

[Commenter 11 logo]

[Commenter 11 representative and
contact information]

February 19, 2019

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information]

VIA E-MAIL

Anthony Star
Director
Illinois Power Agency
105 W. Madison St., Suite 1401
Chicago, IL 60602

Re: **IPA Brownfield Site Photovoltaic Procurement: Questions and Request for Comments
Comments Submitted by [Commenter 11]**

Dear Mr. Star:

I am submitting these comments on behalf of [Commenter 11]. [Commenter 11] appreciates the opportunity to provide comments in response to the Illinois Power Agency's questions issued on February 5, 2019, related to the Brownfield Site Photovoltaic Procurement. Specifically, [Commenter 11] is providing comments in response to the IPA's questions 1, 3, 4, 7, and 8. Please find the IPA's questions set forth in italics, and our responses, below.

1) Section 1-10 of the IPA Act defines a brownfield site photovoltaic project as needing to be located at a site regulated under one of four programs:

(A) the U.S. EPA 's Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA ");

(B) the U.S. EPA 's Corrective Action Program of the federal Resource Conservation and Recovery Act, as amended;

(C) the Illinois EPA 's Site Remediation Program; or

(D) the Illinois EPA 's Solid Waste Program.

Is that definition too restrictive¹? Are there project types commonly understood as brownfield excluded through this definition? If so, what project types are excluded, and how could this definition be improved?

¹ While the IPA is required by law to use this statutory definition for any subsequent brownfield procurements, feedback is nevertheless sought on whether the definition provides a barrier to participation. [Footnote in IPA's original request for comments].

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Response: Yes, the Section 1-10 definition of "brownfield site photovoltaic project" is too restrictive, and excludes potential project types and sites that are commonly understood in the industry and by environmental regulators as brownfields. Specifically, the current definition excludes coal-fired power plant sites that have been recently retired or that are retired in the future that would be excellent locations for redevelopment as locations for utility-scale solar facilities. Retired coal-fired power plants are commonly understood in the industry and by U.S. EPA as brownfields, regardless of when they are retired.

[REDACTED]

[REDACTED] Coal-fired power plant sites have limited potential for reuse but are ideal sites for redevelopment with renewable resources. Coal-fired power plants are located near transmission lines and can leverage this existing infrastructure. Due to their distance from residential neighborhoods, these sites are likely to generate far fewer community objections for aesthetic or other reasons. They are located on industrially-zoned property that has been used as such for decades and, therefore, do not take prime Illinois farmland out of production or trigger land use concerns associated with developing greenfields. Overall, repowering coal-fired power plant sites with renewable energy generation facilities and energy storage facilities is a sustainable land redevelopment strategy for these properties.

The number, sizes, and locations of PV /storage projects that could be developed at the sites of any coal-fired power plants that are retired would depend on many factors. The ability to participate in an IPA Brownfield PV Procurement may be critical to the economic viability of such projects at these coal-fired power plant sites. [REDACTED]

[REDACTED] However, the current Section 1-10 definition is a barrier to [REDACTED] bidding on solar projects in Brownfield PV Procurements conducted by the IPA to be located at any coal-fired power plant sites that have recently retired or retire in the future.

Even though CCR units are not currently regulated under any of the four programs listed in Section 1-10 (and therefore would not meet the IPA Act's proposed definition of brownfield site), they meet the generally accepted understanding of what constitutes a brownfield site. The Illinois Environmental Protection Act defines a brownfield site generally as:

[A] parcel of real property, or a portion of the parcel, that has actual or perceived contamination and an active potential for redevelopment.

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4 15 ILCS 5/58.2. U.S. EPA commonly views coal-fired power plants as brownfields and has provided grant funding for communities to redevelop such sites that are recently closed or closing². In doing so, U.S. EPA has recognized the attributes of these sites and the need to encourage their redevelopment.³

Upon retirement, a CCR unit would either be closed under Illinois Environmental Protection Agency (IEPA) oversight, or regulated under the federal Resource Conservation and Recovery Act (RCRA) CCR program (42 U.S.C. § 6945; 40 C.F.R. § 257, Subpart D). [REDACTED]

[REDACTED] CCR units at sites regulated under the federal program will be closed in accordance with an approved or professionally-certified closure plan and will include long term groundwater monitoring and post-closure care requirements. Impacts to groundwater at these units would of course be addressed under other rules, but those rules are outside of the four programs listed in Section 1-10. Nonetheless, it is undisputed that the sites where the CCR units are located are or will be considered sites in need of reuse and redevelopment in the future.

Surface impoundments [REDACTED] are or were permitted under the IEPA Bureau of Water. However, because they are not permitted under Illinois' Solid Waste Program, which would define them as brownfields under subparagraph (D), they would not constitute brownfield sites for purposes of the IPA Act definition. The result does not make sense and would not achieve any purpose in the sense that there is no logical basis to treat sites that have similar properties differently just because they are permitted or regulated under different rules. The lack of closure regulations for CCR surface impoundments is a recognized gap in Illinois solid waste regulations. A rulemaking is underway to regulate the operation, management, and closure of surface impoundments under the Illinois solid waste regulations.⁴ However, the rulemaking has been stayed for several years pending, first, the promulgation of the federal CCR rule, and second, amendments to RCRA that impacted the states' authority to administer state-based CCR programs.

Allowing all retired coal-fired power plants to participate in Brownfield PV Procurements would provide benefits consistent with the objectives of the Future Energy Jobs Act, which states:

Developing new renewable energy resources in Illinois including brownfield solar projects and community solar projects, will help diversify Illinois energy supply,

² See e.g. <https://nepis.epa.gov/Exec/tiff2png.cgi/P100OWFH.PNG?-r+75+-g+7+D%3A%5CZYFILES%5CINDEX%20DATA%5C16THRU20%5CTIFF%5C0000167%5CP100OWFH.TIF>.

³ Now closed, in 2017 EPA offered grant funding for the redevelopment of brownfields in communities with closed or closing coal-fired power plants ("POWER+ communities may be interested in applying for a BFAWP grant because a closed or closing coal-fired power plant or related legacy brownfield site(s) is likely to quickly become a large, blighted area that the community needs to address."). This request for proposal is viewable at: <https://www.epa.gov/sites/production/files/2016-06/documents/epa-olem-oblr-16-05.pdf>.

⁴ If the Illinois Pollution Control Board does promulgate a state-based CCR program, then CCR units would be regulated under item (D) in the Section 1-10 definition, the Illinois Solid Waste Program, but there is no certainty at this time whether a state program will be promulgated.

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avoid and reduce pollution, reduce peak demand and enhance public health and well-being of Illinois residents.

20 ILCS 3855.1 -5 (6).

Accordingly, whether through statutory amendment to the IPA Act, or administrative interpretation of the current Section 1-10 definition, [Commenter 11] urges that the definition of "brownfields site photovoltaic project" be amended or construed in a manner that includes solar projects at all retired coal fired power plants without limiting participation to sites that happen to be regulated under certain specified rules. It should also be clarified that projects can be located on the entire plant site, not just on the portions of the site that are or were subject to a cleanup or closure plan. In terms of a potential statutory amendment, [Commenter 11] proposes the following revision to Section 1-10:

"Brownfield site photovoltaic project" means photovoltaics that are . . . (2) located at a site that is regulated by any of the following entities under the following programs:

- (A) the U.S. EPA's Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA");
- (B) the U.S. EPA's Corrective Action Program of the federal Resource Conservation and Recovery Act, as amended;
- (C) the Illinois EPA's Site Remediation Program; or
- (D) the Illinois EPA's Solid Waste Program;
- (E) the U.S. EPA's Resource Conservation and Recovery Act Subtitle D, Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residues from Electric Utilities program, as amended; or
- (F) a groundwater management zone and closure plan approved by Illinois EPA.

3) *In applying a requirement that any site regulated under the Illinois Site Remediation Program must also demonstrate "actual blight or contamination," the IPA required the following to be submitted:*

(i) proof that the site is also regulated by another Program referenced in Section 1-10 of the IPA Act (if documentation from another Program could not be submitted instead of the documentation from the IEP A Site Remediation Program because it was dated before a date 15 years prior to the Bid Date); or (ii) demonstration of contamination at the site and determination of the need for remediation activities through a site assessment from the U.S. EPA Targeted Brownfields Assessment; or (iii) additional documents from the EPA Site Remediation Program. If the Bidder is electing to provide additional documents from the IEP A Site Remediation Program, the Bidder must: (a) if the Bidder has not already done

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so, provide a Remedial Action Plan and such document must demonstrate that concentrations of contaminants at the site exceeded the remediation objectives established for the site and require remediation activities; and (b) if the Bidder has not already done so, provide the Remedial Action Completion Report and a No Further Remediation Letter, or certify that such documents have not been issued. If the Remedial Action Completion Report has been issued, it must be provided; it must state that remediation was indeed conducted at the site, and it must be dated later than the Remedial Action Plan. If a No Further Remediation Letter is Provided it must cover the entirety of the site.

Is this requirement too onerous? If so, what would be a more reasonable approach to demonstrating "actual blight or contamination, " and why?

Response: Yes, the requirement is too onerous, and would exclude many retired coal-fired power plants from a Brownfield PV Procurement. A less onerous approach that would not exclude a subset of retired coal-fired power plants from a Brownfield PV Procurement would allow [REDACTED] sites to show "actual blight or contamination" by submitting:

1. An IEPA-approved closure plan and post-closure care plan, including an approved groundwater management zone, if applicable; or
2. An assessment of corrective measures as required by 40 C.F.R. § 257.96(d) and documentation of closure and post-closure care, as required by 40 C.F.R. §§ 257.100-104, to the extent applicable.

4) Consistent with the requirements applicable to the utility-scale solar RFP, projects participating in the Brownfield Procurement were also required to begin delivering RECs by May 31, 2021, with a possible one-year extension should the bidder meet an increased collateral requirement. Given the additional remediation potentially required to successfully develop a brownfield site PV project, is this requirement too onerous? If so, for brownfield site projects, what is a more realistic timeline between project selection and initial REC deliveries?

Response: Brownfield sites can be costly and complex sites to develop and there is a greater potential for unexpected complications to arise during construction and site development. In addition, brownfield site development often requires regulatory approvals not needed for the development of greenfields. Nonetheless, an approximate two-year timeline consistent with the Long-Term Renewable Resources Procurement Plan between project selection and initial REC deliveries should be sufficient, in the absence of unexpected difficulties and delays including delays caused by permitting challenges and appeals. [Commenter 11] suggests that the IPA allow extensions of the initial REC delivery date for brownfield PV projects if there is a legal challenge to an issued permit, work plan, or selected remedy. In that instance, the IPA should grant an extension until final resolution of the legal challenge.

7) [CONFIDENTIAL] Bids were received in the Brownfield Procurement in late November of 2018, just months before the opening of the Adjustable Block Program, which provides incentives for

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RECs from new PV projects of up to 2 MW in size. Did the opportunity for incentives through the Adjustable Block Program impact your participation in the Brownfield Procurement? Did it impact your bid price?

Response: [REDACTED]

8) [CONFIDENTIAL] If you bid in the Brownfield Procurement- if the IPA were to conduct a second Brownfield Procurement in 2019, would you bid again?

Response: [REDACTED]

Additional comment

[Commenter 11] notes that the IPA's request for comment discouraged comments on the reasonableness of the price benchmark for brownfields projects. [Commenter 11] has no information on how the benchmark price(s) was/were developed. However, if in fact a number of bids were received that exceeded the confidential price benchmark, the IPA and the Project Administrator should review the methodology and process for developing the price benchmark to ascertain if the process is in fact producing price benchmarks that do not adequately cover the costs to develop utility-scale PV facilities on an Illinois brownfield site.

Please feel free to contact me with any questions or comments about these responses.

Sincerely,

/s/[Commenter 11]