

Transmittal Letter

February 19, 2019

Illinois Power Agency
Mr Brian Granahan
105 W. Madison St.,
Suite 1401
Chicago, IL 616602

[Commenter 15 logo]

Dear Mr Granahan,

[Commenter 15] is pleased to submit a response to the “IPA Brownfield Site Photovoltaic Procurement Questions and Request for Comment” dated February 5, 2019.

Attached is a transposition of the 8 Questions posed in the IPA request for comment, [Commenter 15]’s responses, along with additional feedback on the Brownfield procurement process.

As requested, [Commenter 15] has not specifically addressed the benchmark in it’s responses, however we have referenced risk factors and development challenges in our feedback that would have a bearing on the overall capital cost of a true Brownfield project.

Thank you for providing [Commenter 15] with the opportunity to submit this proposal. Please do not hesitate to contact us if you have any questions or require additional information.

Sincerely,
[Commenter 15 representative and contact information]

[Committer 15] – Responses to the “IPA Brownfield Site Photovoltaic Procurement, Questions & Request for Comments” dated 5 February 2019.

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.*

Q: Is that definition too restrictive? 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?

- **[Committer 15]’s Response:**

No, the definition of a brownfield photovoltaic site in section 1-10 of the IPA Act is not too restrictive. If anything, [Committer 15] believes that the definition as drafted was too broad as it provided a pathway for solar projects proposed to be sited on lightly contaminated properties in Illinois EPA’s Site Remediation Program to compete on equal footing against photovoltaic projects proposed for construction on heavily contaminated parcels regulated under the US EPA’s CERCLA and RCRA programs and IL EPA’s Solid Waste program.

There are meaningful public benefits to siting renewable energy projects on true brownfield properties. These include, but are not limited to: finding societally beneficial and economically valuable uses for unproductive land, developing renewable energy in a manner that preserves agricultural land resources, returning tax and / or community development dollars to the often underserved communities with blighted properties, bringing employment opportunities to the often economically depressed areas with significant numbers of brownfields properties, and siting renewable energy generation close to electrical loads. The Future Energy Jobs Act recognized the importance of constructing renewable energy projects on true brownfield properties stating that “developing brownfield solar projects in Illinois will help return blighted or contaminated land to productive use while enhancing public health and the well-being of Illinois residents.”

The Future Energy Jobs Act and the IPA’s Solar Brownfield Procurement intended to facilitate the development of solar arrays on contaminated sites that had limited reuse potential. By expanding the pool of eligible projects, it is less likely that the state will achieve its policy goals of “return(ing) blighted or contaminated land to productive use.” To fully realize the substantial public benefits of siting solar on contaminated properties, IPA should ensure that the projects selected through the IPA’s brownfield procurement are constructed on truly blighted brownfields.

2. *In interpreting that definition, the IPA required that any such project needed to demonstrate having been regulated under the applicable program within the last 15 years.*

Q: Is that requirement too restrictive? If so, what recency requirement (if any) should apply?

- **[Commenter 15]'s Response:**

Based on [Commenter 15]'s interpretation of this requirement, we do not feel that the 15-year time limit is too restrictive. It is our expectation that any "Brownfield" site would be in a position to demonstrate current regulation and would not require a 15 year look-back.

Our interpretation assumes that a Brownfield site would be subject to an open order or permit (or engaged in a state voluntary program), and/ or (in the case of a site that has reached closure or no further action status) subject to ongoing OM&M/

Reporting requirements or an Environmental Covenant / Alternative Use Restriction (AUL). Under each of these scenarios, current Brownfield Status could be demonstrated through confirmatory correspondence with the regulating agency.

To the extent that there is no ongoing order / remediation process and/or site use restriction / AUL or plan governing the site's reuse and/or the ongoing Operations, Maintenance & Monitoring of a remedy (an indicator of the enduring potential health and environmental risk posed by the site), the site would have comparatively no greater restrictions on future use than a greenfield site – and would not be consistent with the spirit of the IPA Brownfield program.

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 IEPA 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 IEPA Site Remediation Program. If the Bidder is electing to provide additional documents from the IEPA Site Remediation Program, the Bidder must: (a) if the Bidder has not already done 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.*

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

- **[Committer 15]’s Response:**

We do not feel this requirement is too onerous.

As discussed in Question 1, the legislative intent of the Future Energy Jobs Act’s brownfield site photovoltaic carve-out was to procure RECs from solar photovoltaic projects sited on blighted or contaminated properties. It is not unjustly onerous or unreasonable for prospective projects to demonstrate that they comply with the regulations by providing evidence that they have “actual blight or contamination.”

As discussed in [Committer 15]’s response to question 1, there are substantial public and regulatory benefits associated with deploying solar on true brownfield properties. The IPA should do everything in its power to ensure that the projects selected through the brownfield procurement deliver the public benefits that the Future Energy Jobs Act legislation intended.

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.*

Q: 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?

- **[Commenter 15]’s Response:**

[Commenter 15] suggests extending the deadline for COD and the “one-year extension” option only to consider the delay between the originally anticipated auction award (December 04, 2018) and the final / eventual award of Brownfield REC contracts.

[Commenter 15] does not believe that the deadline should be extended beyond the IPA procurement delay period. If the deadline is extended further, IPA increases the risk of selecting a low bid project whose economics are contingent upon speculative, unsubstantiated assumptions about future solar equipment prices. Projects built on unrealistic cost assumptions will struggle to attract financing and likely will not be constructed.

5. *Given the complexity of brownfield site development, the IPA recognizes that brownfield site PV projects could face development and performance risks distinct from those faced by a greenfield site utility-scale solar project.*

Q: Are the REC delivery contract's force majeure provisions sufficient to account for such risks? Are there other ways in which the contract could account for brownfield site development risks? If so, how?

- **[Commenter 15]'s Response:**

Brownfield projects do face development and performance risks distinct from those faced by a greenfield site utility-scale solar project. The REC delivery contracts force majeure provisions are not sufficient to account for all such risks.

Risks relevant to FM: An adjustment to the FM contract to include, in addition to interconnection delay, the delay of approval by site regulating authorities with respect to post closure use would help mitigate one clear area of risk related to achieving the COD date for the project. During operation the projects face the risk of the ongoing operation, maintenance and monitoring program identifying a new hazard to health or the environment / or the standard applied to an existing condition being changed – in either case an updated order could require removal of the array system in whole or part to facilitate a remedial action – allowance for such an event within the definition of FM would address a material “unique” risk.

Unique risks unable to be addressed through the contract: The majority of the risks unique to Brownfield solar must be addressed through physical risk reduction / mitigation rather than contractually. As such they impact the development and design basis / scope of the project in a way that separates them from typical utility scale solar. Examples of this include:

- Development phase risk modeling and regulatory stakeholder engagement. For Brownfield projects, the permitting process extends beyond typical zoning / stormwater / wetland management and construction permitting to include an assessment of the human health impact of the facility during both construction and operation. This can require a multilevel regulatory stakeholder engagement process that adds time, expense and complexity however we do not see a contractual remedy to this. It simply adds cost.
- Community risk / remedy. Community / stakeholder engagement is a material risk area for Brownfield projects. The engagement very often goes beyond the solar facility itself and extends to the underlying remedy. Communities often anticipate the solar projects providing not simply a go – forward viable re-use of a site but also compensation to offset prior impacts and the perceived future risk related to the future use of the site. This can extend beyond simple tax revenue. Such a risk cannot be addressed contractually, unless through a REC price adjustment mechanism.
- Construction phase - remedy disturbance. For Brownfield projects that have utilized onsite containment or mechanical barriers to manage the contamination risk to human health and the environment the solar project must factor in design and installation adjustments that ensure the barrier and containment structures are undisturbed. The simplest example of this is a capped site that uses an impermeable membrane as part of the solution. In general, development approval is only granted by the regulating authority if the project can demonstrate no impact to the cap or membrane – this requires use of ballasted rather than driven racking systems; no trenching or drilling for cabling, pads and services; implementing a multistep material handling process that uses

a staging site and smaller low pressure vehicles for movement of equipment on the cap; building of bridging works to allow movement of certain equipment across the site; significant dust management measures to minimize dispersal of potentially impacted soils. We do not see a contractual remedy here – it would remain a point of difference between large utility scale and Brownfield.

- Operation and maintenance. The risk of health / environmental impact during operation is typically addressed through a more involved land management / maintenance and monitoring program in addition to increased insurance expenses to protect the project. We do not see a contractual remedy – this remains a point of difference.

6. *Q: If you bid in the Brownfield Procurement, how did you learn about the opportunity to bid? Are there other venues or mediums through which information could have been published/provided that would have made it easier for you to learn about the procurement event?*

- **[Commenter 15]'s Response:**

[Commenter 15] learned of the auction through the regular IPA communication on the status of the roll out of FEJA and the LTRRPP. Our experience is that there was broad knowledge of the Brownfield Auction amongst our peers from various regional markets. [Commenter 15] also benefited from ongoing communication and updates from the Environmental Law and Policy Center and ISEA.

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 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?

- **[Committer 15]'s Response:**

- [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

- [Redacted]

8. [CONFIDENTIAL] Q: If you bid in the Brownfield Procurement—if the IPA were to conduct a second Brownfield Procurement in 2019, would you bid again?

• [Committer 15]'s Response:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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