

Draft Long-Term Renewable Resources Procurement Plan Response to Illinois Power Agency Request for Public Comment

February 28, 2022

Company:

Invenergy LLC (“Invenergy”) is a leading privately held developer and operator of sustainable energy solutions headquartered in Chicago. Invenergy has completed development on 17 sustainable energy projects in Illinois and is pursuing additional opportunities in the state. Proud of our Illinois roots, Invenergy has long looked to provide value to the state by siting some of our most innovative projects on Prairie State Soil. Our Grand Ridge Energy Center, three energy technologies co-located at a single site, received Power Engineering and Renewable Energy World Magazines’ 2015 Project of the Year Award for Best Renewable Project as well as Energy Storage North America’s Innovation Award.

Through our growth journey, the state of Illinois and the Illinois Power Agency (“Agency”) have been crucial partners. Invenergy commends the efforts of the state to expedite the decarbonization of our energy grid and the thoughtful expansion of renewable energy deployment.

Invenergy submits the following responses and respectfully request that the Agency consider the feedback provided below.

COMPETITIVE PROCUREMENT

Project requirements, including the timeline for Project Labor Agreements and Minimum Equity Standard Compliance Plan submissions, need to be finalized prior to the upcoming bidding deadline or they will not be considered requirements for projects selected in the upcoming procurement.

Invenergy understands that the Agency is required to carry out a procurement before the Long-Term Plan is finalized and approved. This parallel development can present substantial challenges to consistency.

At the same time, Invenergy must insist that projects selected in the upcoming REC RFP will not be subject to retroactive requirements that are not in the procurement contract but are later finalized with the ICCs approval of the Long-Term Plan. Mandating that projects adhere to requirements finalized after bids are submitted results in a prohibitive

amount of business risk and hampers the whole procurement. Invenergy urges the Agency to clarify that any bids selected in this upcoming RFP will not be subject to retroactive requirements that are not clearly outlined in the REC procurement contract.

The Proposed Ban of Sellers and Projects Due to Economic Reasons and Misrepresentation Needs Further Details and Reconsideration.

To ensure bidders are committed to following through on contract performance, the Agency proposes to permanently ban entities that voluntarily default on contracts for economic reasons or misrepresent their eligibility to participate in a procurement (LTRRPP, p.122).

Invenergy notes that “voluntary,” “economic reasons,” and “misrepresent” are undefined, broad terms that subject developers to an incredible amount of business risk.

It is imperative that the Agency not only define these terms, but also create an exhaustive list of entity actions or decisions which may lead to permanent barring from participation in future procurements. As it stands, situations outside the control of the developer's best efforts, like human error or supply chain issues, could lead to decisions interpreted as “voluntary” defaulting.

Invenergy agrees with the Agency's concern and is supportive of strict penalty for contract reneging. However, when considering penalty commensurate to the harm caused, a permanent barring of participation in future RPS procurements may be too harsh a penalty. Perhaps temporary barring or a prohibitive financial penalty may be more appropriate alternatives, with permanent banning reserved for repeat offenders.

Energy Transition Community Grants

The IPA is to optimize the procurement of RECs from Energy Transitions Community Grants. To ‘optimize’ procurements of projects in Energy Transition Communities, the IPA proposes to select these projects ahead of all other projects, as long as the Energy Transition is Community project has a bid price below the confidential benchmark (LTRRPP, p. 115).

Invenergy supports this sentiment but believes that the aforementioned benchmarks and qualifications should be carefully vetted. Overly aggressive price targets may come at the expense of quality and Energy Transition Community Grant communities benefit most from quality projects.

The Project Labor Agreement Should be Filed with the Agency after said Agreement has been Entered Into, usually a Few Months Prior to the Start of Construction.

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, p. 114).

As stated in Invenergy's February 9th comments to the Agency, a PLA should be produced after the bid is due and should not be a requirement for a bid. The commitment to enter a PLA should be sufficient as a bid requirement. PLAs and contracts are negotiated closer to NTP. It is not prudent for PLAs to be negotiated prior to receiving a bid as timelines and needs can often change when moving through permitting processes.

A more appropriate timeline would be based off construction timelines. Invenergy recommends that PLAs be filed with the agency within 30 days of entering into these agreements. Contractor selection usually only begins a few months prior to construction and developers would not be able to provide PLAs on the timeline that the Agency is currently recommending.

Invenergy Supports the Agency's Proposal to Treat the Converter Station in the State as the Location for the Public Interest Test.

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

Invenergy supports this proposal. Additionally, Section 1-75(c)(1)(I) states that "renewable resources that are delivered via a high voltage direct current converter station located in Illinois shall be deemed generated in Illinois at the time and location the energy is converted to alternating current by the high voltage direct current converter station if the high voltage direct current transmission line.... (iii) has an Illinois converter station located and interconnected in the region of the PJM Interconnection..."

Invenergy Transmission's Grain Belt Express has a converter station that is located in Illinois and will be interconnected to PJM's transmission system and would seek confirmation from the Agency that RECs generated by projects interconnected to GBX will be deemed generated in Illinois.

Invenergy Supports Agency's Decision to Not Impose a Price Collar.

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, p. 118).

Invenergy supports the Agency's stance that the price collar is not a necessary tool for upcoming competitive procurements.

Invenergy remains vehemently opposed to the implementation of price collars for reasons outlined in December 3rd, 2021, comments to the Agency. Payment should always make the bidder whole to the Strike Price – if it does not, then the contract will not provide developers with the certainty necessary for financing, which was the intent of contracting for an indexed versus a fixed REC in the first place.

Furthermore, a price collar would likely increase risk for the bidder, as there is a risk that the bidder will not be made whole. A price collar would result in higher REC prices to mitigate such risk.

To the extent that the Agency remains concerned about budget impacts absent a price collar, the legislation already requires the procurement administrator, Agency, Commission staff, and procurement monitor to quantify the annual cost of these contracts by utilizing an industry standard, third-party forward price curve for energy at the appropriate hub or load zone. The forward price curve is based on industry standard forecasts and revised on an annual basis. If the expected contract spend is higher or lower than the total quantity of contracts multiplied by the forward price curve value for that year, the forward price curve is required to be updated by the procurement administrator, in consultation with the Agency, Commission staff, and procurement monitors, using currently available price forecast data and additional budget dollars obligated or re-obligated as appropriate. This provision should be more than enough to address the Agency's budget concern and make a collar unnecessary.

DIVERSITY, EQUITY, AND INCLUSION

Equity Accountability System

The Agency is seeking feedback on whether a 10% Minimum Equity Standard as a baseline seems feasible by the end of 2024.

The 10% MES baseline by the end of 2024 cannot be deemed feasible without a demonstration that such a workforce exists to comply with this obligation. Instead, Invenergy would offer a benchmark Equity Eligible Contractor (EEC) registration quantity prior to MES implementation rather than an arbitrary timestamp.

Though Invenergy understands that the workforce development programs of the Department of Commerce and Economic Opportunity (DCEO) have not yet launched in full, it is still fact that as of the release of this draft plan, "no entities have registered" (p. 298). The 10% MES baseline cannot be assessed as "feasible" or not by any timeframe without any metric of the success of programs that do not yet exist.

Invenergy recognizes that the 10% EEC composition of a project workforce by 2024 is a statutory requirement (Section 1-75(c-10) (1)). However, Invenergy believes that any ramp-up rates should be based on the quantity of graduates of DCEO programs or qualified

persons registered in the Energy Workforce Equity Database. Not only would this appropriately focus achievement of MES on workforce development but would also ensure that developers are set up for success when filing compliance plans.

Unnecessary administrative burden upon developers and the Agency awaits if this standard increases too quickly. Without an explosive ramp up and runaway success of DCEO workforce development programs, the vast majority of developers will need to file MES waivers due to scarcity. Premature requirements also introduce substantial business risk, as developers cannot make any meaningful plans to employ graduates of programs that do not exist from an online database with an unknown launch date.

To alleviate this risk of non-compliance or mass-waivers, for the first few years, the Agency should consider alternative actions that may count towards reaching the 10% MES requirement, like hosting apprenticeship programs, assisting with DCEO education and outreach, or otherwise contributing to workforce development.

Different geographical requirements based on participation, registration, and availability of EEC would also greatly assist in the smooth implementation of this standard. As the Climate and Equitable Jobs Act does not clearly define “work,” Invenergy highly suggests that the Agency allow Independent Power Producers to define “work” in each Compliance Plan to further smooth implementation of this program.

Invenergy reiterates that any planned ramp up in the next few years should be based on participation in DCEO programs and registration to the Energy Workforce Equity database. By the next Long-Term Renewable Resources Procurement Plan, the Agency will likely have more data on the pace of workforce development in the state and will have stronger basis for setting reasonable time-based targets.

Compliance Plan Requirements

The Agency proposes that a Minimum Equity Standard Compliance Plan be due at the time of application to the ABP and/or bid registration for Agency REC procurements.

Invenergy asserted in its February 9th comments that requirement of labor agreements at or near the bid submission is unreasonable, as these contracts are negotiated close to NTP. Invenergy believes that requiring an MES Compliance Plan with the application or within 30 days of a successful bid is still far too compressed a timeline.

Setting a timeline that works with all project timelines will be very difficult. Instead, Invenergy recommends that in the bid, the supplier commits to submitting an MES Compliance Plan 60 days prior to construction or within 30 days after contractor selection. Contractors are usually selected a few months prior to construction so any plans for compliance sent in prior will be speculative rather than grounded in feasibility. Building flexibility into quickly upcoming requirement deadlines will be instrumental for maximizing developer participation.

Waivers for the Minimum Equity Standard

The number one consideration in approval of a waiver is whether there was a sufficient labor pool from which the MES could have been met.

Section 1-75(1) (c-10) (1)(D) states that “Waivers approved for lack of equity eligible persons or equity eligible contractors in a geographic area of a project shall not count against the approved vendor or designee.” This implies that for each delivery year, there is some knowable quantity of equity eligible persons or equity eligible contractors below which the MES cannot be reasonably expected to be achieved, and thus, should be waived.

This quantity, or benchmark, for EECs in a geographic region should be determined by the Agency in advance and should be a major consideration for whether a waiver is approved. Good faith efforts should not be equivalent to unequivocally exhaustive. And no matter the exhaustiveness of the effort to meet the MES requirement, it will not be met if there simply are not enough contractors.

Prioritizing Bids and Applications that Exceed MES

The Agency is considering approaches on how to prioritize bids that feature commitments to a higher proportion of equity eligible contractors.

While Invenergy supports the intention behind this beneficial price, Invenergy is strongly opposed to this implementation with the current state of EEC labor supply.

As of writing this plan, the equity eligible contractors are scarce due to the novelty of DCEO programs. This scarcity could lead the proposed beneficial price to have unintended negative consequences. Beneficial pricing for projects that use the most EEC labor will likely lead to bidding wars, which would be a detriment to the Agency’s budget, or to overworking equity eligible subcontractors.

Furthermore, the proposed implementation of this preferential pricing fundamentally misaligns incentives. At the time of bidding, labor negotiations have largely not yet occurred. Preferential pricing would thus be based on *expected* labor composition and not *actual* labor composition, thus incentivizing aggressive bidding rather than achievement of ambitious standards.

