

**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

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In re:	)	
	)	
FutureGen Industrial Alliance, Inc.	)	UIC Appeal No(s): 14-68, 14-69, 14-70 &
	)	14-71
UIC Permit Nos.: IL-137-6A-001	)	
IL-137-6A-002	)	
IL-137-6A-003	)	
IL-137-6A-004	)	

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**PERMITEE FUTUREGEN INDUSTRIAL ALLIANCE, INC.'S  
MOTION FOR EXPEDITED REVIEW AND  
DECLARATIONS IN SUPPORT**

John J. Buchovecky  
Marlys S. Palumbo  
Chris D. Zentz  
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*Counsel for FutureGen Industrial Alliance, Inc.*

Pursuant to 40 C.F.R. § 124.19(f), permittee FutureGen Industrial Alliance, Inc. (the “Alliance”) hereby moves the Environmental Appeals Board (“Board”) to expedite review of this proceeding. For the reasons specified below, the Alliance respectfully requests that the Board grant this Motion to Expedite.

### **FACTUAL AND PROCEDURAL BACKGROUND**

The Alliance is a non-profit membership organization created to benefit the public interest and interests of science through research, development, and demonstration of near-zero emissions coal technology. It is partnering with the U.S. Department of Energy (“DOE”) on the FutureGen 2.0 Project (“Project”), which is to be the world’s first large-scale, near-zero emissions power plant using carbon capture and storage (“CCS”) and oxy-combustion technologies.

On August 5, 2010, USDOE Steven Chu and U.S. Senator Richard Durbin of Illinois announced an award of \$1B in funding for the Project. These funds were appropriated by the American Recovery and Reinvestment Act of 2009 (“ARRA”). Pub. L. No. 111-5. The completion of the commercial financing transaction, and thus major construction spending, will not occur prior to resolution of the instant case. In particular, the petition for review filed before the Board in this proceeding (“Petition”) frustrates the ability of the Alliance to obtain private-sector commercial financing in a timely manner, thus imperiling the entire Project and jeopardizing the \$1B in federal appropriations already spent on the Project. Declaration of Kenneth K. Humphreys Jr. at ¶ 5 attached hereto (“Humphrey’s Decl.”).

On March 15, 2013, the Alliance submitted an application to USEPA Region 5 for four Class VI UIC wells in order to capture excess carbon dioxide (CO<sub>2</sub>) emitted by the Project and inject it underground for permanent storage using CCS technology. These wells will be located

in Morgan County, Illinois approximately 11 miles northeast of the City of Jacksonville. Underground Injection Control Permit Applications for FutureGen 2.0 (hereinafter, “Permit Applications”) at iii (AR # 2). As proposed in the permit application, the Alliance will inject 22 million metric tons of CO<sub>2</sub> produced by the Project into the Mt. Simon Sandstone underground formation over the course of 20 years. *Id.*

After submission of the permit applications and extensive supporting documentation, during the remainder of 2013 and early 2014, USEPA Region 5 conducted a technical and completeness review of the permit application and supporting documentation and worked with the Alliance to obtain all information in conformance with USEPA’s Class VI UIC well regulations. On March 31, 2014, USEPA Region 5 announced its draft permits decision and established a 45-day public comment period. On May 7, 2014, during the public comment period, USEPA Region 5 also held a public hearing on the draft permit decision. After reviewing all comments received and conducting additional technical review based upon those comments, on August 29, 2014, USEPA Region 5 issued the final Permits to the Alliance. On October 3, 2014, the Petitioners filed their Petition challenging the Permits.

### **ARGUMENT**

The Board has authority to grant expedite review upon a motion by a party. *See*, 40 C.F.R. § 124.19(f); *In re La Paloma Energy Center, LLC*, PSD-TX-1288-GHG (Filing #9). Failure to grant the Alliance’s request for expedited review will result in severe prejudice to the Alliance.

It is imperative that the Petition be resolved as soon as possible. Failure to do so could jeopardize the \$1B in government funding for the Project, as well as the lost opportunity to complete this Project, which holds substantial promise for both industry and the environment.

The Project's construction schedule does not allow time for further and extended litigation delays. Humphrey's Decl. at ¶¶ 5-8. To maintain the Project's schedule and maintain financial viability of the Project, it is critical that the pending Petition be resolved expeditiously. *Id.* Not only does delay jeopardize the \$1B in federal funds to be expended on the Project, but delay will also prevent the commercial financing transaction from being concluded. *Id.* at ¶ 5. Throughout 2014, the Alliance has been in the process of attempting to obtain equity and debt financing for the Project. *Id.* at ¶ 4. However, the equity and debt markets are extremely sensitive to risks posed by litigation delays and, therefore, the Alliance has already been harmed by the Petition and other ongoing litigation. *Id.* at ¶ 5. Simply put, these litigation delays have jeopardize the financial viability of the Project, which could result in substantial financial losses for the Alliance, the U.S. Government, and taxpayers. *Id.* at ¶ 8.

#### **STATUS OF PARTIES' CONCURRENCE**

Pursuant to 40 C.F.R. § 124.19(f)(2), the Alliance states that it has contacted both the U.S. Environmental Protection Agency ("USEPA") and Ms. Jennifer T. Nijman, the attorney that filed the Petition on behalf of the Leinberger and Critchelow families ("Petitioners"). Declaration of Christopher D. Zentz at ¶ 3 ("Zentz Decl.")]. In response, USEPA indicated that it does not oppose this motion. Zentz Decl. at ¶ 4. Petitioners' attorney indicated that she does not oppose the motion, to the extent this motion does not impact the timing of any reply briefing. Zentz Decl. at ¶ 5.

## CONCLUSION

For the reasons set forth herein, the Defendants respectfully request that this Board enter an order directing expedited review of this case.

Respectfully submitted,

/s/ John J. Buchovecky  
John J. Buchovecky  
Van Ness Feldman, LLP  
1050 Thomas Jefferson St. NW, 7th Floor  
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Fax: (202) 338-2416  
Email: [jjb@vnf.com](mailto:jjb@vnf.com)

*Counsel for FutureGen Industrial Alliance, Inc.*

Date: October 31, 2014

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UIC Permit Nos.: IL-137-6A-001	)	
	)	
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**DECLARATION OF KENNETH K. HUMPHREYS JR.**

I, Kenneth K. Humphreys, Jr., declare under that the following is true and correct:

1. I am over eighteen years of age, have personal knowledge of the matters herein, and am competent to testify regarding all matters set forth herein.
2. I am the chief executive officer of the FutureGen Industrial Alliance, Inc. (the "Alliance"), a non-profit corporation and international consortium of companies that will build and operate the FutureGen 2.0 clean energy project in Morgan County, Illinois (the "Project"). I have led the Alliance since September, 2010. In my role with the Alliance, I have been intimately involved with all aspects of the Project, including the Alliance's efforts to obtain private financing for the Project, as well as the federal appropriations that have been provided for the Project to date.
3. On August 5, 2010, USDOE Steven Chu and U.S. Senator Richard Durbin of Illinois announced an award of \$1B in funding for the Project.
4. Throughout 2014, the Alliance has been in the process of attaining commercial equity and debt financing. The completion of these transactions is highly dependent on the status

of pending litigation, including the litigation currently before the Environmental Appeals Board (“Board”).

5. Delays in major construction spending financially threaten the ability of the Project and frustrate the Alliance’s ability to obtain commercial financing. The equity and debt markets are extremely sensitive to pending litigation against the Project and, therefore, the mere presence of proceedings before the Board is damaging to the Project.

6. In the event the Board grants the Petition for Review submitted by the Leinberger and Critchelow families (“Petitioners”), the delays associated with remand of the Underground Injection Control Class VI permits (“Permits”) or a formal hearing before the Board will negatively impact the Project construction schedule such that the entire Project may be in jeopardy.

7. The delays associated with litigation of the Permits also subjects the Project to significant cost uncertainties. Project vendors are subject to market forces and price their services based on current and anticipated market costs and the availability of sub-contractor services and equipment. Litigation delays increase the risk that the Alliance will be unable to obtain timely and economical agreements with vendors, or worse, that essential equipment or services will become unavailable.

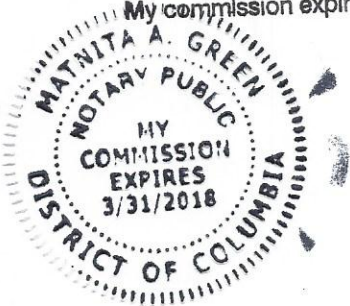
8. Any number of the delays listed in this declaration could jeopardize the entire Project. The Project schedule does not allow time for further and extended delays. If the Alliance is unable to secure commercial financing in a timely manner, the \$1B of federal government spending could also be in jeopardy.

EXECUTED ON October 30, 2014.

Kenneth K. Humphreys Jr.  
Kenneth K. Humphreys Jr., Declarant

SUBSCRIBED AND SWORN to before me this 30<sup>th</sup> day of October, 2014.

District of Columbia :   
Subscribed and Sworn to before me  
this 30<sup>th</sup> day of October, 2014  
Matrita A. Green  
Notary Public, D.C.  
My commission expires 3/31/2018



Matrita A. Green  
NOTARY PUBLIC for the State of District of Columbia  
Residing at: 1101 Pennsylvania Ave. N.W. Washington, DC 20004  
My Commission Expires: 3/31/2018  
Matrita A. Green  
Notary Public, District of Columbia.



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IL-137-6A-003	)	
IL-137-6A-004	)	
_____	)	

**DECLARATION OF CHRISTOPHER D. ZENTZ**

I, Christopher D. Zentz, declare under that the following is true and correct:

1. I am over eighteen years of age, have personal knowledge of the matters herein, and am competent to testify regarding all matters set forth herein.

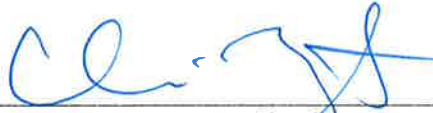
2. I am an attorney at Van Ness Feldman, LLP and assisted with preparing the FutureGen Industrial Alliance, Inc. (the "Alliance") Response to the Petition for Review (the "Response") submitted in this proceeding before the Environmental Appeals Board ("Board").

3. In preparing the Response on behalf of the Alliance, I contacted both the U.S. Environmental Protection Agency, Region 5 ("Region") and Ms. Jennifer T. Nijman, who represents the Leinberger and Critchelow families ("Petitioners"), regarding the Alliance's Motion to Expedite ("Motion") these proceedings.

4. Tom Krueger at the Region indicated to me that the Region does not oppose the Motion.

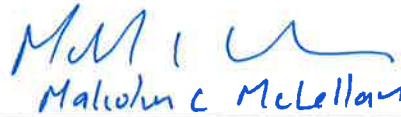
5. Ms. Jennifer Nijman indicated that the Petitioners would not oppose the motion, so long as it had no impact on the timing of reply briefing, to the extent necessary.

EXECUTED ON October 31, 2014.



Christopher D. Zentz, Declarant

SUBSCRIBED AND SWORN to before me this 31<sup>st</sup> day of October, 2014.



Malcolm C. McLellan  
NOTARY PUBLIC for the State of WA  
Residing at: King County  
My Commission Expires: 3-9-2018



## CERTIFICATE OF SERVICE

I hereby certify that I filed the original and exhibits electronically with the Environmental Appeals Board. In addition, I filed one copy of the Motion to Expedite and the attached declarations by Next Day UPS with the Clerk of the Environmental Appeals Board at:

Ms. Eurika Durr  
U.S. Environmental Protection Agency  
Clerk of the Board  
Environmental Appeals Board  
1201 Constitution Avenue, NW  
WJC East, Room 3332  
Washington, DC 20004

I also certify that I delivered a copy of the foregoing Motion to Expedite and the attached declarations on the date specified below, by electronic mail and certified mail, return receipt requested to:

Jennifer T. Nijman  
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Date: October 31, 2014