Brightfields Development LLC

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

Re: June 15, Forward Procurement Workshop Comments

Director Star,

Brightfields Development is pleased to provide our written feedback on certain topics discussed at the IPA - June 15 Forward Procurement Workshop. Our comments are from the perspective of a participant in the proposed Brownfield category procurement.

Kind Regards,

Brightfield Development LLC

Topic 1: Deadline for First REC Delivery

The IPA's Long-Term Renewable Resources Procurement Plan targets the 2020-2021 Delivery Year for first REC deliveries under the Forward Procurements but does not indicate a specific date. With no specific date statutorily mandated or referenced in the Plan, the upcoming Forward Procurements may feature flexibility regarding the deadline for the first REC delivery. At the workshop, some attendees stated that it may be appropriate for the contract to specify events that could delay the initial REC delivery date but that would not lead to contract termination.

1. Given the timing of the procurement events, what would constitute a workable deadline for the first REC delivery? Would a deadline for the first REC delivery of the end of the 2020-2021 delivery year (May 31, 2021) provide developers with sufficient time to build, interconnect, and energize projects?

   Comment: For a general utility scale solar project, Brightfields' expectation is that a deadline of May 31, 2021 would provide sufficient time for permitting, execution of site works and construction of the solar facility, assuming preliminary site investigation has been completed and the scope of civil works have been defined by the bid date. Specific to the Brownfield category we would suggest, however, extending the date to Dec 31, 2021 to reflect the greater impact of seasonal and environmental constraints on projects involving potentially heavy or complex civil or remediation work associated with the precursor remediation and restoration activities (as is often the case with Brownfield sites). Timeline risks do exist that would be outside the direct control of the developer and would reasonably be considered as basis for extensions as discussed below.

2. What are the circumstances or events under which a delay in the initial REC delivery should not lead to contract termination? What would be appropriate notification deadlines to trigger a request for a delay?

   Comment: The most likely delay events for Brownfield sites include; Legal challenge to issued permits or agreed remedial action work plans (RAWP); changes in laws or regulations at the Federal or State level that cause solar to be an unacceptable or uneconomic future use of a site or require the re assessment of an existing remedial action work plan; found issues during site remediation that extend the work plan; and interconnection construction delays at the utility level.

   - *Permit / RAWP legal challenge: Brightfields would recommend that a legal challenge to issued permits or to an agreed remedial action work plan would trigger an extension to the project timeline / REC delivery date equal to the duration of the legal challenge (eg. a 3 month legal challenge, preventing site works from commencing or continuing, would result in an extension of the REC deadline by 3 months). Notification would be upon commencement of the legal action and conclusion of the legal action.*

   - *Government Action: Brightfields would recommend a change in law or regulation action that causes the cessation of site work due to a requirement to re-evaluate a permit or RAWP should result in a like for like extension in the REC deadline. A legislative or regulatory action that results in Solar no longer being a permitted use, or renders the project economically infeasible would trigger a termination without penalty (the development costs for a brownfield site are materially greater than that for a greenfield or non contaminated site*

and incremental termination penalties under this scenario would seem unreasonable). Notification would be upon commencement and resolution of the government action.

- *Interconnection: The interconnection evaluation process at the distribution and transmission level is well defined with timelines, milestones and decision points. It is Brightfields recommendation that an appropriate requirement would be the entry by the seller into the formal interconnection evaluation and agreement process with the RTO or IOU within a set timeframe of bid award. Issuance of the IA would be an appropriate notification point and should include the expected build timeline. Any delay in REC delivery due to delay in installation or upgrade of utility owned interconnection or system infrastructure would trigger an extension to that delivery obligation under the contract – conditional upon the site being mechanically complete at the time of the extension request. A notification of expected interconnection delay 6 months prior to the contract delivery date would seem achievable, subject to the IOU field work scheduling process.*

3. Should the contract name interim milestones that have to be met prior to first REC delivery? If so, what would these interim milestones be and what is the timeline associated with them? What penalties should be assessed for failure to meet interim milestones?

   Comment: A key milestone for all project types would be commencement of the interconnection process by a deadline subsequent to the bid award (to the extent it has not commenced by the bid date).

Topic 2: Credit and Collateral Provisions

The contract under the Initial Forward Procurements tied the amount of post-bid collateral to the annual REC quantity and the bid price. At the workshop, some attendees held the view that an alternative approach, whereby the post-bid collateral requirements would not be tied to the annual REC quantity and/or the bid price, may be a better approach.

1. Is there an alternative approach to determining the amount of post-bid collateral that will provide adequate financial assurances? Should this alternative be based on a dollar amount per MW or a dollar amount per REC? If a dollar amount per MW or per REC is recommended, what is an appropriate basis for determining this amount? Please provide any sample documentation from a jurisdiction that uses the proposed approach, if available.

   Comment: Brightfields considers the intent of the pre and post bid collateral, prior to the REC delivery date is to a) pre: ensure the participation of credible bidders / developers that will be prepared to execute a REC contract upon bid win and b) post: ensure the developer is sufficiently at risk and incentivized to complete development and build of the project by the agreed REC delivery date.

   A mechanism using a REC multiple, using the bid REC price, will dissuade development of challenging brownfield sites. Challenging sites, that already represent far greater development risk for the seller and a higher build price by virtue of restoration works and hardware requirements, will be subject to a collateral commitment orders of magnitude greater than a similarly sized greenfield site.

Brightfields recommends use of the existing pre-bid mechanism for collateral calculation (a MW multiple) with this collateral requirement carried through the REC delivery date, stepping to a REC based calculation at the date of energization / REC delivery.

2. Noting that the level of the pre-bid collateral is generally related to the amount of the post-bid collateral under the contract, should the approach suggested under 1 above have implications for the approach to be used when setting pre-bid collateral?

   Comment: Yes. Brightfields recommends that the pre-bid collateral should be based on the per MW multiple.

3. Should the amounts of pre-bid and/or post-bid collateral be the same for utility-scale wind, utility-scale solar, and brownfield site photovoltaic projects? If not, what factors should be considered in differentiating between the types of projects?

   Comment: Brightfields suggests that Brownfield projects attract a 30% discount in collateral requirement vs. non-Brownfield projects of a similar size. This position is driven by the comparatively high cost of early stage site investigation work, permitting, design and development activities for Brownfield solar projects.

Topic 3: Degradation of Solar Projects

At the workshop, some attendees noted that solar installations typically degrade at a rate of 0.5% per year; this could lead to oversizing projects so that under a fixed annual quantity contract, sufficient RECs would be generated in the later years of the 15-year contract.

1. Are the banking provisions used in the Initial Forward Procurement sufficient to address degradation of solar projects given that the Seller can bank RECs at the beginning of the contract to be delivered at the end? If not, please explain why not and explain what additional measures should be included in the contract to address this issue.

   Comment: The key concern is the termination trigger related to production shortfalls whether due to degradation or forced outage. Rather than a contract termination provision, a REC Production Shortfall Payment would be preferred and more easily financed.

Topic 4: Assessment of Project Maturity

Attendees at the workshop were generally satisfied with the requirements for project maturity used in the Initial Forward Procurements (that approach was to assess current project maturity based on a project having obtained an Interconnection Agreement or, if unavailable, providing proof of site control). Sufficient project maturity is considered a prerequisite for project eligibility because it helps to demonstrate the viability of a project and its likelihood of successful development.

1. Is requiring proof of site control an appropriate milestone to assess project maturity and assess the likelihood that a project will be developed in the desired timeframe?

Comment: Yes. Not withstanding the adequacy of the site control standards, consistent with the response to Topic 5, for a brownfield site, completion of the initial site investigation would be an additional benchmark.

2. What proof of site control is appropriate? Should the standard be different among wind, solar, and brownfield site photovoltaic projects?

   Comment: Current standard seems reasonable.

3. Would an alternative milestone, such as a letter of intent from a lender to finance a portion of the capital cost of the project, provide greater assurances that the project will be developed in the desired timeframe? If so, in responding, please provide sample documents, requirements, or templates for another jurisdiction, if available.

   Comment: No alternative mechanism to recommend. A financing LOI however would likely not be a reliable indicator of project maturity / success potential – it will be necessarily be very general or heavily qualified at the bid stage of a project.

4. Is there another milestone in the project development process that is more appropriate to utilize for assessing project maturity?

   Comment: For a Brownfield, evidence of site investigation / remediation status / regulatory progress.

Topic 5: IEPA brownfield site eligibility requirements

The Illinois Commerce Commission's Order approving the IPA's Long-Term Renewable Resources Procurement Plan requires that a brownfield site photovoltaic project on a site regulated by the IEPA's Site Remediation Program must show that such site previously featured or currently features "actual blight or contamination prior to remediation." The IPA is seeking input on how best to apply this requirement.

1. Is there an appropriate and measurable requirement that can be used to demonstrate that a site within the IEPA's Site Remediation Program currently features or featured actual blight or contamination prior to remediation? Please describe the proposed standard as well as what evidence could be used to satisfy the standard.

   Comment: Definitions of Brownfield are necessarily broad. Differentiation of sites is through the investigative stage of the assessment process. Requirements under the program could begin with the project having a completed site investigation and have in hand an agency agreed remediation plan. The categories of investigation and remediation under the TACO procedures provide a guide to the degree of contamination. If the intent of the program is to focus first on roll out of solar on sites that have limited alternative uses, then a remediation recommendation that requires an engineered barrier would be one indication of contamination severity (ie. too costly or infeasible to remove contaminants from site).