- c. the parties to the confidential agreement(s).

ANSWER:

7. Please state whether, prior to May 1, 2007, Respondent made any presentations or provided any report to any entity regarding:

- a. the projected construction costs required to complete PSEC;

- b. the projected length of time it would take to complete construction of PSEC;
- c. the projected per megawatt hour rate of electricity that would be produced at PSEC;
- d. the projected operating capacity of PSEC;
- e. the type of coal at Lively Grove mine;
- f. the decision not to wash the coal that would be burned at PSEC;
- g. the viability of using high-sulfur coal as an energy source when unwashed;
- h. PSEC's future operating costs; and
- i. PSEC's future maintenance costs.

ANSWER:

8. Please state whether Respondent was advised that PSEC would achieve at least an 85% annual capacity factor.

ANSWER:

- 9. If the answer to the foregoing interrogatory is in the affirmative, please state;
 - a. who advised Respondent that PSEC would achieve at least an 85% annual capacity factor;
 - b. the projected annual capacity factor advised each time; and
 - c. the date(s) Respondent was advised that PSEC would achieve at least an 85% annual capacity factor.

ANSWER:

10. Please state whether Respondent was advised that power generated at PSEC would cost \$46 or less per megawatt-hour for electricity produced.

ANSWER:

- 11. If the answer to the foregoing interrogatory is in the affirmative, please state;
 - a. who advised Respondent that power generated at PSEC would cost \$46 or less per megawatt-hour for electricity produced;
 - b. the projected post per megawatt-hour for electricity produced advised each time; and

- c. the date(s) Respondent was advised that power generated at PSEC would cost \$46 or less per megawatt-hour for electricity produced.

ANSWER:

12. Please state whether Respondent was advised that Unit 1 of PSEC would be substantial completed by August 1, 2011.

ANSWER:

13. If the answer to the foregoing interrogatory is in the affirmative, please state;
 - a. who advised Respondent that Unit 1 of PSEC would be substantial completed by August 1, 2011; and
 - b. the date(s) Respondent was advised that Unit 1 of PSEC would be substantial completed by August 1, 2011.

ANSWER:

14. Please state whether Respondent was advised that Unit 2 of PSEC would be substantial completed by May 1, 2012.

ANSWER:

15. If the answer to the foregoing interrogatory is in the affirmative, please state;
 - a. who advised Respondent that Unit 2 of PSEC would be substantial completed by May 1, 2012; and
 - b. the date(s) Respondent was advised that Unit 2 of PSEC would be substantial completed by May 1, 2012.

ANSWER:

16. Please state the final cost of constructing PSEC.

ANSWER:

17. Please state whether Respondent paid any money to Raj Rao and if so the total dollar amount paid by Respondent to Raj Rao.

ANSWER:

18. Please state whether Respondent paid any money to ISC and if so the total dollar amount paid by Respondent to ISC.

ANSWER:

19. Please state whether Respondent paid any money to IMPA and if so the total dollar amount paid by Respondent to IMPA.

ANSWER:

20. Please state the date Respondent learned that Bechtel Corporation would not enter into a capped or fixed fee contract for engineering, procuring, and constructing PSEC.

ANSWER:

21. At any point in time was Respondent provided a projection of the cost of construction of the power plant at PSEC?

ANSWER:

22. If your answer to the foregoing interrogatory is in the affirmative, please provide the following:

- a. each date Respondent was provided with a projected cost of construction of the power plant;
- b. the projected cost of construction of the power plant Respondent was advised each time; and
- c. name of each person that provided the cost of construction of the power plant.

ANSWER:

23. At any point in time were you told CMS was withdrawing as the lead developer, construction manager, and operator of the PSEC project?

ANSWER:

24. If your answer to the foregoing interrogatory is in the affirmative, please provide:

- a. the date Respondent was told CMS would be withdrawing from the PSEC project;
- b. the name of the person that told you CMS would be withdrawing from the PSEC project; and
- c. the reasons given that CMS was withdrawing from the PSEC project.

ANSWER:

25. Was Respondent advised by anyone that it needed to commit to the PSEC project by a date certain or it was out of the PSEC project?

ANSWER:

26. If your answer to the foregoing interrogatory is in the affirmative, please state:

- a. the date Respondent was advised of the need to commit; and
- b. the person that advised Respondent it needed to commit to the PSEC project or it was out.

ANSWER:

27. In 2012 what was the actual operating performance of PSEC?

ANSWER:

28. In 2013 what was the actual operating performance of PSEC?

ANSWER:

29. In 2014 what was the actual operating performance of PSEC?

ANSWER:

30. What is the actual monthly cost per megawatt hour for the power produced at PSEC per month from January 2013 to present?

ANSWER:

Dated: August 19, 2014

Respectfully submitted,



Michael L. Childress, Esq.

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Counsel for Plaintiffs

IN THE CIRCUIT COURT OF KANE COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

Joe MARCONI, Adelina MARCONI)
Richard A. BENSON, Louis M. BENSON)
Daniel J. SOLIZ, Margret M. SOLIZ,)
Mary POPIEL, John WULFF,)
and Emil GOELLNER, individually)
and on behalf of others similarly situated,)

Plaintiffs,)

v.)

Case No.

INDIANA MUNICIPAL POWER AGENCY,)
IMPA SERVICES CORPORATION,)
RAJESHWAR G. RAO,)
SARGENT & LUNDY, LLC.,)
and SKELLY AND LOY, INC.,)

Defendants,)

and)

PEABODY ENERGY INC.,)
PRAIRIE STATE GENERATING COMPANY,)
LLC., PRAIRIE STATE ENERGY CAMPUS)
MANAGEMENT, INC., LIVELY GROVE)
ENERGY PARTNERS, LLC., NORTHERN)
ILLINOIS MUNICIPAL POWER AGENCY,)
ILLINOIS MUNICIPAL ELECTRIC AGENCY,)
AMERICAN MUNICIPAL POWER AGENCY –)
OHIO, INC., KENTUCKY MUNICIPAL POWER)
AGENCY, MISSOURI JOINT MUNICIPAL)
ELECTRIC UTILITY COMMISSION, PRAIRIE)
POWER, INC., SOUTHERN ILLINOIS POWER)
COOPERATIVE, CMS ENTERPRISES)
COMPANY, WISCONSIN PUBLIC POWER,)
INC., WOLVERINE POWER SUPPLY)
COOPERATIVE, INC., BECHTEL CORP.,)
R.W. BECK, INC. k/n/a SCIENCE)
APPLICATIONS INTERNATIONAL CORP.;)
CITY OF ROCHELLE; CITY OF GENEVA;)
and CITY OF BATAVIA,)

Respondents in Discovery.)

**PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO
RESPONDENT IN DISCOVERY**

Plaintiffs, Joe Marconi, Adelina Marconi, Richard A. Benson, Louis M. Benson, Daniel J. Soliz, Margret M. Soliz, Mary Popiel, John Wulff, and Emil Goellner, individually and on behalf of all other similarly situated individuals, by its attorneys, Childress Duffy, Ltd., pursuant to Illinois Supreme Court Rule 214 serves on Respondent, the following Requests for Production of Documents to be answered within 28 days:

DEFINITIONS

1. As used herein, the words "document" and "documents" mean each written, typed, printed, lithographed, recorded, transcribed, taped, electronically stored, digitized, disked, filmed, or graphic matter of every kind, however produced or reproduced, including originals or copies of originals not in existence or available, all drafts or partial copies, wherever located, and including all Electronic Data, correspondence, letters, emails, envelopes, memoranda, requests for information, telegrams, telexes, cables, reports, records, studies, tests, inspections, working papers, handwritten notes, diaries, charts, spreadsheets, photographs, negatives, sketches, drawings, blueprints, videos, moving pictures, graphs, indices, submittals, data sheets, databases, conversations, statements, minutes, notations (including notes or memorandum of conversations), telephone conversations in whatever form, agreements, contracts, drafts of agreements or contracts, proposed agreements or contracts, specifications, addenda, suggestions, comments, instructions, warnings, notices, manuals, periodicals, pamphlets, brochures, catalogues, bulletins, schedules, price lists, invoices, and other documentation.

2. The term "Electronic Data" as used herein, shall be construed as the following types of electronic data and data compilations in the custody and/or control of (Respondent):

- a. All electronic mail and information about electronic mail sent or received by (Respondent);
- b. All databases containing any reference and/or information;
- c. All activity logs on any computer system which may have been used to process or store electronic data containing information;
- d. All word processing files and file fragments, including metadata, containing information;
- e. All electronic data files and file fragments created by application programs that process financial, accounting and billing information;

- f. All electronic data files and file fragments from electronic calendars and scheduling programs that contain information about the above-listed subjects;
- g. All electronic mail from third-party sources (e.g., Hotmail, Yahoo! Mail, etc.); and
- h. All electronic or automated claims handling systems or software.

3. The terms “and” and “or” as used herein, shall, where the context permits, be construed to mean “and/or” as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

4. The terms “You”, “Your” and “Respondent” refer to (Respondent), its predecessors, successors, subsidiaries, affiliated entities, officers, directors, employees, agents and anyone acting on its behalf or at its direction.

5. The term “contract” means any contract, agreement, letter of intent, or reservation agreement, confidential or not, executed or received by Respondent related to the construction, ownership, design, planning, marketing, supervising, consulting, managing, or any other services related to the constructing, design, operation, or management of PSEC.

6. The term “involvement” means the construction, ownership, design, planning, marketing, supervising, consulting, managing, or any other services related to the constructing, design, operation, or management of PSEC.

7. The term “PSEC” refers to the 1,600 MW Nominal twin unit coal-fired electric generating facility, with an adjacent high-sulfur coal mine without washing mine-mouth, a coal combustion waste disposal facility, and other ancillary support equipment located in Washington, St. Clair and Randolph Counties, Illinois called the Prairie State Energy Campus.

8. The term “IMEA” refers to the Illinois Municipal Electric Agency.

9. The term “IMPA” refers to the Indiana Municipal Power Agency.

10. The term “ISC” refers to the IMPA Service Corporation, a subsidiary of IMPA.

11. The term “NIMPA” refers to the Northern Illinois Municipal Power Agency.

12. The term “PSGC” refers to the Prairie State Generating Company.

13. The term “Lively Grove mine” refers to the high-sulfur coal mine without washing mine-mouth adjacent to PSEC in southern Illinois.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Any and all documents described, identified, referred, and/or responsive to Respondent's Answers to Plaintiffs' First Set of Interrogatories; or which were read, reviewed, relied upon, or otherwise utilized in any manner in preparing Respondent's Answers to said Interrogatories.

RESPONSE:

2. All economic or financial assessments, presentation slides or handouts, reports, or investigations provided to or generated by Respondent dated prior to May 1, 2007 analyzing, projecting or estimating the current or future prices of purchasing energy and/or capacity from the PJM and Midwest Independent Transmission System Operator ("MISO") competitive wholesale markets.

RESPONSE:

3. All economic or financial assessments, presentation slides or handouts, reports, or investigations provided to or generated by Respondent dated prior to May 1, 2007 analyzing the construction of PSEC.

RESPONSE:

4. All economic or financial assessments, presentation slides or handouts, reports, or investigations provided to or generated by Respondent dated prior to May 1, 2007 analyzing the future cost of generating power from PSEC.

RESPONSE:

5. All economic or financial assessments, presentation slides or handouts, reports, or investigations provided to or generated by Respondent dated prior to May 1, 2007 analyzing PSEC's future operating performance.

RESPONSE:

6. All economic or financial assessments, presentation slides or handouts, reports, or investigations provided to or generated by Respondent dated prior to May 1, 2007 regarding the burning of unwashed, ash-laden coal at PSEC.

RESPONSE:

7. All economic or financial assessments, presentation slides or handouts, reports, or investigations provided to or generated by Respondent dated prior to May 1, 2007 that discussed, estimated, or projected the quantity of coal available at the Lively Grove mine.

RESPONSE:

8. All economic or financial assessments, presentation slides or handouts, reports, or investigations provided to or generated by Respondent dated prior to May 1, 2007 that discussed, estimated, or projected the quality of coal available at the Lively Grove mine.

RESPONSE:

9. Please produce any presentations presented to Respondent or generated by Respondent prior to May 1, 2007 regarding PSEC.

RESPONSE:

10. All correspondence, notices, or other communications sent to Respondent regarding any deadlines for Respondent's commitment to its involvement in PSEC.

RESPONSE:

11. Please produce any power purchase agreements executed regarding the purchase of power from PSEC.

RESPONSE:

12. Please produce all contracts Respondent either executed or received regarding PSEC.

RESPONSE:

13. Please produced any written material Respondent received or generated prior to May 1, 2007 which stated:

- a. the projected construction costs required to complete PSEC;
- b. the projected length of time it would take to complete construction of PSEC;
- c. the projected per megawatt hour rate of electricity that would be produced at PSEC;
- d. the projected operating capacity of PSEC;
- e. the type of coal at Lively Grove mine;
- f. the decision not to wash the coal that would be burned at PSEC;
- g. the viability of using high-sulfur coal as an energy source when unwashed;
- h. PSEC's future operating costs; and
- i. PSEC's future maintenance costs.

RESPONSE:

14. Please produce all documents Respondent received or generated discussing CMS's withdrawal from the PSEC project.

RESPONSE:

15. Please produce any documents discussing the costs of constructing coal fired power plants between 2002 and 2010.

RESPONSE:

16. Please produce any documents reflecting the operating performance of coal fired power plants between 2002 and 2010.

RESPONSE:

17. Please produce any documents reflecting the cancelation of construction of any coal fired power plants between 2002 and 2010.

RESPONSE:

18. Please produce any documents projecting when unit 1 at PSEC would commence operation.

RESPONSE:

19. Please produce any documents projecting when unit 2 at PSEC would commence operation.

RESPONSE:

20. Please produce any documents indicating the actual cost per megawatt hour for power generated at PSEC in 2013.

RESPONSE:

21. Please produce any documents indicating the actual cost per megawatt hour for power generated at PSEC in 2014.

RESPONSE:

22. Please produce any documents indicating the total cost of constructing PSEC.

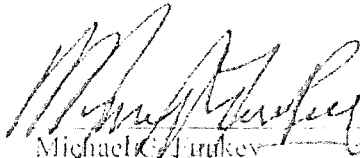
RESPONSE:

Dated: August 19, 2014

Respectfully submitted,



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