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ILLINOIS POWER AGENCY

**Post-Award Indexed REC Process First Workshop: Pain Points for Developers with the current Indexed REC Process (without the ability to negotiate post-award)**

**AGENDA  
July 29, 2024**

1. Introduction

a. People (IPA, NERA)

- 47 attendees

b. Indexed REC Process

Pursuant to Section 1-75(c)(1)(G)(v) of the IPA Act,<sup>1</sup> the IPA, through its Procurement Administrator (NERA Economic Consulting), administers competitive procurement events to procure RECs from utility-scale wind and solar projects, brownfield site photovoltaic projects, and hydropower projects using an indexed pricing model.

Through the indexed pricing model, bidders specify a strike price, which is a contract price for energy and renewable energy credits, akin to an all-in price for RECs and energy. The resulting REC price constitutes the difference resulting from subtracting the strike price from the index price for that settlement period, with the index price representing the real-time energy settlement price at the applicable Illinois trading hub.

c. History of the Workshop Process

As described in Section 5.4.8 of the IPA's 2024 Long-Term Plan ("Plan"), the IPA's current indexed REC procurement structure results in renewable energy project developers bidding a set strike price into the indexed REC procurement generally before most project development has commenced. If the developer's bid is selected, they must contractually commit to that price even if the market conditions, such as supply chains, component costs, interest rates, interconnection costs, interconnection delays, and other variables, change between the when the contract is awarded and project energization, which can be as long as a several years.

The Agency has been made aware that, due to the recent volatile market conditions, some projects that have been selected in the IPA's indexed REC procurements have seen the cost of development and construction increase substantially, making projects potentially uneconomic at the awarded strike price—thus winning bidders may be left with the choice to either build an uneconomic project or to terminate the contract and face a possible two-year suspension from the IPA's indexed REC procurement events. Further, a forced default due to changed economics leaves Illinois further behind on RPS progress, as capacity allocated to projects under eventually-defaulted contracts cannot be reallocated to future procurement events until the original project contracts are terminated.

In the 2024 Plan, the Agency outlined this workshop process to explore the issue of post-award contract changes, with a goal that an indexed REC contract post-award negotiation process may be finalized for inclusion in a compliance filing within one calendar year after

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<sup>1</sup> 20 ILCS 3855/1-75(c)(1)(G)(v).

the ICC approved the Plan in February 2024.<sup>2</sup>

2. Workshop Logistics
  - a. Workshop Format
  - b. Q&A
3. Discussion Topic: Pain Points for Developers with the current Indexed REC Process (without the ability to negotiate post-award)
  - a. Cost challenges
    - Cost categories?
      - **Dawn Fischer, Ameresco:** Primarily developing brownfield IREC projects from Fall 2022 procurement event. What was surprising for Ameresco was the vast difference in projects from the Northern and Southern parts of IL. The price discrepancy between the two regions even beyond PLA costs was surprising. Ameresco worked with unions to understand discrepancies give the limited opportunity visibility into the target price.
        - **Chandrika:** Are you saying you wish there were different categories or price or that wish you knew more about what is causing the discrepancies?
        - **Dawn:** Would be helpful if the IPA had differences in target price between the 2 regions, which would help them change how they approach this in the future and how to focus their projects.
      - **Chandrika:** Anyone have comments on what categories of cost and input should be considered? Similarly, if there are data sources that we should be looking at in the market, please let us know.
        - **Alejandro Aixala, Invenergy:** Section 5.7.3 covers shortfalls and cures?
        - **Chandrika:** yes, and Section 5.8 covers benchmarks
    - Minimum cost thresholds for renegotiation?
    - Input costs established by third-party?
      - **Chandrika:** We understand that there's interest in input into developing benchmarks Are there any 3<sup>rd</sup> party reports or data sources to inform our benchmark so we can look at what developers are seeing in the market?
      - **Jeff Ferry, Vistra:** Challenges come from anytime you have an interconnection process that takes 3-5 years, expectations of what would be economic when putting together bids have changed drastically with this time of interconnection (supply chain, inflation). There are multiple issues driving these challenges, and Vistra has cancelled contracts because the economics make the projects infeasible. Trying to figure out other ways to develop these same sites, which delays the economic benefits.
        - **Chandrika:** In light of these challenges, any suggestions? What thresholds or categories would be helpful to reexplore? What can the IPA do to help with these contracts, if we allow for certain changes while maintaining integrity of the process? And what, if any penalties, should be in place for gaming, etc.? What can be in place to prevent cancelling contracts?
        - **Jeff:** Needs to get additional expertise on the line to have this discussion. You have costs of material, labor. But cannot answer Chandrika's questions directly today.
    - **Chandrika:** Do most people feel the challenges are inflation-related or something more specific to IL that we can talk about? What are the

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<sup>2</sup> Final Order at 16, ICC Docket No. 23-0714 (Feb. 20, 2024).

possibilities for establishing change of input costs if anyone has any suggestions?

b. Non-cost challenges

- Supply chain challenges

- Development timeline?

- **Chandrika:** What other challenges are people seeing because we sign this contract early in the cycle, that you would like to see more flexibility on? How does the IREC contract vary from the contracts you may be signing with a Google/Meta than what you are signing with the State? How does it vary and are certain terms better on one contract form than other?

- **Rachel Shifman, Orsted:** Don't currently have contracts with IPA. One thing they see is a clause in the PPA that allows utilities to stop making REC payment when they run into RPS budget challenges. This is a big risk that our management team cannot wrap their heads around and financing parties are not comfortable with. Coming from the offshore wind industry and moving to onshore, signing a deal 10 years before commercial operation date (COD) may be tough. Encourages IPA to look at NYSERDA's process for inflation protection... you can pick specific indices or do a general inflation index between time signing contract and COD, and adjust PPA price accordingly.
    - **Chandrika:** Thank you for bringing this up, we're actively looking at structures from other states including NY.

- **Christopher Kozlowski, Earthrise Energy:** To earlier point about nonpayment risk embedded in the contract, would like to explore the IPA's commitment to this. Understand not exceeding budget parameters and a change required a legislative fix, but nonpayment risk is troublesome when thinking about financing. Pro: Collateral requirements are relatively small compared to the market, which is a positive for current structure.

- **Chandrika:** The RPS budget concern is a concern we all share. Without a legislative fix, the IPA cannot change much here. But the IPA does 3- and 5-year projections. If we do end up in a scenario where we see budget shortfalls, we will not continue procuring if we cannot meet current commitments in contracts. Do these rate caps exist that limited the RPS budget? Yes, and we can see how it constrains financings. We need a change in the law, but if there's a shortfall projects, we can assure you we'll fulfill our current obligations before taking on new ones.
    - **Christoper:** Gets it but wanted to highlight prior comment on this. Understands the commitment to utilize 95% of the budget. Maybe tighten it more to get developers comfortable? Understands the legislative limitations, but if there are other things the IPA or ICC could do to help with nonpayment risks, would appreciate this.

- Force Majeure events

c. Index REC contracts vs. Bilateral contracts

d. Other

4. Questions Submitted in Advance of the Workshop

- **Ben Chee, NERA:** We have received a number of questions related to the risk of triggering an event

of default under the Indexed REC Contract due to underperformance of REC delivery requirements. Currently, the contract provides that it is an event of default if Seller fails to meet its delivery year requirement for five or more years and the aggregate shortfall amount meets or exceeds the annual quantity requirement. First, the main objective of the REC delivery requirement is to ensure we have serious bids in the procurement process and to avoid a situation where we have a bidder that speculatively bids on a quantity that it has no intention or ability to fulfill under the contract. Given the nature of the competitive process, the quantity awarded to one bidder may mean that we will have to take that quantity away from another bidder, which may preclude such other bidder from an award. As such, the requirement is to address chronic underperformance under the contract. We understand that there could be some bad weather events that may lead to shortfall years, and the contract provides a myriad of flexibilities to accommodate such events. These flexibilities are summarized in Section 5.7.3 of the 2024 Long-Term Plan and they include the following:

- the contract extended the number of shortfall years to 5 years (from 3 years) for an event of default to be considered and will only be triggered if the aggregate shortfall amounts equals or exceeds the annual quantity.
- Seller's failure to meet the delivery year requirement through the first two (2) full Delivery Year as well as any stub period prior to the first full Delivery Year will not constitute a shortfall amount;
- to accommodate potentially higher levels of degradation to better match contracted REC deliveries with anticipated project projection, Sellers of photovoltaic projects are now able to self-designate a degradation rate up to 1%, which would be built into the contract calculation of the delivery year requirement;
- Seller may also make manual transfer of RECs to the Buyer(s) for the purpose of reducing shortfall amounts incurred in one or more delivery years, which may include RECs that were generated in excess of prior delivery year requirements and RECs that were not previously committed to the Buyer(s);
- the acceptable vintage period is 20 years and 1 additional month to allow for RECs to be counted as eligible for payment and settlement; and
- there is also flexibility on size changes after contract award subject to the terms of the contract. As such, if a developer would like to build something bigger to mitigate the risk of a shortfall, there is no prohibition to do so, and the contract allows at time of energization for Seller to indicate the percentage of the project that it may want to commit to another off-taker, while committing to delivering the quantity it had bid on; and any REC quantities generated beyond the delivery year requirement belongs to Seller to be used at its sole discretion.

## 5. Future Workshop Topics and Workshop Dates

- **Chandrika:** For the second workshop on Aug. 26, if there are comments, please share them.
  - Workshop #2 on August 26<sup>th</sup>: We will dig into contract terms that parties would like to propose to be negotiable—and why or why not around why these should be negotiable?
  - Workshop #3 on September 30<sup>th</sup>: We will discuss the pros and cons of other states' models around whether or not to allow for contract renegotiation. Particularly, we will look at NYSERDA's approach to deciding whether to allow for construction renegotiation given how similar our structure is.
  - Workshop #4 on October 28<sup>th</sup>: We will drill down on the challenges we've heard in other workshops and what we could have as a flexible contract given the parameters we're bound by Illinois law.
  - Workshop #5 on November 25<sup>th</sup>: We will recap of what has been discussed in the prior workshops, discuss what solutions for existing contracts we have come up with together, and we will evaluate our best path forward, including developing a proposal to be included in a compliance filing filed with the ICC in February 2025.

## 6. Next Steps After the First Workshop

### a. Posting of Workshop Summary

- **Chandrika:** At least 1-week before each upcoming workshop, we will post the summary of the prior workshop, share the agenda for the upcoming workshop, and seek questions and discussion topics from stakeholders for items to discuss in the upcoming workshop.

### b. Second Workshop Topic: Contract Terms that Stakeholders Would Like To Be Negotiable Post-Award

### c. Second Workshop Agenda: to be sent out to Stakeholders for feedback on discussion topics before the Second Workshop

### d. Other Stakeholders

- **Chandrika:** Are there people not in this room that we think should be in this room? When have IPA, NERA, utilities representatives, and energy developers. Anyone not here that should be to make this discussion more fruitful?
  - **Alejandro:** any member from ICC staff who could attend (would be walled off from participating in discussion).
    - **Chandrika:** We will take this internally to discuss how the ICC can be involved.