



February 28, 2022

VIA E-MAIL

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Mr. Anthony M. Star
Mr. Mario Bohorquez
Illinois Power Agency
Michael A. Bilandic Building
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RE: Swift Current Energy's Comments on the Illinois Power Agency's 2022 Draft Procurement Plan

Dear Sirs:

Swift Current Energy wishes to submit comments on certain aspects of the Illinois Power Agency's ("IPA") draft 2022 Long-Term Renewable Resources Procurement Plan ("Plan"). Swift Current Energy is a renewable energy developer that has constructed and/or is developing wind and solar energy generation facilities in Illinois. More specifically, Swift Current Energy has developed three (3) utility-scale wind energy projects that are currently operating in central Illinois, with a fourth under development, and has three (3) utility-scale solar projects in the permit and/or development stage in central Illinois.

Introduction

As a preliminary matter, Swift Current Energy has received interest from off-takers who have expressed a desire to participate in the Self-Direct Customer program. The recent changes to the IPA Act require projects associated with customers in the Self-Direct program to comply with both labor (Section Q) and equity (Section P and subsection (c-10)) requirements of the IPA Act. Although contractors with which Swift Current Energy has communicated have expressed confidence in understanding the labor requirements of the IPA Act, the same cannot be said for the equity requirements in the Act. Swift Current Energy has a strong desire to satisfy the IPA Act's labor and equity requirements when constructing its wind and solar energy projects; however, to properly calibrate and price bids for Self-Direct off-takers, more certainty is needed for compliance with equity requirements so that contractors can accurately price their construction bids, which will allow Swift Current Energy to properly price its bids for off-takers. Swift Current Energy hopes that the following comments on the 2022 draft Plan will lead to changes in the language of the final Plan that provides more clarity about what steps contractors can take to comply with the IPA Act's equity requirements.

Comments

Swift Current Energy seeks to comment on the following sections of the draft Plan:

6.3.3 Labor and Equity Requirements

Section 6.3.3 of the draft Plan indicates that “new utility-scale wind projects or new utility-scale solar projects must comply with the requirements established in subparagraphs (P) and (Q) of paragraph (1) of this subsection (c) and subsection (c-10).” Both subparagraph (P) and subsection (c-10) relate to the equity requirements. Although the IPA Act states and projects serving Self-Direct customers must comply with these provisions, the Act is far from clear about how projects are supposed to comply.

In the draft Plan, the IPA appears to recognize this lack of clarity by inviting comments on these provisions:

For this draft Plan, the Agency is interested in feedback for how to better sync Section 1-75(c)(1)(R)’s application and selection processes with the requirements found in subparagraphs (P) and (Q) of Section 1-75(c), as well as subsection (c-10).

The IPA Act and the Plan add to the confusion for Self-Direct projects because the Plan appears to establish one regime for compliance with equity requirements in Section 5.4.3 for prospective bidders participating in future IPA procurements without separately explaining, in a clear fashion, what steps projects of Self-Direct customers will be required to take to comply with the IPA Act’s equity requirements. This is understandable since the changes to the IPA Act are not clear about how projects eligible for the Self-Direct customer program should comply with these requirements. Section 1-75(c)(1)(R)(2)(vii) of the IPA Act simply states that Self-Direct projects must comply with subsection (c)(10) of Section 1-75 of the Act in order to be eligible for the program. Although the IPA Act seems clear about which requirements must be met for a project to bid into an IPA procurement, the equity requirements for the Self-Direct program are not as clear.

To better sync the equity requirements in subparagraph (P) and subsection (c-10) to the Self-Direct customer program, and to provide clearer guidance to contractors and projects that are vying for Self-Direct customers, Swift Current Energy proposes that the IPA consider allowing contractors to devise their own equity compliance programs and submit them for pre-certification to the IPA before construction commences on any wind or solar project. The pre-certified equity plans could draw upon the equity criteria enumerated in the IPA Act, e.g., participation of eligible persons in certain training programs, and meet the equity percentage requirements in subsection (c-10). The pre-certification concept, however, should allow contractors to more precisely predict their costs associated with complying with these requirements, which will, in turn, allow eligible projects to better calibrate their bids to prospective Self-Direct customers.

Alternatively, the IPA in the Plan should set forth proposed compliance approaches for contractors to follow. For example, the Plan could establish parameters around whether hiring minority-owned contractors can contribute toward a Self-Direct project’s equity compliance obligations.

10.1.1. Minimum Equity Standards

For this section, the IPA invites feedback on the following issues:

The Agency welcomes stakeholder feedback on the proposed percentage requirement for the 2024-2025 delivery year, as well as if there are concrete geographic considerations it should take into account at this time.

Swift Current Energy has concerns about increasing the percentage requirement to 12% for the 2024-2025 delivery year given the current uncertainty about steps needed to comply with the equity requirements. However, since the IPA Act requires a steep ramp up to 30% by 2030, an increase to 12% seems reasonable after the first delivery year.

However, for purposes of the ramp up beyond the initial 10% requirement, the Plan should at least divide the state into five (5) geographic regions that follow the appellate court districts and be prepared to either adopt more flexible or adaptable standards in those regions with fewer eligible persons, or establish more lenient standards in certain regions. Contractors have already expressed serious concerns about whether projects proposed in more rural areas of the state will not only be able to employ sufficient eligible persons to satisfy the IPA Act's equity requirements, but also whether they can hire enough construction workers necessary to build the projects in those areas.

Construction vs. Operations

Although the draft Plan seems clear that the equity requirements apply to construction of wind and solar projects, the draft Plan is not clear about whether these same requirements apply to the operation and maintenance of the projects. The draft Plan should insert language to clarify this.

Minority-Owned Businesses

Although the IPA Act and the draft Plan are clear that hiring "eligible persons" will allow a project to satisfy the equity percentage requirements, the IPA Act and draft Plan are not clear whether hiring a minority-owned contractor can contribute toward a project's compliance with the equity requirements. The Plan should explain what impact, if any, hiring minority-owned contractors will have on the contractor's compliance with the equity requirements.

Sincerely,

A handwritten signature in black ink that reads "Matt Birchby". The signature is written in a cursive style with a large, looped "y" at the end.

Matt Birchby
President