

SHUTE, MIHALY
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102
T: (415) 552-7272 F: (415) 552-5816
www.smwlaw.com

ERICA S. McCONNELL
Special Counsel
mcconnell@smwlaw.com

November 13, 2017

Anthony Star, Director
Illinois Power Agency
Michael A. Bilandic Building
160 North LaSalle St., Suite C-504
Chicago, IL 60601

Re: Interstate Renewable Energy Council, Inc.'s Comments on Long-Term Renewable Resources Procurement Plan

Dear Director Star:

The Interstate Renewable Energy Council, Inc. (IREC) appreciates the opportunity to review and provide comments on the Illinois Power Agency's draft Long-Term Renewable Resources Procurement Plan. IREC's comments are attached.

Please contact me if you have any questions.

Sincerely,

SHUTE, MIHALY & WEINBERGER LLP

/s/Erica S. McConnell

Erica S. McConnell

**COMMENTS OF THE INTERSTATE RENEWABLE ENERGY COUNCIL, INC.
ON THE ILLINOIS POWER AGENCY’S DRAFT LONG-TERM RENEWABLE
RESOURCES PROCUREMENT PLAN**

I. INTRODUCTION

The Interstate Renewable Energy Council, Inc. (IREC) appreciates this opportunity to submit comments on the Illinois Power Agency’s (IPA) Draft Long-Term Renewable Resources Procurement Plan (Plan). IREC is a 501(c)(3) non-partisan, non-profit organization working nationally to increase consumer access to sustainable energy and energy efficiency through independent fact-based policy leadership, quality workforce development, and consumer empowerment. IREC supports the creation of robust, competitive clean energy markets, though IREC does not have a financial stake in those markets. In service of our mission, IREC works to increase the adoption of regulatory reforms that expand access to and streamline grid integration of distributed energy resources (DERs) to optimize their widespread benefits.

The scope of IREC’s work includes: generating and promoting national model rules, standards, and best practices; and implementing shared (or community) renewable energy programs to expand options for consumers that cannot host a renewable energy system. As part of this work, IREC has developed various resources, including *Model Rules for Shared Renewable Energy Programs (Model Rules)* and associated Guiding Principles, *Shared Renewable Energy for Low- to Moderate-Income Consumers: Guidelines and Model Provisions (LMI Guidelines)*, and our National Shared Renewables Scorecard and Catalog.¹ IREC has also participated in shared renewable energy program rulemakings in several states, including most recently Oregon, Maryland, New York, and Minnesota. In addition, IREC has provided technical

¹ IREC’s publications are available at www.irecusa.org/publications. IREC’s Catalog is available at www.irecusa.org/regulatory-reform/shared-renewables/state-shared-renewable-energy-program-catalog and the Scorecard is available at <https://sharedrenewablescorecard.org>.

assistance to the Cook County Community Solar Project, funded by the U.S. Department of Energy Solar Market Pathways program.² IREC has also participated in the Illinois Commerce Commission’s interconnection reform proceeding (Docket No. 14-0135) and plans to be involved in the State’s NextGrid efforts.

IREC limits our comments to the portions of the Plan addressing community renewable generation projects, including in particular Section 7 (Community Renewable Generation Project) and Section 8 (Illinois Solar for All Program). IREC is generally supportive of these parts of the Plan. In many instances, these sections, and the statutory provisions on which they are based, already embody the best practices detailed in IREC’s *Model Rules, LMI Guidelines*, and other resources. IREC offers specific comments and suggestions for improvement below.

II. COMMENTS

A. Co-Location of Projects (Section 7.3)

In our experience working on community and shared renewables programs in several states, IREC has seen co-location of facilities emerge as a point of contention during and after program implementation, including in the Minnesota community solar gardens program as discussed in the Plan. IREC commends the IPA for its clear articulation of a co-location standard in the Plan, which will help avoid confusion and uncertainty within the program. IREC believes IPA’s proposed co-location standard is reasonable, in that it recognizes the 2 MW statutory limit for project size while also allowing for some flexibility in project development. IREC recommends, however, that the standard address projects owned “or developed” by a single entity. While some project developers will also own the projects they develop, this may not always be the case. Without this suggested revision, a single entity may be allowed to develop

² For more information about the project, visit www.cookcountyil.gov/service/solar-energy.

co-located project with separate owners, which would seem to undermine the intent of the IPA's standard. IREC's recommendation would require modification of relevant language in the second, third, and fourth bullet points of the standard.

B. Eligibility of Projects Located in Rural Electric Cooperatives and Municipal Utilities (Section 7.4)

IREC supports the IPA's efforts to allow projects located in cooperative and municipal utility service territories to participate in the program and receive the associated revenue from renewable energy credits (RECs). In this way, the IPA is expanding customer access to community renewable generation to the extent possible. IREC agrees that it is appropriate to set forth standards that these utilities must meet in order for projects in their service territories to qualify. IREC offers the following suggestion to improve the first proposed standard specific to municipal and cooperative utilities:

- *Be capable of “credit[ing] the value of electricity generated by the facility to the subscribers of the facility.” This can be accomplished through offering “virtual net metering” substantially similar to the provisions contained in Section 16-107.5(l) of the Public Utilities Act.*

IREC agrees that the utility's ability to provide bill credits to participating customers is essential. However, we also urge the IPA to set forth a requirement related to the value of those bill credits, such that participating customers in cooperative and municipal service territories are entitled to at least the same value on their electricity bills as those in regulated utilities' service territories. To accomplish this, IREC suggests modifying the first sentence as follows: “Be capable of “crediting the value of electricity generated by the facility to the subscribers of the facility the subscriber's energy supply rate (or higher rate) on the subscriber's monthly bill.” This

modification would ensure that all customers receive at least the same level of compensation for their participation, and allow a municipal or cooperative utility to utilize a different, higher rate if it determines doing so is appropriate in its service territory.

IREC supports the second two standards listed in the Plan. In addition, IREC suggests that the IPA clearly state in the Plan that projects in cooperative and municipal service territories should have to meet all of the community renewable generation project requirements described in the Plan, including the co-location requirements, disclosure requirements, and other elements. While this may be implicit, IREC believes an explicit statement would help to avoid any confusion, and ensure fair competition among projects, regardless of service territory.

C. Subscriber Requirements: Residential Participation (Section 7.6.1)

IREC supports the IPA’s goal “to allow creativity and flexibility in developing projects while at the same time ensuring basic consumer protections.”³ IREC also supports the statutory goal to “expand renewable energy generating facility access to a broader group of energy consumers, to ensure robust participation opportunities for residential and small commercial customers and those who cannot install renewable energy on their own properties.”⁴ IREC agrees that providing a REC adder to encourage such participation may help to accomplish this goal. It appears, however, that the Plan is focused on only residential participation, whereas the statute explicitly references small commercial customers, as well. In IREC’s experience, these small commercial customers face many of the same challenges to participation as residential customers. They may be less sophisticated than larger commercial and industrial customers, and can be harder for project developers to reach and thus less attractive as a customer class.

³ Plan at 130.

⁴ 20 ILCS 3855/1-75(c)(1)(N).

Therefore, IREC encourages the IPA to revise the Plan to make clear that the REC adder paradigm applies to customers with subscriptions or shares of 25 kW or less, rather than referring only or primarily to residential customers. Such a differentiation would capture both residential and small commercial customers, and better meet the language and intent of the statute. A 25-kW limitation is in line with the capacity limitation used in other states.⁵ Moreover, it comports with the determination of Level 1 (expedited) review treatment under Illinois' interconnection procedures, which, while it takes into account physical system considerations, is also similarly intended to benefit residential and small commercial customers.⁶

In addition, while IREC appreciates the IPA's efforts to balance ensuring residential and small commercial customer participation with supporting community solar market growth, we are concerned that the REC adder in place may not successfully achieve the goal of expanding access to these customers. In IREC's experience, residential and small commercial customers are often interested in participation, but they can be harder and more costly for project developers to reach, and thus less attractive marketing targets without sufficient financial incentive to reach them. Furthermore, residential and small commercial customers may tend to be less sophisticated than larger commercial and industrial customers, and thus less likely to know how to pursue community solar opportunities without proactive outreach by providers. Having participated in the implementation of the Minnesota community solar gardens program, IREC disagrees with the IPA's interpretation of the predominance of larger subscribers in the Minnesota program as

⁵ See, e.g., NY Public Serv. Comm'n, Order Establishing a Community Distributed Generation Program and Making Other Findings, Case No. 15-E-0082, at 7-8 (July 17, 2015) (establishing 60% carve-out for subscriptions 25 kW or smaller) .

⁶ IAC § 466.80; ICC, First Notice Order, Docket No. 14-0135, at 23 (Nov. 12, 2015) (articulating rationale for Level 1 review limit of 25 kW).

demonstrating greater interest by these subscribers.⁷ Rather, IREC would suggest that it reflects a program design that incentivizes community solar providers to target larger subscribers because they are easier and less expensive to reach. The financial incentive in place under the initial retail rate-based version of the Minnesota program to obtain residential subscribers would seem to have been insufficient to offset the extra costs associated with those customers, regardless of those customers' interest in participating in the program.

To determine whether or not the REC adder adopted by the program sufficiently enables residential and small commercial customer participation, IREC encourages the IPA to require the program administrator to track such customer participation as part of its responsibilities.⁸ This tracking should inform the Plan update anticipated in 2019. At that time, if residential and small commercial customer participation levels are limited, IREC urges the IPA to consider a higher adder and/or additional means to promote such participation.

D. Subscriber Requirements: Residential Subscribers (Section 7.6.2)

IREC appreciates the IPA's review of existing state and federal consumer protection laws, regulations, and agencies relevant to community renewable energy projects. While IREC agrees that additional measures are advisable, it is important to be aware that these existing protections provide a robust foundation for ensuring consumers have a positive experience and are not inappropriately targeted or otherwise harmed. IREC supports the IPA's proposal to require additional disclosures to customers as listed in the Plan. IREC further suggests that the IPA require the program administrator to ensure that these disclosures are provided to customers in a manner that is accessible and easy to understand, which may involve development of a form disclosure checklist and/or other guidance documents. IREC also supports the Plan's specific

⁷ Plan at 131.

⁸ See Plan at 108-09.

requirements related to portability and transferability of subscriptions, which are critical components of any community or shared solar program.

E. Subscriber Requirements: Marketing Claims Related to the Ownership of RECs and Community Renewable Generation Subscriptions (Section 7.6.3)

IREC agrees that marketing claims that may be made regarding participation in a community renewable generation project receiving a REC contract deserve close attention. As the IPA notes in the Plan, since RECs serve to signify the environmental attributes of generation, when a provider does not sell the RECs associated with a subscription to a participating customer, the provider may be limited in its marketing claims regarding the environmental attributes the customer is receiving. An important component to addressing this issue will be ensuring that any explanation provided to a participant accurately, but also clearly, captures what that customer will receive. IREC suggests that such an explanation be included as part of the disclosures that a provider is required to make, as described in Section 7.6.2. We further suggest that the IPA and/or the program administrator, with the input from interested stakeholders, develop acceptable language for the disclosure, as well as additional guidance on this issue for customers and project developers. For example, the disclosure language and guidance should help to ensure that customers understand that, while they may not receive RECs as part of their participation, they are nonetheless supporting new, renewable generation in their communities and in their state through participation in the program. While clarity regarding the value proposition for customers is paramount, and customers should know what they are receiving when they sign up for community renewable generation subscriptions, it is also essential that they understand the environmental and other beneficial impacts of their participation in the program. Moreover, it will be valuable to developers and providers to be able to market these benefits to customers, and differentiate them from other clean energy products available to

customers, which in turn will support the overall appeal and ultimately the success of the program.

F. Utility Responsibilities (Section 7.7)

IREC agrees that the two core responsibilities for utilities within this program are allocating credits to customers on their electricity bills through net metering, and ensuring portability and transferability of subscriptions. In addition, IREC notes that customers interested in community renewable energy projects may contact their utilities as a resource for more information. IREC suggests that the IPA require the program administrator to coordinate with utilities to ensure that they direct interested customers to the program administrator or other appropriate source for more information. Likewise, it is likely that complaints and disputes will arise within the program, and that customers (or providers) may approach their utilities as the initial point of contact. IREC recommends that the program administrator serve as the appropriate first point of contact for dispute resolution, and that the IPA require it to coordinate with utilities to ensure a smooth process for communication regarding any disputes that may arise. IREC further recommends that the Program Manual required in Section 6.10 include a clear process for dispute resolution.

G. Illinois Solar for All Program (Section 8)

IREC strongly supports the IPA's implementation of the Solar for All program, in particular with respect to its community solar components. While we highlight a few suggestions and concerns below, overall IREC is pleased to see movement towards a comprehensive program to facilitate meaningful access to solar energy for low-income customers, including specifically through overcoming financial hurdles these customers may face. IREC also appreciates that the Plan goes beyond providing financial incentives and includes additional guidance and requirements related to projects serving low-income customers. IREC agrees that the program

administrator should provide further guidance and education once selected, as described in Section 8.8.

1. Low-Income Community Solar Project Initiative (Section 8.6.2)

IREC supports the measures proposed to implement the statutory requirement that projects partner with community stakeholders regarding the location, development, and participation in the requirement. We agree that demonstration of a significant partnership with a community-based organization is an appropriate way to ensure projects meet this requirement. Indeed IREC highlighted the importance of partnerships with community-based organizations in our *LMI Guidelines* and associated model provisions, which require such partnerships.

IREC also appreciates the IPA’s efforts to ensure ongoing low-income subscription levels by requiring annual reporting and collateral for ten years equal to ten percent of the remaining REC value, which may be clawed back if low-income subscription levels drop. To ensure that this mechanism serves its purpose effectively, IREC suggests that the IPA require the program administrator to track low-income subscriptions and any instances where they fall below their required levels. If such tracking demonstrates that the collateral claw-back does not serve to incentivize providers to maintain (or cure) their low-income subscription levels, the IPA should consider alternative mechanisms to meet this goal.

2. Low-Income Community Solar Pilot Projects (Section 8.6.4)

IREC appreciates that the IPA seeks to rely on existing competitive procurement provisions to design the procurement framework for these projects, however we are concerned by the proposal to evaluate bids solely on a \$/REC basis. As the IPA recognizes, these projects “must result in economic benefits for the members of the community in which they will be located,” which may involve a variety of approaches, including community ownership, in-community siting, including on rooftops, local hiring and job training, and other targeted

measures.⁹ These measures may raise the cost of the project, but may result in a project that better meets the intent of this pilot and the Solar for All program. However, evaluating bids solely on a \$/REC basis would mean simply choosing the least expensive project, which may not go as far to achieve the pilot and program goals. In particular, it may exclude projects that are community-owned or have greater community involvement, because such projects are likely to be more expensive up front than projects owned or managed by a utility or another large entity. Likewise, such an approach would likely have a bias towards large projects, which can take advantage of economies of scale, rather than smaller and/or in-community projects. As a result, the exploration of innovative, local, community-driven models, which may ultimately help to lower the costs of deploying those models in the future, may be stymied.

The IPA already acknowledges that the statutory limitations on funding distribution will require a somewhat more complex bid evaluation process.¹⁰ IREC recommends that the IPA also consider additional criteria for the procurement process that address the other elements of projects prioritized in the statute, beyond just the project cost (\$/REC). While these criteria may introduce some discretion and subjective evaluation into the procurement process, IREC suggest that this is necessary to achieve the goals of the pilot. At the least, IREC suggests that bid evaluation consider the ability of the project to drive “economic benefits for the members of the community in which they will be located,” in addition to its \$/REC price, to allow for such discretion.

3. Consumer Protections (Section 8.14)

IREC agrees that low-income customers should be protected by enhanced requirements, beyond those already stipulated in the Plan, including with respect to the community solar

⁹ Plan at 151 (referencing 20 ILCS 3855/1-56(b)(2)(D)).

¹⁰ Plan at 152.

portions of the program. IREC is generally supportive of the proposed components. IREC further suggests that the IPA and the program administrator carefully track any complaints or other problems that may arise, such that these elements may be revised should additional issues emerge. We also commend the IPA for its interest in exploring alternative underwriting approaches, and specifically encourage it to explore the potential for on-bill financing and repayment within the community solar program.¹¹

4. Environmental Justice Communities (Section 8.15)

IREC appreciates the IPA's efforts to determine a feasible way to define "environmental justice communities," given available data and resource constraints. IREC agrees that California is a leader in this sphere, specifically its approach to identifying "disadvantaged communities" through the California Communities Environmental Health Screening Tool (CalEnviroScreen), and we support the IPA's efforts to deploy this concept in Illinois.¹² IREC also supports the IPA's proposal to allow communities that are not in the top 25 percent of scores to request the IPA to consider their inclusion, as well as the IPA's intention to allow itself some flexibility in determining community boundaries. In addition, based on our work on disadvantaged communities program implementation in California, IREC encourages the IPA to consider looking at both the top 25 percent of environmental justice communities statewide, as well as the top 25 percent within each utility's service territory. In California, parties discovered that these two different approaches resulted in different results because of where disadvantaged communities are located, as they are not evenly dispersed throughout the states or utility service territories. IREC suggests that the IPA may find both metrics (top 25 percent statewide and by utility service territory) useful in considering environmental justice community designation.

¹¹ See *LMI Guidelines* at 25-29.

¹² Plan at 164-67.

Ultimately, depending on these results and the input the IPA receives based on its initial designations and maps, the IPA may wish to choose whichever figure identifies more communities in each utility's service territory, in order to reach the broadest range of customers.

III. CONCLUSION

Overall, IREC found IPA's Plan with respect to community solar to be comprehensive and reasonable. We offer the suggestions presented in these comments to bring Illinois' community solar program further in line with best practices and more accessible to all customers. IREC appreciates the opportunity to provide these comments.