

Illinois Power Agency
Long Term Renewable Resources Plan (LTRRP) – Request for Public
Comments

Clean Grid Alliance’s Response to the Illinois Power Agency’s Request for
Public Comments on its Draft 2022 LTRRP Plan

February 28, 2022

I. INTRODUCTION

Illinois’ generation portfolio will experience a significant transition to cleaner energy over the next ten years due to substantial fossil fuel plant retirements and expanded deployment of clean energy resources. We recognize the critical role that the Illinois Power Agency (“IPA”) will have in supporting this energy transition by implementing energy policies enacted as part of the Climate and Equitable Jobs Act (CEJA, P.A. 102-0662). To this end, Clean Grid Alliance (“CGA”) appreciates the opportunity to provide public comments on IPA’s Draft 2022 Long Term Renewable Resources Procurement Plan (“LTRRPP”) with the goal of helping IPA create a successful pathway for Illinois to meet critical clean energy procurement and equity objectives.

Table of Contents

I. INTRODUCTION.....	1
II. COMPETITIVE PROCUREMENT.....	2
1. Monthly REC Settlements Should be Based on Data That is at a Level of Detail Comparable to What is used for PJM and MISO Energy Market Settlements	2
2. The Proposed Ban of Sellers and Projects Due to Economic Reasons and Misrepresentation Needs Further Clarification	3
3. The Project Labor Agreement (PLA) Should be Filed With the IPA After the PLA is Entered Into	4
4. Comments on Structure of REC Agreement.....	5
5. CGA Supports the IPAs Proposal to Treat the Converter Station in the State as the Location for Public Interest Test	5
6. CGA Supports Decision to Not Impose a Price Collar.....	5
7. CGA Supports the Forward Price Curve Being Used for Budgeting RPS Funds	6
III. DIVERSITY, EQUITY AND INCLUSION (DEI)	7
1. Minimum Equity Standards	7
2. Energy Workforce Equity Database	8
3. Applicability to Competitive Procurements.....	10
4. Compliance Plan Filing.....	12
5. 10.1.3.1. Waivers for the Minimum Equity Standard.....	12
6. Enforcement of Standards.....	13

II. COMPETITIVE PROCUREMENT

1. Monthly REC Settlements Should be Based on Data That is at a Level of Detail Comparable to What is used for PJM and MISO Energy Market Settlements (Indexed REC Settlement (§5.4.5))

The IPA requests feedback on the optimal approach for calculating the monthly settlement for the Indexed REC product. (LTRRPP at 116). CGA recommends the settlement be as granular as possible and consistent with the respective RTO settlement processes. The REC Seller is to provide the utilities both the hourly Locational Market Price (“LMP”) and the production volumes.

CGA recommends the hourly LMP be the average of the 12 - 5 minute LMPs in that hour weighted by the energy produced in the corresponding 5 minute period, similar to the following:

$$\sum_{n=1}^{12 \text{ intervals in an hour}} \left(\frac{5 \text{ minute LMP} \times \text{MWh generated in 5 minute period}}{\text{MWh generated in that hour}} \right)$$

Each hour would be calculated as noted above and summed for each hour of the month. This approach will reduce risk and yield the lowest possible bids because it most closely parallels PJMs and MISOs settlement processes.

Proposed Replacement Language: see Attachment A.

2. The Proposed Ban of Sellers and Projects Due to Economic Reasons and Misrepresentation Needs Further Clarification
(Credit Requirements (§5.7.1))

To ensure bidders are committed to following through on contract performance, the IPA proposes to permanently ban entities that voluntarily default on contracts for economic reasons or misrepresent their eligibility to participate in a procurement. (LTRRPP at 122). CGA supports the use of appropriately weighted mechanisms or penalties to ensure parties follow through on contracts. This penalty, however, needs to consider the relative the harm of the default, and whether the default was intentional or caused by human error/accident or are caused by reasons beyond the seller's control.

A more appropriate range of penalties would be to limit or prohibit the sellers participation in procurements for a few years, or to prohibit the use of only that facility in future procurements. Permanent bans should be reserved for repeat behavior, and even in that situation it should be used with caution because corporate behavior can be changed with a change in personnel. The LTRRPP

should signal a range of penalties that are to be refined during contract development and adjusted for market realities at the time.

CGA also recommends the IPA provide further details about “economic reasons” that trigger this event. In addition, the IPA should clarify whether events beyond a Seller’s control are exceptions, such as:

- an RPS Budget shortfall,
- a force majeure event,
- an inability to secure permit approvals that are above and beyond the land control requirements,
- interaction with labor and hiring requirements, and
- any other provisions of the REC agreement.

3. The Project Labor Agreement (PLA) Should be Filed With the IPA After the PLA is Entered Into

(Labor, Diversity and Equity Requirements (§5.4.3))

The IPA has requested feedback on whether the Project Labor Agreement should be a bid eligibility requirement and therefore filed with the bid application, or whether it could be filed 6 to 12 months after being awarded a contract. If a winning bidder fails to provide an acceptable PLA it would lose its bid collateral. (LTRRPP at 114).

CGA recommends that the IPA does not require a Project Labor Agreement to be filed with a procurement bid application given that a project developer needs to first be awarded a successful procurement bid before it proceeds with contracting with an EPC (general contractors and sub-contractors) to construct the project. Moreover, timing of PLAs is not co-related to date the contract is awarded but rather to the notice to proceed and the planned start of construction; being signed within months of starting construction. PLAs should be provided to the IPA within 30 days of the execution of the PLA.

Proposed Replacement Language: see Attachment A.

4. Comments on Structure of REC Agreement
(Contracts (§5.7))

The IPA has asked for additional feedback on the contract structure, and whether any adjustments should be made to the LTRRPP concerning the contract being used in the Spring 2022 REC procurement. (LTRRPP at 122).

CGA submitted comments to the IPA on the Spring 2022 RFP draft REC Agreement and incorporates those comments by reference.

5. CGA Supports the IPAs Proposal to Treat the Converter Station in the State as the Location for Public Interest Test
(High Voltage Direct Current Transmission Lines and Converter Stations (§4.5.))

The IPA proposes that the HVDC lines delivery point of power into Illinois should be used for the public interest criteria evaluation. (LTRRPP at 101-102).

CGA supports this proposal. Such an interpretation is the best way to capture the benefit of these lines. To reach its decarbonization goals, Illinois will need to utilize all forms of wind and solar generation from the region.

6. CGA Supports Decision to Not Impose a Price Collar
(Application of the Price Curve (§5.4.7.))

The IPA has decided to not implement a price collar on the Indexed REC because it forecasts sufficient RPS funds over the next ten years. (LTRRPP at 118).

CGA supports this position. A price collar will increase the number of uncontrolled variables of a project, drive up bid prices to compensate for uncontrolled variables, and adversely impacts a developers ability to obtain project financing. The use of price collars in IPA

procurements makes the IPA contracts far more risky than a virtual power purchase agreement with a corporate or industrial customer. It will likely encourage utility-scale developers to seek corporate PPAs, and reduce the pool of potential bidders in IPA competitive procurements.

Proposed Replacement Language: see Attachment A.

7. CGA Supports the Forward Price Curve Being Used for Budgeting RPS Funds

(Forward Price Curve (§5.4.6))

The IPA proposes that the forecasted market price calculated by the third-party forward price-curve for energy be used for RPS budget planning purposes, and not used to establish an annual cap on utility REC purchases. (LTRRPP at 117).

CGA supports the use of the forward price curve for budgeting purposes and not an annual cap. Further, CGA encourages the IPA to adjust the curves to account for soft cost impacts due to Diversity, Equity and Inclusion requirements, Project Labor Agreement requirements, Prevailing Wage Act requirements, detailed in P.A. 102-0662. These requirements are not necessarily included in an ‘industry-standard’ forward price curve that may be applicable to the Eastern Interconnect, or to a region such as the Midwest or the Great Lakes, or for a neighboring state. An industry-standard forward price curve will need to be customized for the PJM-NIHUB or MISO-IL pricing hubs; accounting for differences between data used for the industry-standards and data for these trading hubs, and adjusting them for cost impacts of additional statutory requirements.

III. DIVERSITY, EQUITY AND INCLUSION (DEI)

A. Equity Accountability System (§10.1)

CGA supports the inclusion of more equity-eligible people in Illinois’s clean energy economy and understands IPA’s obligation, under CEJA, to implement an Equity Accountability System by establishing minimum equity standards (MES) for all renewable energy procurements, the Adjustable Block Program and for Noncompetitive Procurements (LTRRPP p. 299). CGA’s comments support creating a pathway for successful compliance with equity requirements by proposing key considerations and amendments to IPA’s approaches, mechanisms and compliance timeline to 1) better align the LTRRPP with the realities of project development, and 2) condition MES compliance on the state Equity Workforce Hubs and the Energy Workforce Equity Database both being fully operational. Both are needed to ensure that there is an adequate pool of certified, equity eligible persons and contractors at all times to meet the MES requirements for ABP projects and competitively bid projects. Moreover, the Energy Workforce Equity Database should be the primary, if not exclusive, location for renewable energy developers and contractors to find qualified equity eligible persons and contractors.

1. Minimum Equity Standards (Minimum Equity Standards (§10.1.1))

The IPA proposes that the minimum equity standard (MES) for the first delivery year of 2023-2024 be set at 10% of a project workforce and that it should increase to 12% for the 2024-2025 delivery year with subsequent adjustments being determined in future Long-Term Plans. (LTRPP at 299-300). The IPA also requests comments about if there are concrete geographic considerations it should take into account to comply with the MES. (LTRRPP at 300). The IPA defines “equity

eligible persons” based on P.A. 102-0662 Section 1-10, however it does not define “project workforce.”

CGA recommends the following:

- The initial MES of 10% is achievable only if the IPA ensures that there is a sufficient, certified equity eligible labor pool in Illinois to meet its MES. This will be contingent on the IPA identifying and certifying equity eligible persons (EEPs) and equity eligible contractors (EECs) in its Energy Workforce Equity Database that the IPA is to create. This Database is a critical precursor resource that is necessary for project bidders and applicants to legitimately indicate an intention to comply with the MES and to fulfill this compliance commitment.
- The increase of the MES to 12% in delivery year 2024-2025 should be predicated on a sufficient identified, trained, and certified EEP and EEC labor pool. The IPAs Energy Workforce Equity Database should be a one-stop shop for locating EEPs and EECs.
- CGA supports the IPA’s proposal to not set increases to the MES beyond 2025 and instead to make those determinations with stakeholder input through future LTRRPPs.
- Geographic considerations for compliance with the MES should also be based on region-specific availability of certified equity eligible people. This should be identified either through the Energy Workforce Equity database or through the state Workforce Hubs. Currently, it is already a challenge for Engineering Procurement and Construction (EPC) companies in Illinois to staff projects in remote areas, as those larger projects have between 400 to 500 people on site daily during project construction. EPC’s and small contractors’ ability will be further constrained without accessibility to adequate, region-specific eligible persons.
- With respect to what constitutes a project workforce, CGA still recommends an applicant or bidder be given flexibility in how it complies with this standard. An applicant should be allowed to define project workforce as either their contractors’ and sub-contractors employees, or their company’s employees in combination with their contractors’ and sub-contractors employees, as noted in CGA’s comments submitted on this topic in December 2021.

Proposed Replacement Language: see Attachment A.

2. Energy Workforce Equity Database (§10.4.)

The LTRRPP states the IPA is responsibility per Section 1-75(1)(c-25) of CEJA to create an Energy Workforce Equity Database. The LTRRPP notes two different dates by which the IPA intends to launch the database; one reference states it will potentially launch during the first quarter

of 2023 and another by the end of 2022 (LTRRPP at 309 and 310). The LTRRPP clarifies what the database will include per items (A) through (H) as required by statute (LTRRP at 310). The LTRRPP does not appear to address, however, the certification process the IPA is responsible for designing. (see 20 ILCS 3855/1-75(c-10)(4)(D)). The LTRRPP also does not address identifying Qualified Persons as part of its Energy Workforce Equity Database.

CGA recommends the following:

- The Energy Workforce Equity Database is a critical precursor resource that needs to be fully in place prior to the IPA's implementing the Minimum Equity Standard (MES). CGA urges this as a condition in order to ensure applicants and bidders can effectively comply with the MES by having access to a sufficiently sized equity eligible labor pool.
- CGA requests clarity and confirmation about when the Database will be fully established given the differing stated dates in the LTRRPP. CGA understands the Illinois Department of Commerce and Economic Opportunity (DCEO) is working in tandem to support a training hub program and its timeline should be fully integrated into consideration of when to implement the MES.
- It is critical that the database will have "a list of equity eligible contractors with their contact information, types of work performed and locations worked in" since it will serve as the primary hiring resource for applicants and EPCs. (LTRRPP at 310).
- Further, CGA asks the IPA to consider how CEJA's requirements for solar installations to be built by Qualified Persons will coincide with the requirement to have EEPs and EECs comprise a minimum amount of a project workforce. CGA's understanding, from its members, is that the labor pool for Qualified Persons is already limited. CGA recommends that the Equity Workforce Database must include a certain amount of equity eligible contractors who are also Qualified Persons. Further, given that CEJA does not require Qualified Persons to install solar panels if the installer is part of the Illinois Solar For All Program, it would also be important to include Illinois Solar for All Program installers as qualified contractors to the Equity Workforce Database.
- Without having a central repository for trained, certified and equity eligible contractors, project developers and EPCs will be hard pressed to meet CEJA's multi-pronged labor requirements.
- Finally, the LTRRPP does not appear to directly address the certification process the IPA is responsible for establishing to certify EECs and EEPs. (see 20 ILCS 3855/1-75(c-10)(4)(D)). CGA requests further information about this process.

Proposed Replacement Language: see Attachment A.

3. Applicability to Competitive Procurements (§10.1.1.2)

The LTRRPP addresses the applicability of the MES to competitive procurements in chapters 5 and 10. The LTRRPP states that the IPA is considering “approaches on how to prioritize bids that feature commitments to having a higher portion of contract value flowing to Equity Eligible Contractors. This could be through either adjustments to how bids are considered in price order, or an adjustment to bid price prior to ranking of bids by price order.” (LTRRPP at 301; see also 115).

Information About EEC/EEP Availability is Insufficient at Bid Submission For a Bidder to Reasonably Indicate an Intent to Exceed the Minimum Equity Standard (MES)

At the time of bidding, the bidder will not yet have a firm contract with an Engineering, Procurement and Construction (EPC) company given the sequencing of project development timelines. Therefore, it would be giving preferential treatment to an intention not the actual fulfillment of exceeding the MES.

When a project is bid into a procurement, it still has a number of major development tasks to be completed before EPC contracts are bid and entered into. To elaborate on this timeline, competitive procurement bidders will likely consider the award and execution of a REC contract(s) as pre-requisite for engaging an EPC provider and beginning construction financing negotiations. Project financing, including construction financing, requires a complete set of creditworthy offtake contracts; otherwise it is highly inefficient, expensive or even impossible to complete. Similarly, EPC service solicitations (and procuring major equipment such as modules and inverters) are highly competitive, and is a time and resource-intensive activity. To solicit EPC bids the bidder needs to complete detailed construction plans, specification sheets and a construction timetable. All of this takes time to complete after receiving an awarded contract.

The timing of an EPC contract is largely driven by the construction timetable. In addition to financing arrangements and selection of an EPC, a project construction timeline is shaped by availability of construction materials, zoning issues, and generation interconnection issues. Currently, access to construction materials is a real logistic concern, with certain items requiring long-lead times. For certain projects, zoning and interconnection issues require a long-lead time to complete.

In short, the contract and financing realities of project development would require an offtake, or REC, agreement as a pre-requisite before engaging an EPC who will be the entity hiring equity eligible persons for the project's construction. Therefore, some of the draft LTRRPP's proposals to require compliance details at the time of bidding as well as to give preferential treatment to projects that claim an intention to exceed the MES are not realistic.

The Policy of Prioritizing Projects with Higher EEC Targets May Lead to Unforeseen Outcomes

Giving a beneficial price adjustment of 10% to a compliance plan at this point in time may not further MES in all instances, because it offers an opportunity for bidders to bid projects that are not necessarily the lowest cost projects. Consequently, this prioritization may introduce a mechanism that lead to various poor outcomes, such as:

- a. Projects not fulfilling their aggressive commitments but keeping their awards and getting built anyway, undermining the overall selection process.
- b. Projects not fulfilling their aggressive commitments and thus failing to get built on time or at all – this also would undermine the selection process by raising attrition rates or delaying the achievement of the state's goals.
- c. Projects fulfilling their requirements but at unforeseen high costs and thus having to renegotiate contracts,

CGA recommends the IPA reward overachievement on *actual, contracted* labor terms, as opposed to a mechanism that rewards overly opportunistic *bidding*. This issue could be revisited after the Hubs and Energy Workforce Equity Database are operating.

Proposed Replacement Language: see Attachment A for pages 115 and 301.

4. Compliance Plan Filing
(§10.1.1.3)

The LTRRPP states that “successful bidders in competitive procurements (“Competitive Procurement Suppliers”) will be required to file a Compliance Plan within 30 days of ICC approval of their bids.” (LTRRPP at 301).

CGA’s position is that the bidder can be required to submit a Letter of Intent to comply with the MES at the time of bidding but will not be able to specify the number of workers that are equity eligible at that time since an EPC contract will not yet be in place.

CGA further proposes that a Compliance Plan not be required to be submitted 30 days after a successful bid, but rather that the seller is required to submit the Compliance Plan 30 days prior to the start of the construction of the project. This is to better align with the realities of project development, financing and construction timelines so that a seller has the information about equity eligible project workforce required for the Compliance Plan filing.

Proposed Replacement Language: see Attachment A.

5. 10.1.3.1. Waivers for the Minimum Equity Standard
(§10.1.3.1.)

The LTRRPP states that “the Agency will grant waivers where the applicant provides evidence of significant due diligence toward meeting the minimum equity standards” as based on the conditions enumerated. (LTRRPP at 304).

CGA recommends that the IPA's Energy Workforce Equity Database be fully operational and ensure an adequate equity eligible labor pool prior to implementing the MES. In the event the database is not fully operational, applicants and Sellers should be allowed to submit waivers.

Further, waivers should be granted in instances where there is a constrained equity eligible labor pool for solar installation due to CEJA's requirement for projects to have Qualified Persons install solar panels. CGA anticipates that as the MES target increases, the likelihood that Qualified Persons will also need to be an EEC also increases. The MES and Qualified Persons requirement creates a tension for a project owner/bidder/seller because it is in jeopardy of losing their PPA if they do not use Qualified Persons, but then they are also risking not being able to bid in future procurement periods if they don't comply with the MES.

As stated in Section 2 above, CGA's proposed solution that at the Equity Workforce Database must include a certain amount of equity eligible contractors who are also Qualified Persons. There should also be specific language in the MES Waiver section saying applicants have grounds for a waiver if they cannot meet the MES because of limitations based on available Qualified Persons.

6. Enforcement of Standards

(§10.1.4.)

The LTRRP states that consequences for not fulfilling a seller's MES compliance requirement is "suspension of the entity's ability to submit project applications to IPA programs or to participate in competitive procurements during the remainder of the delivery year." (LTRRPP at 305). It also states that "Competitive Procurement Suppliers could likewise be barred from participation in future competitive procurement events." (LTRRPP at 306).

CGA's position is that if a seller's EPC provider fails to fulfill the MES based on their project workforce management, that the seller can be granted a waiver of the MES requirement. This is because the LTRRPP places the burden of complying with the MES on the seller when in reality, the seller is contracted with an EPC to manage project hiring and workforce.

Prepared and submitted on behalf of Clean Grid Alliance by

Sean R. Brady, Senior Counsel and Regional Policy Manager- East
Tina Brown, Project Consultant

Clean Grid Alliance
570 Asbury Street
Suite 201
St. Paul, MN 55104

651-644-3400

Clean Grid Alliance
P.O. Box 4017
Wheaton, IL 60189-4072

312-867-0609

651-968-6240

February 28, 2022