

Prairie State Energy Project Q &A for Feb. 24 Open House

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Q: How did the City of Batavia become involved in the Prairie State project?

A. In the early 2000's the State of Illinois was still transitioning to a deregulated electric market. Batavia evaluated the potential impacts of deregulation and over several years adopted a philosophy of wanting more local control. City staff and outside consultants evaluated various generation and contract alternatives. In early 2004 Batavia, in conjunction with the cities of Geneva, Rochelle and Geneseo, formed the Northern Illinois Municipal Power Association (NIMPA). In early 2005 NIMPA took action to formally participate in the Prairie State project.

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Q: What is electric deregulation?

A. The State of Illinois began transitioning to deregulation in 1997. Prior to that time, everyone received their power from the same entity that owned the poles and wires through which it came. Those companies either had their own generation

assets, or purchased power from generating companies. During the initial 10-year transition period the state's two largest utilities, ComEd and Ameren, were required to separate their generation assets from their electric distribution assets. ComEd transitioned their generation assets to Exelon and is now just a "poles and wires business".

Alternative Retail Electric Suppliers (ARES) entered the Illinois market and were initially permitted to serve only large commercial customers. Starting in 2002 ARES were permitted to serve residential and small business customers; however, rate caps, which were included in the original legislation, kept them from being competitive. In early 2007 the rate caps expired and rates throughout Illinois rose significantly. In mid 2007 the Illinois Power Agency Act was passed which provided an additional four years of rate relief to residential and small business customers. The Illinois Power Agency administers contracts on behalf of customers who do not contract with an ARES. By 2011 the deregulated market had matured to where ARES were able to competitively

serve residential and small business customers. Many local communities aggregated their electric loads and achieved cost savings for their residents. In mid 2013 the Illinois Power Agency had some older, more expensive, contracts expire. As a result, ComEd's customers realized lower rates. At the current time the cost difference between ARES and ComEd is minimal. Profit margins for retail sales have decreased, especially in the past 12-18 months.

These features of deregulation do not apply to Illinois municipal utilities (such as Batavia) or co-ops because they are already in pools for purchasing purposes. Historically, rates of the municipal utilities were lower than those of the investor-owned utilities.

Deregulation also meant the end of "full requirements" contracts, by which the supplier had to supply Batavia with as much or as little power as it needed at any time, and Batavia would only have to pay for what it used. Under deregulation, the municipal utility needs to plan and purchase three different types and amounts of power: "Base" load, that is,

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power used 24/7, “intermediate” load, that is the power used 5 days per week and 16 hours per day, and “peak” load, that is, the amount of power used on the hottest days of the year. Prairie State is a baseload plant and generates on a 24/7 basis.

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Q: Who is the owner of Prairie State, Batavia or NIMPA?

A. NIMPA is one of nine owners of the Prairie State project. Batavia has a Power Sales Agreement (PSA) with NIMPA to receive a portion Prairie State’s generation resources. Batavia has no direct ownership in the Prairie State project.

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Q: How much of the Prairie State project does NIMPA own? And what is the percentage of ownership among NIMPA members?

A. The total generation from Prairie State is approximately 1,600 megawatts (MW). NIMPA’s entitlement share is 7.5% or approx. 120MW of the total. Batavia, through its PSA with NIMPA, is obligated to purchase 45.8% or approx. 55MW of NIMPA’s entitlement

share. Geneva is obligated to purchase 29.2% (35MW) and Rochelle is obligated to purchase 25% (30MW).

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Q: Who are the other owners of Prairie State?

A. There are nine owners of Prairie State including eight public power agencies and Peabody Energy. The public power agencies serve in excess of 2.5 million families in 300 communities and 67 counties in nine different states. The agencies include NIMPA, Illinois Municipal Electric Agency (IMEA), AMP Inc (AMP), Indiana Municipal Power Agency (IMPA), Kentucky Municipal Power Agency (KMPA), Southern Illinois Municipal Cooperative (SIPC), Missouri Joint Municipal Electric Utility Commission (MJMEUC) and Prairie Power Inc (PPI).

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Q: What’s the difference between NIMPA and IMPA?

A. Batavia is a member of the Northern Illinois Municipal Power Agency (NIMPA). NIMPA is a public power agency formed under Illinois State Statutes. IMPA is an

acronym for the Indiana Municipal Power Agency. IMPA is a public power agency that serves fifty-nine communities in Indiana. In 2004 NIMPA executed a professional services agreement with IMPA. IMPA was initially retained to assist NIMPA with due diligence efforts related to the evaluation of various generation and contract alternatives, including Prairie State. When NIMPA elected to participate in the Prairie State project in 2005, IMPA was retained to provide professional services related to construction and operation of the project. IMPA continues to serve as professional consultant to NIMPA.

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Q: Was there any due diligence performed before NIMPA (including Batavia) elected to participate in the Prairie State project?

A. There were numerous technical, financial and legal studies performed over the course of several years prior to any final decisions being made. NIMPA worked in combination with IMPA to commission and review several of the studies. The other public power

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agencies also performed their own independent studies. Ultimately, and based on the best information available to everyone at the time, the eight public power agencies and Peabody Energy elected to proceed forward with the project. During the project financing phase each bonding company performed their own independent due diligence.

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Q: What are the details of Batavia's Power Sales Agreement (PSA) with NIMPA?

A. Batavia receives generation assets (power) from the Prairie State project via a Power Sales Agreement (PSA) with NIMPA. Under the terms of the PSA, NIMPA is obligated to supply Batavia with 45.8% of its entitlement share (approx. 55 MW). The PSA serves as a framework through which Batavia is obligated to purchase the generation assets and pay for all associated costs, such as project financing. Generation assets are delivered through NIMPA to Batavia independent of the operation of Prairie State.

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Q: Is it possible for the City to simply terminate its Power Sales Agreement (PSA) with NIMPA?

A. According to terms outlined in the PSA, the Agreement continues for a period ending on "the earlier of (i) the day which is fifty years from the Effective Date or (ii) the later of the following dates (a) the date on which the principal of, premium, if any, and interest on all Bonds have been paid or sufficient funds have been sufficiently set aside for the full defeasance of such Bonds and all other obligations of NIMPA under the Financing Documents have been paid or satisfied, all in accordance with the Financing Documents; (b) the date the Prairie State Project is retired; or (c) the date on which NIMPA elects to terminate its interest in the Project Development Agreement or the Project Development Agreement is otherwise terminated in accordance with its terms; or (d) the date NIMPA's Ownership Interest in the Prairie State Project is terminated pursuant to the Participation Agreement."

In absence of one of the above criteria, Batavia could elect to terminate the PSA via default provisions described in the PSA. NIMPA would have the right to recover any outstanding funds, such as bond proceeds, from Batavia. Under the terms of the PSA, NIMPA's other members, Geneva and Rochelle, could be held responsible for up to 200% of their respective entitlement shares. A default by Batavia would have long-lasting financial impacts for all three member communities.

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Q: Why is much of the information related to Prairie State considered confidential?

A. Many documents and items of information are considered confidential under the terms of NIMPA's participation agreement in the project and Batavia's PSA with NIMPA.

In the early 2000's the State of Illinois was transitioning to a deregulated electric market. It was known that Batavia's full requirements contract under ComEd would be ending in 2007. Prior to NIMPA's

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participation in the Prairie State project, and over the course of several years, Batavia's City Council adopted a philosophy of operating the utility more as a business than a government entity. With this philosophy came the constraints of the private sector, such as confidentiality. The Mayor and City Council have entered into Confidentiality Agreements which allow them to have access to any documentation related to the project.

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Q: How much did the Prairie State project cost to construct?

A. During the early conceptual stage Peabody Energy estimated the cost of the entire project, including the power plant and coal mine, to be approximately \$2.5 billion. It's important to note that this estimate was based on a different type of power plant than what was ultimately constructed. By the time of actual construction in 2007, the estimate for the entire project was approx. \$3.9 billion. In 2010 it was announced that the total cost of the project had increased by approx. \$1

billion to a total of \$4.9 billion.

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Q: What were the main factors that led to project cost increases?

A. Peabody Energy's original concept was to construct what is known as a merchant coal plant. A merchant plant is built to supply power to the open market and has no specific customers. Through the process of attracting investors (the public power agencies), the project's concept shifted to a rate based power plant. Rate based plants are constructed to service specific customers and therefore require increased reliability. This shift from a merchant plant to a rate based plant resulted in cost increases to account for engineering and construction of redundant systems throughout the plant.

In late 2004 Peabody Energy, and the other project participants at that time, executed a letter of intent (LOI) with Fluor Corporation, a worldwide leader in power plant construction, to engineer and construct the plant. In early 2005 the Illinois Environmental Protection Agency (IEPA) issued the

air permit for the project, based upon its inclusion of the best available technology for cleaning emissions. In mid-2005 several environmental groups filed appeals to stop the project. In August of 2005 Hurricane Katrina struck the Gulf Coast causing significant damage to electric infrastructure and power plants in several southern states. At this same time the American economy was prosperous and several major construction projects were underway. Contractors, such as Fluor, were in high demand. By mid-2006, with the environmental appeals underway and it being uncertain as to when the project would commence, the participants elected to terminate the LOI with Fluor to avoid additional retainer costs. In 2007 the project received final approvals from the IEPA to proceed. The project participants retained Bechtel Corp. to engineer, procure and construct (EPC) the project. Due to the fact that their services were in high demand, Bechtel would not agree to enter into a fixed price contract and instead offered only a target price. In 2010, after a good portion of construction had been completed, the project

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participants and Bechtel negotiated a final fixed price EPC contract which was approx. \$1 billion higher than the original projected cost.

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Q: How much money did NIMPA borrow to fund the project?

A. NIMPA issued three series of bonds having a combined principal value of approx. \$525 million. The initial principal value of Batavia's contractual obligation was approx. \$240 million. It was originally anticipated that NIMPA would issue two series of bonds; however, the construction cost overruns resulted in the need for a third issuance. Batavia's contractual debt service obligation is approx. \$15 million annually through the year 2040. NIMPA's debt service consists of both taxable and tax exempt bonds. Batavia pays its share of the debt service through the Power Sales Agreement. A portion of each monthly power bill from NIMPA includes a payment towards debt service. The debt is disclosed in the City of Batavia's Comprehensive Annual Financial Report (CAFR) in the Notes to the Financial Statement

Section. It is not reported as debt on the City of Batavia's financial statements because it is reported as debt on NIMPA's financial statements. In addition, the asset of Prairie State ownership is reported on NIMPA's books and not Batavia's. Batavia is committed through the Power Sales Agreement to make the monthly payments as a purchased power expense and to ensure a revenue stream is in place that is sufficient to make the monthly payments so that the debt will be repaid.

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Q: What led to Batavia's decision to contract for 45.8% (55MW) of output from the project?

A. Batavia experienced significant residential and industrial growth throughout the late 1990's and early 2000's. In late 2004 a large industrial customer announced their intention to construct a facility in Batavia. Initial projections were that the company would consume 8 MW initially and eventually grow to almost 19 MW. It was within the context of growth and new businesses that city staff and outside consultants developed projections for

the city's future electric needs.

In addition to the above, the American economy was prosperous and wholesale natural gas and electric prices were rising at a high percentage rate each year. It was within the context of these market conditions that the decision was made to pursue ownership in a generation facility and gain more local control.

The combination of ownership and continued growth led to Batavia's decision to initially contract with NIMPA for 50 MW of Prairie State power. In mid 2007, soon after another Prairie State participant withdrew from the project, Batavia elected to increase its entitlement share to 45.8% or approx. 55 MW.

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Q: Did the city consider any other projects?

A. The city did investigate other generation and contract opportunities. The City Council at the time placed a high value on local control and felt that ownership in a generation asset was the best option. At the time of the city's investigation there were limited opportunities

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available for ownership. Prairie State was deemed to be the best option.

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Q: What about portfolio diversification?

A. The issue of diversification was discussed and debated as part of City Council's decision process. Based on load projections developed by city staff and outside consultants, it was estimated that Batavia's ownership share in Prairie State would represent only a nominal portion of its total electric load requirements. City Council elected to proceed forward with investing in Prairie State with the understanding that as the City's electric load grew the utility would need to invest in or contract with other projects. In other words, it was thought that the City's electric portfolio would become more diverse through load growth and participation in other future projects.

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Q: What is the relationship between Prairie State and the wholesale natural gas and electric markets?

A. In the late 1990's and early 2000's the American economy was prosperous

and wholesale natural gas and electric prices were rising at a high percentage rate each year. In 2005 Federal Legislation was passed to exempt hydraulic fracking from seven key regulations under the Clean Water Act. This legislation resulted in a sharp increase in natural gas production. In 2008 the economy experienced a significant decline and the overall demand for electricity and natural gas decreased. The large supply of natural gas and overall lower demand were some of the key factors which led to historic low wholesale prices. The wholesale natural gas and electric markets have historically trended together. The decreased cost of natural gas, combined with the economic decline and reduced demand, resulted in historically low electric prices.

Prairie State was conceived and developed within the context of strong wholesale natural gas and electric markets. The fact that these markets continue to hold near their historic lows has an economic impact on the Prairie State project. Prairie State is able to generate and sell electricity into the market at a profit;

however, at this current time, the profit is not sufficient to cover NIMPA's associated costs, such as financing. Therefore, NIMPA's net cost of generation resources from Prairie State is higher than the wholesale market.

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Q: When will the natural gas and electric markets improve?

A. According to many experts, pending Federal clean air regulations will result in the permanent shutdown of many older coal generating facilities. This decrease in generation is projected by some to result in upward pressure on electric markets. Experts have estimated that this upward pressure could become more apparent as soon as 2016.

Over the past four years Batavia has retained consultants to evaluate various options related to its contractual share of Prairie State. Some of the consultant's work included an independent analysis of market conditions. Batavia's consultants have coined the term "crossover" to describe the point in time in which electric market conditions will result in a net profit

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for NIMPA and the other Prairie State's owners (accounting for all associated costs such as financing). Batavia's consultants estimated that the crossover could have occurred as soon as 2013 or potentially the crossover may never occur. The consultant's general consensus was that the crossover was most likely to occur sometime between 2016 and 2024.

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Q: What are some factors which influence natural gas and electric markets?

A. The basics of economics dictate that natural gas and electric markets are ultimately driven by supply and demand. Current Federal regulations are such that hydraulic fracking is permitted and natural gas production is high. The wholesale cost of natural gas in the United States remains near historic lows. Elsewhere in the world there is a strong demand for natural gas and prices are higher. Several corporations recognize this fact and have been constructing liquefied natural gas (LNG) facilities to allow for the export of natural gas to other countries. Experts

predict that as more natural gas is exported, prices will rise in the United States.

Federal clean air regulations could result in the permanent shutdown of many older coal generating facilities, thus reducing generation supply. This decrease in supply is projected by some experts to result in upward price pressure on electric markets; however, others predict that this decrease must be accompanied by a corresponding increase in demand in order to result in any appreciable market shift. Industrial Production and Capacity, as measured by the Federal Reserve, has experienced periods of growth followed by periods of decline. Overall industrial production has increased modestly over the past few years and there has been a corresponding increase in electric consumption.

In addition to supply and demand, wholesale natural gas and electric markets can be influenced by Federal regulations. Generically speaking Democratic representatives have typically favored environmentally friendly regulations whereas Republican representatives have typically favored business friendly

regulations. Given the current makeup of a Democratic President and a split Congress, it is unlikely that any sweeping legislation could occur anytime soon; however, if at some point in the future there is a shift in Washington towards one way or another, then significant issues such as prohibiting fracking or requiring carbon capture could impact market conditions.

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Q: When did the financial issues surrounding Prairie State first become apparent to Batavia?

A. In 2006, prior to the commencement of Prairie State, NIMPA began to study the possibility of constructing wind generation. The wind project, which was eventually known as Eagle View, progressed to the point of public meetings which were held in late 2009. In early 2009 city staff began to express concern to NIMPA's Board regarding the unknowns of Prairie State and the potential increased risk of proceeding with Eagle View. By late 2009 city staff began to express concerns related to Prairie State's financials to City

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Council. In December of 2009, out of concerns related to Prairie State, city staff recommended against Batavia's involvement in the NIMPA Eagle View project. NIMPA's other members, Geneva and Rochelle, continued to pursue Eagle View in early 2010. By mid 2010 it was announced that a negotiated fixed price EPC contract had been finalized and the cost of Prairie State had increased by approx. \$1 billion. By early 2011 city staff had collected sufficient information to develop a financial analysis of Prairie State versus the wholesale market. Staff concluded that during the lifecycle of the project, ownership in Prairie State would have a net positive return; however, staff's model projected that the project would produce negative results when compared to the wholesale market for the first 10-15 years. Based on the results of staff's analysis, City Council elected to retain the services of an independent consultant, Pace Global, to evaluate the city's overall portfolio. Pace Global concluded their analysis at the end of 2011.

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Q: How much has Batavia spent on consultants?

A. Prior to commencing with the Prairie State project NIMPA retained the services of several consultants to perform due diligence studies. The cost of these studies was allocated to all of NIMPA's members, including Batavia. There were no large-scale studies performed during the period from 2007 to 2011.

In 2011 Batavia, acting independently from NIMPA, retained the services of Pace Global to evaluate its portfolio (including Prairie State). Based on the results of Pace's study, NIMPA retained the services of The Brattle Group to assist Batavia with the potential sale of some of its Prairie State entitlement share. Even though the Brattle engagement was administered through NIMPA, the cost was entirely Batavia's. Upon conclusion of the Brattle sale process, Batavia, acting independently from NIMPA, retained the services of a legislative lobbyist. The lobbyist is still engaged with Batavia.

Batavia's consultant engagements from 2011 to

the present have cost approx. \$900,000. The consultants were engaged to identify long-term mitigation strategies to reduce Batavia's purchase power costs which for 2014 alone are projected to be in excess of \$37 million.

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Q: What has Batavia learned through the consultant engagements?

A. Batavia's staff and City Council have gained considerable market, financial, legal, bonding, contractual and legislative knowledge as a result of the engagements. Some examples include:

- Pace Global's analysis of the complex relationship between Prairie State and the wholesale natural gas and electric markets and subsequent coining of the term "crossover".
- Brattle's development of legal and contractual framework to support various sale options.
- Chapman and Cutler's legal analysis of the project documents and tax exempt bond issues.
- Morrill & Associate's development of potential legislative strategies

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Q: What percentage of Batavia's power is supplied by Prairie State?

A. Batavia's annual energy consumption is measured in megawatt-hours (MWh). Batavia's 45.8% entitlement share in the Prairie State project equates to approx. 481,800 MWh. The following is a list of Batavia's annual energy consumption since the start of Prairie State construction:

2007 – 431,234 MWh
2008 – 421,007 MWh
2009 – 414,459 MWh
2010 – 445,178 MWh
2011 – 479,549 MWh
2012 – 493,621 MWh
2013 – 464,400 MWh

Prairie State provides energy on what is called a baseload or 7x24 basis. Batavia receives its full entitlement share through NIMPA at all hours every day of the year. Generally speaking, Batavia fully utilizes its entitlement share during normal working hours (also known as 5x16). Batavia's entitlement share often represents excess energy during overnight and weekend periods. During these periods Batavia sells the excess energy from Prairie State back into the wholesale market.

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Q: How much excess Prairie State energy does Batavia sell back into the wholesale market?

A. Excess energy from Prairie State is sold back into the wholesale market whenever Batavia's load is below its entitlement share of approx. 55 MW. This occurs most often during overnight and weekend hours. The following is a list of annual excess Prairie State energy sales:

2011 – 42,520 MWh
2012 – 37,794 MWh
2013 – 51,492 MWh

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Q: How has Prairie State impacted Batavia's purchase power costs?

A. Three significant purchase power cost components were identified as part of staff's 2011 financial analysis. The first, and most significant component, is debt service on the project financing. The construction cost estimates available when Batavia first evaluated the merits of the project were lower than the final construction cost. As a result, additional financing was required.

Batavia's contractual debt service obligation is approx. \$15 million annually through the year 2040. It should be noted that, at that time, the forecasts for electric prices still showed Prairie State to be favorable compared to the wholesale market.

The second component results from the sale of excess energy into the market. Currently the wholesale market cost is below that of what Batavia pays NIMPA for Prairie State's generation assets (energy and capacity). Using 2013 as an example, NIMPA's 2013 cost for energy only was approx. \$55.50 per megawatt-hour (MWh). The average wholesale energy market price in our area for 2013 was approx. \$31.50/MWh. Therefore, for the year 2013 Batavia realized a loss associated with the sale of Prairie State energy of approx. \$1,200,000.

The final component is the "lost opportunity cost" of purchasing generation assets from Prairie State as opposed to from another source. NIMPA's 2014 budget assumes a combined base rate of \$62.466 per megawatt-hour (MWh) for Prairie State generation assets (includes both energy and

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capacity). This value is higher than current wholesale market conditions and comparable contract terms that city staff has seen recently. Current baseload hedge contracts for energy only are in the range of \$33-35/MWh. The current wholesale market cost of capacity is approx. \$3.2/MWh for the calendar year 2014.

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Q: Has Batavia made any attempt to reduce its financial obligations to NIMPA?

A. Working in combination with NIMPA in early 2012, Batavia retained the services of The Brattle Group to explore the possibility of selling a portion of Batavia's entitlement share.

NIMPA's debt service consists of both taxable and tax exempt bonds. This limits the type of counterparty that Batavia (NIMPA) could contract with. The Federal Tax Code prohibits the use of tax exempt funds to benefit taxable entities. The Code requires the duration of any contractual arrangement related to tax exempt funds be limited to less than three (3) years

when the counterparty is a taxable entity. This restriction does not apply if the counterparty is tax exempt.

Working within the limits of the Tax Code, Brattle developed the legal and contractual framework to support various sale options. Batavia's interest in potentially selling a portion of its entitlement share was advertised throughout the upper Midwest to both taxable and tax exempt entities. In late 2012 it became apparent that there was no interest in a long-term contractual obligation. In early 2013 bids were received for short-term contracts. The terms of the bids were not favorable to Batavia and the sale process was subsequently terminated.

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Q: Why has Batavia retained the services of a lobbyist?

A. Upon conclusion of the Brattle sale process in early 2013, it was evident that outside investors had little interest in the Prairie State project. At about that same time, retail aggregation vendors were executing contracts with multiple public agencies throughout Illinois.

In accordance with state statute, customers of regulated utilities, such as ComEd, are able to purchase their energy from multiple vendors (known as aggregators). Customers of municipal utilities are not able to purchase energy from other vendors unless the municipality chooses to open its borders. Municipalities have typically not opened their borders out of concern that surrounding regulated utilities could attract their largest and efficient customers, leaving the remaining customers to pay a much larger share of utility expense.

Batavia originally retained a lobbyist to assist with the development of legislation that would have allowed NIMPA, as a public power agency, to sell energy at the retail level without jeopardizing the borders of its member communities. Selling at the retail level would have enabled NIMPA (Batavia) to capture the increased margin over wholesale transactions. This would have resulted in lower purchase power costs. Unfortunately, NIMPA's other member communities were not supportive of the

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legislative effort and the process was terminated.

During the latter half of 2013 and into early 2014 Batavia's lobbyists have been working with city staff to develop other strategies. Our state representatives are aware of our issue and would be part of any potential legislative solution.

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Q: What are the details of the ongoing Securities and Exchange Commission investigation into Prairie State?

A. In early 2013 it was disclosed that the U.S. Securities and Exchange Commission (SEC) is investigating Peabody Energy in connection with the Prairie State project. The exact nature of the investigation, and any associated details, are unknown at this time. The following is an excerpt from the SEC's website describing the investigation process:

“All SEC investigations are conducted privately. Facts are developed to the fullest extent possible through informal inquiry, interviewing

witnesses, examining brokerage records, reviewing trading data, and other methods. With a formal order of investigation, the Division's staff may compel witnesses by subpoena to testify and produce books, records, and other relevant documents.

Following an investigation, SEC staff present their findings to the Commission for its review. The Commission can authorize the staff to file a case in federal court or bring an administrative action. In many cases, the Commission and the party charged decide to settle a matter without trial.”

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Q: Why did NIMPA elect to participate in a coal generation project as opposed to a renewable resource such as wind or solar?

A. NIMPA's members were seeking ownership in a baseload (7x24) generator. There were limited options available at the time. Renewable resources, such as wind and solar, do not generate on a 7x24 basis.

From 2000-2008 lawmakers in Washington generally promoted policies which were more business friendly and less stringent from an environmental standpoint. It was within this context that several coal generation power plants were proposed. Some of the plants, including Prairie State, proceeded through the entire environmental review process to construction. From 2008 to the present lawmakers in Washington have placed more emphasis on environmental issues and have promoted renewable resources.

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Q: Could Batavia sell the electric utility and allow its residents to choose their own supplier?

A. Provisions in the Power Sales Agreement between NIMPA and Batavia, NIMPA's Prairie State Participation Agreement and various Bond Covenants prohibit the sale of the utility without first satisfying all outstanding financial requirements. In other words, Batavia's contractual portion of NIMPA's bonds would need to be paid in full before the sale of the utility would be a viable option.

The value of Batavia's local distribution system, including poles, wires, transformers, etc., is estimated to be approx. \$80 million. Potential purchasers of the utility would need to recover this

value, as well as the value of the outstanding bonds. Presumably they would recover these costs via rates paid for by Batavia's citizens and businesses. Rates are currently regulated at the local level by City Council. Upon sale of the utility, it is presumed that rates would be regulated at the State level via Illinois Commerce Commission.

The City continues to examine all options. Because some options require dealing with the private sector in a competitive environment, they cannot always be publicized, though the Mayor & City Council are continually kept abreast of efforts.

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Q: Has Prairie State, NIMPA, IMPA or Batavia violated any fiduciary responsibilities?

A. Prairie State is governed by a Management Committee consisting of a representative from each of the nine owners. Prairie State is required to have independent audits performed. The nine owners, including NIMPA and IMPA, are each required to have independent audits performed. Batavia is required to have an independent audit performed. To date there have been no allegations of any irregularity in the financial reporting, and none of any breach of fiduciary responsibilities by any of these groups in relation to Batavia's commitment with NIMPA and NIMPA with Prairie State, and the auditors have not expressed any sense of any wrongdoing.

A fiduciary duty arises when a person or board is placed in a position of trust over someone else's

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property or money. The responsibility that comes with that is to act as a prudent person would act under the circumstances. NIMPA took the same view that the other partners representing over 300 communities and 2.5 million people did, that at the time of the initiation of the project and commitment to construction and financing, it was a prudent investment.

In formulating the Prairie State Project, the members had outside experts evaluate the entire plan, including those who were advising those representing bond purchasers and insurers of those bonds. As far as we know, no action was taken contrary to the advice given or at odds with those reports and studies.

Although the range of decisions were at lower levels, we believe that the

same is true of NIMPA, IMPA and the City. No person has profited personally that we know of, and no entity has received benefits that other owners did not.

Currently the SEC has an investigation into the project, and everyone will benefit if a conclusion is reached one way or another. However, in the meantime, Batavia is dealing with the circumstances as they exist, including the economy, overall power prices and the like.

Often the question is asked, "Would you have done what you did if you knew what you know now?" In this case, of course, probably no one would have proceeded. But that is not the measure of a breach of fiduciary duty.

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Q: How is Batavia represented with

respect to Prairie State issues?

A. The NIMPA Board consists of three members and three Alternates. Each member community, Batavia, Geneva and Rochelle, appoints a Board member and an Alternate. Batavia has one vote (out of three total) at the NIMPA level. NIMPA has a 7.5% vote (out of 100% total) at the Prairie State level.

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Q: Is NIMPA (and Batavia) responsible for all future Prairie State Costs, such as capital projects and compliance with future regulations?

A. In accordance with NIMPA's Prairie State Participation Agreement, NIMPA is responsible for all costs deemed to be appropriate by the governing Management Committee. This includes project

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and regulatory costs. Through the Power Sales Agreement, Batavia is responsible for 45.8% of the costs.

NIMPA has established a capital improvements fund in anticipation of future expenditures. NIMPA also has some proceeds from the initial bond issuances that can be utilized for future expenditures. If the cost of projects or compliance issues exceed these funds, then NIMPA would be required to seek additional financing via bonds.

Have more questions? Feel free to send them to:

electric@cityofbatavia.net

They will be posted on the City website.