

IPA Indexed REC Post-Award Contract Changes Workshop Process Outline and Stakeholder Feedback Request

The Illinois Commerce Commission (“ICC”) approved the Illinois Power Agency (“IPA”) conducting workshops after its 2024 Long-Term Plan (“2024 Plan”) approval to further explore the issue of post-award contract changes, with a goal that an Indexed REC post-award negotiation process may be finalized for inclusion in a compliance filing within one calendar year after the ICC approved the 2024 Plan on February 20, 2024.

To kick off workshops, we are seeking stakeholder feedback on what issues the workshop process should cover, how that process should be administered, and its timeline.

1. Summary from the Plan

In Section 5.4.8 of the IPA’s 2024 Plan, the Agency explained how it has been made aware that recent volatile market conditions have led to some utility-scale renewable projects, which were previously selected in the IPA’s Indexed REC procurements, experiencing significant increases in development and construction costs during the time that the contract was awarded and when the project actually starts construction, making projects potentially uneconomic at the awarded Strike Price.

Allowing post-award changes to contracts could help address project cost increases, however, post-award negotiation presents a fundamental shift away from the processes historically utilized by the IPA. Such post-award changes would require strict parameters for which changed assumptions would warrant a downstream contract price adjustment, how those changed assumptions can be fairly demonstrated, and would require a process to safeguard the integrity of the initial competitive bidding process.

In its 2024 Plan, the Agency proposed conducting workshops to explore potential processes for post-award contract changes. If warranted, the workshop process will also include the development of a contract addendum available to be utilized by both existing Indexed REC contracts and future awards. This proposal was approved by the ICC in approving the IPA’s 2024 Plan.¹

The workshops may conclude with a compliance filing within one calendar year after the Commission approved the 2024 Plan. If the Commission disagrees with the proposal set forth in the Agency’s compliance filing, the Commission can reject the filing and open an investigation.

To help structure the workshop process, the IPA has developed questions for stakeholder feedback in the sections across the topics of workshop substance, process, and other states’ approaches to handling similar challenges.

2. Process, Timeline, and Scope

We foresee this process conducted in three stages and the timeline below.

¹ See Final Order at 16, ICC Docket No. 23-0714 (Feb. 20, 2024).

Stage 1 – Stakeholder Feedback around process, scope, and timeline

Stage 2 - Workshops

1. Given the complexity of post award contract changes and the need to balance competing important considerations, the IPA foresees conducting three to five workshops before a formal post award negotiation process can be considered. The IPA proposes the following tentative workshop schedule (to be finalized based on stakeholder feedback)
 - a. First workshop - July 29, 2024
 - i. IPA releases discussion summary from the workshop and key topics for the next workshop one week before the next workshop
 - b. Second workshop – August 26, 2024
 - i. IPA releases discussion summary from the workshop and key topics for the next workshop one week before the next workshop
 - c. Third workshop - September 30, 2024
 - i. IPA releases discussion summary from the workshop and key topics for the next workshop one week before the next workshop
 - d. Fourth workshop - October 28, 2024
 - i. IPA releases discussion summary from the workshop and key topics for the next workshop one week before the next workshop
 - e. Fifth workshop - November 25, 2024
 - i. IPA releases discussion summary from the workshop and key topics for the next workshop one week before the next workshop

Stage 3 – Proposal Drafting

1. Proposal development: December 2024 – January 2025
2. Draft Proposal Released for Public Comments: January 20, 2025
3. Public Comments due on Draft Proposal: February 3, 2025
4. Final Proposal to be included in a Compliance Filing with the ICC: February 19, 2025

Process, timing, and scope-related questions for feedback:

1. Section 5.4.8 of IPA’s 2024 Plan outlines a series of key substantive questions that the IPA believes must be addressed through the workshop process.
 - a. Do stakeholders believe these are the key issues that must be addressed through workshops and any proposal?
 - b. What additional issues should be covered by the workshop process and any proposal?
 - c. Are there any new developments since this list was developed (October 2023) of which the IPA should be aware?
2. In terms of timing, cadence, and structure, how should workshops be structured?
 - a. One thought is that workshops could be organized around *substantive topics*. Would stakeholders prefer that approach? If so, which topics should be used for organizing workshops?
 - b. Another potential approach is to separate the workshop by *stakeholder perspective* (Buyer, Seller, the IPA/state, financing party, others). Would

- stakeholders prefer this approach? If so, how should these workshops be substantively structured?
- c. Is monthly cadence a good cadence for these workshops?
 - d. Are 3-5 workshops sufficient for this exercise?
 - e. How should opportunities for written feedback be folded into the workshop process?
3. Are there any outside speakers or consultants we should bring in for these workshops or for managing the overall process?
- a. What role should our Procurement Administrator (NERA) have in this process?
 - b. Should the IPA consider a subcontractor to assist with administration of workshops and the development of work product? If so, what skill or experience should be required?
4. Proposal Development
- a. A compliance filing may be developed at the conclusion of this workshop process; if the IPA determines that a renegotiation process is viable and appropriate, that filing will outline the process. That compliance filing is preceded by the development of a draft proposal for stakeholder comment.
 - i. What elements are necessary for the structure of any draft proposal?
 - ii. How can the workshop process be used most effectively to inform the development of that proposal filing?
 - b. Any proposal is likely to have parties in favor of or opposed to that proposal. In assembling a compliance filing with the ICC, how should the IPA handle that support or opposition?

3. Other States' Approaches

The IPA is discussing both utility-scale renewable project development challenges and competitive procurement fixed-price contract challenges with key officials from other states. These conversations are being used to explore how those states grapple with issues related to post award changes in cost and financing expectations placing successful project development at risk, whether the states allow for similar post-award contract changes, and if so, how that state has implemented a contract change process.

To date, the IPA has engaged with officials from New York, Massachusetts, New Jersey, Rhode Island, and Connecticut. The IPA is also leveraging members from the Clean Energy States Alliance to aid in understanding how other states have addressed these issues.

Some states have found that that adjusting the competitively bid and procured contracts would be inconsistent with competitive procurement processes intended to protect ratepayers. Other states have considered implementing an inflation-adjusted bid pricing formula. Our workshops will explore other states' approaches and how these approaches could provide potential processes for post-award contract changes.

Other states' approaches questions for feedback:

1. Are there states we should be researching and talking to, in addition to the above?
2. Are there recent statutory or regulatory developments about which we should be aware?
3. Many of these states have dealt with these challenges in the context of off-shore wind projects and changed assumptions in off-shore wind project development costs. By contrast, Illinois faces this concern with respect to onshore wind and solar project development.
 - a. To what extent, and how, are these issues different for onshore renewable energy projects versus offshore projects?
 - b. How do renewable energy generation technological differences more generally inform the issues that need to be worked through in determining whether post award contract changes are warranted, and if so, through what process?

Stakeholder Feedback Process

How to Respond:

Please provide comments via email to the IPA's Director of Renewable Energy Finance, Chandrika Mital, at chandrika.mital@Illinois.gov with the subject "[Responder's Name] – Post Award Contract Change Workshops" by June 28, 2024.

Responses will generally be made public and will be published on the Agency's website at <https://ipa.illinois.gov/renewable-resources/stakeholder-engagement/downstream-negotiation-for-indexed-rec-contracts.html>.

However, should a commenter seek to designate any portion of its response as confidential, that commenter should provide both public and redacted versions, and the Agency will only post the redacted version. Independent of that designation, if the IPA determines that a response contains confidential information which should not be disclosed in connection with a competitive procurement event, it reserves the right to provide its own redactions.² The Agency will protect confidential information under Section 1-120 of the IPA Act.³

All feedback on scope, timeline and process for the post award Indexed REC contract changes workshop process is welcome. Stakeholders may comment on as many or as few of the questions as they would like. Stakeholders should not feel limited by the questions offered and may also provide other information that they deem relevant to the Agency conducting post award contract changes.

² Stakeholders may submit information via a secure transfer website if they are concerned about transmitting confidential or sensitive information by email. Please email IPA.ContactUs@Illinois.gov to request access.

³ 20 ILCS 3855/1-120.