

Questions Submitted for Post-Award Workshop #1 and Responses

Question 1:

The threshold for defaults under the form contract is equal to three (3) or more Shortfall Years (based on if the cumulative sum of the Shortfall Amount in all Shortfall Years equals or exceeds the Annual Quantity). This threshold standard triggers a default if a projection has as little as a 5% variation in production. Under current financing practices, lenders as a matter of course assume worst-case scenarios the contemplate production variances in excess of 5% production variances. As a result, the default thresholds in the current form contracts are rendering them impracticable to finance. How does the IPA propose to address this? Would the IPA consider alternatives, for example, inserting a “grace” range on Shortfall Amounts such that the first 5%-10% would not be counted against the Shortfall Amount solely for the purpose of determining whether a default has occurred?

Question 1 Response:

The IPA’s 2024 Long-Term Plan addressed this issue specifically in Section 5.7.3.; which was approved by the ICC in February 2024 and has been implemented in the Indexed REC contracts. We have attached that Section in an Appendix to this document for review as well. There are multiple flexibilities in the contract that helps accommodate shortfalls. These flexibilities include the following list below and Items (a), (b) and (e) were specifically expanded in the 2024 Long-Term Plan to accommodate the pain point raised:

- a. Shortfall under the Indexed REC contract will only result in an Event of Default if: (i) Seller fails to meet the Delivery Year Requirement for five (5) or more years (which do not need to be consecutive), and (ii) the cumulative sum of the Shortfall Amounts for all Shortfall Years equals or exceeds the annual quantity;
- b. Delivery underperformance for the initial partial Delivery Year when RECs are first delivered and then the first two (2) full Delivery Years are excused such that Seller’s failure to meet the Delivery Year Requirement through the first two (2) full Delivery Years as well as any stub period prior to the first full Delivery Year will not constitute a Shortfall Amount;
- c. An acceptable vintage period of 241 months (i.e., 20 years and 1 month) starting on the month of electric generation underlying the first REC issuance and ending on the last day of the 241st month since the start of the acceptable vintage period, and a delivery period that extends three months after the conclusion of the acceptable vintage period;
- d. Flexibility on size changes after contract award subject to the terms of the Indexed REC contract;
- e. To accommodate potentially higher levels of degradation and better match contracted REC deliveries with anticipated project projection, the Agency proposed to enable Utility-Scale Solar Projects and Brownfield Site Photovoltaic Projects to self-designate a Delivery Year Degradation Rate up to 1%, which would be built into the Indexed REC contract Delivery Year Requirement Calculation.
- f. Additional flexibility on delivery requirements such that the three Illinois electric utilities no longer have first rights to the project’s RECs; and there is an option for Seller to indicate a percent of the project’s output it elects to commit to the Buyer under the applicable Indexed REC contract so as to allow for a third party off-taker to procure a portion of the project’s output that is not committed to the Buyer under the applicable the Indexed REC contract; and
- g. A process for Seller to 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).

Question 2:

Under the form contracts, there is an inability to cure any shortfall amount within a shortfall year. Thus, there is effectively no cure for any type of default. Alternatively, would the IPA also consider the ability to cure any Shortfall Amount in a given year, through purchase by the Project of RECs on the market or by utilizing excess production from other Projects?

Question 2 Response:

The ability to cure shortfalls is addressed in the Indexed REC Contract. Any prior shortfalls may be cured by (a) transferring over any excess RECs generated in a year, (b) transferring over any RECs that are not pursuant to the Standing Order (or the Project Committed Percentage), (c) adjust the size of the project if necessary given there is no prohibition on size changes under the contract and (d) the acceptable vintage period also provides for 241 months to be counted as eligible (i.e., 20 years and 1 month for RECs to be considered eligible). In addition, there are other items as indicated in the response in item 1 to accommodate shortfall events.

Question 3:

There is significant ambiguity regarding how physical project layouts will be assessed. The contract provides that "... at least 50% of the Project [must be] located within the physical location identified in the Site Description in the Product Order ..." How will the "50%" rule will be interpreted? For example, it is not clear whether this standard means, on the one hand, that 50% of final project acreage must be in the same exact location as the original project submission to IPA, or on the other hand, whether this standard means that 50% of final project designs must be attributable to the percentage of project acres with solar panel coverage.

Question 3 Response:

For utility-scale wind, utility-scale solar, or hydropower project, at least 50% of the project must be located within the physical location identified in the site description in the product order. This should be interpreted as at least 50% of the final project acreage must be located within the boundaries of the site map proposed in the RFP. During the RFP process, the proposed site map and its boundaries may include a bigger land than the actual project site. This allows flexibility to seller to make necessary adjustment when building the project, and at the same time, assure that the project is being built on the proposed project site.

Question 4:

How is the IPA seeking to address concerns from developers regarding the finance-ability of the Event of Default provision related to Shortfall Amounts in Section 9.2(k) in the Indexed REC contract?

In Section 9.2(k), an Event of Default would occur if there are “five (5) or more Shortfall years and the cumulative sum of the Shortfall Amounts for all Shortfall Years equals or exceeds the Annual Quantity.” This provision has been identified by lenders as problematic, with many unwilling to underwrite or finance over such a provision.

Given these evident financing issues that could jeopardize the State of Illinois from hitting its procurement and RPS goals, we would ask that the IPA consider solutions that would address the above issue in both existing contracts and upcoming procurements. Solutions that should be on the table include:

- i. further increasing the number of Shortfall Years.
- ii. increasing the cumulative sum of the Shortfall Amounts that would trigger an Event of Default.
- iii. allowing Sellers to provide RECs to Buyer from another generator that satisfies Buyer’s RPS requirements.

Question 4 Response:

This is very similar to Question 1 above and the list of flexibilities for shortfalls is discussed in Question 1 Response above.

Question 5:

The definition of “a Cure” in the Event of a Default is currently undefined; this would need to reflect a meaningful cure period AND ways to cure that are commercially expedient that don’t necessarily involve signoffs from all three utilities.

Question 5 Response:

This is very similar to Question 2 above and the list of ways to cure a shortfall is discussed in the Question 2 Response above.

Question 6:

Project developers can have many “pain points” that vary from project to project and can be related to interconnection costs, permitting, component costs, labor costs, and other items as well. We’d like to know what the “pain points” are for the IPA and NERA in the benchmarking process. What elements of the calculation provide the most pain or heartache in determining the benchmark price? What variables are the most difficult to estimate?

Question 6 Response:

While the benchmark development process is a confidential topic in nature, the IPA understands that there are many interests for the process. Therefore, the Agency introduced a process to consider comments from the stakeholders in establishing the benchmark. Section 5.8. of the IPA’s 2024 Long-Term Plan, attached in the Appendix, provides a process for comments to be considered related to the benchmark inputs and process: “The Agency recognizes that potential bidders have a strong interest in understanding and helping shape the inputs and assumptions informing benchmark development, even if the benchmark prices themselves must remain

confidential. In light of these concerns, but given the need to maintain the confidentiality of benchmarks and ensure the integrity of the competitive bidding process.”

In the Summer 2024 Indexed REC RFP, the IPA’s Procurement Administrator solicited feedback on new data sources, inputs (for example, specific numbers or categories of inputs), or other insights to review for consideration, and asked the following questions in seeking feedback:

- What categories of cost, revenue, and other inputs and assumptions should be considered in benchmark development?
- What data sources should be used to ensure the most relevant, up-to-date market information is used for benchmark development? Please provide links to any data sources and include information as to whether the information is publicly available or behind a paywall.
- Please provide your comments and insights on any category of cost, input (specific numbers or categories of inputs, for example), and/or assumption and how it impacts current project development costs in Illinois or an adjacent state.

This is a dynamic environment and we want to ensure that we have feedback from market participants. Please do let us know if you have any pain points and anything you would like us to consider. We want to ensure that if there are pain points or items the market participants want us to consider, there is an avenue for us to receive that information. As such, we are looking forward to receiving your feedback to the benchmark development during the comment process in the upcoming RFP.

Appendix

Section 5.7.3 of the IPA's 2024 Long-Term Plan: Indexed REC Contract Flexibility

To ensure that entities who participate in in the Agency's procurement events do not speculatively bid and are committed to delivering the RECs offered through the RFP, the Indexed REC contract requires the Seller to meet the delivery obligations under the contract. In each Delivery Year, the Seller must deliver to the Buyer the quantity of RECs that meets the Delivery Year Requirement under the terms of the parties' Indexed REC contract. If the Seller fails to deliver the Delivery Year Requirement for a Delivery Year, such amount of RECs that the Seller fails to deliver to satisfy the Delivery Year Requirement for such Delivery Year shall be deemed a "Shortfall Amount."¹

In recognition of the variance and unpredictability inherent in wind and solar project output, several accommodations have been incorporated pursuant to stakeholder input to assist the Seller in meeting its delivery obligations under the Indexed REC contract. These accommodations include the following:²

- a. Shortfall under the Indexed REC contract will only result in an Event of Default if: (i) Seller fails to meet the Delivery Year Requirement for three (3) or more years (which do not need to be consecutive), and (ii) the cumulative sum of the Shortfall Amounts for all Shortfall Years equals or exceeds the annual quantity;
- b. Delivery underperformance for the initial partial Delivery Year when RECs are first delivered and then the first full Delivery Year are excused such that Seller's failure to meet the Delivery Year Requirement through the first full Delivery Year (i.e., the first June 1 through May 31 period in the delivery term) as well as any stub period prior to the first full Delivery Year will not constitute a Shortfall Amount;
- c. An acceptable vintage period of 241 months (i.e., 20 years and 1 month) starting on the month of electric generation underlying the first REC issuance and ending on the last day of the 241st month since the start of the acceptable vintage period, and a delivery period that extends three months after the conclusion of the acceptable vintage period;
- d. Flexibility on size changes after contract award subject to the terms of the Indexed REC contract;
- e. The integration of a Delivery Year Requirement Calculation based on a 0.5% degradation adjustment for Utility-Scale Solar Projects and Brownfield Site Photovoltaic Projects;
- f. Additional flexibility on delivery requirements such that the three Illinois electric utilities no longer have first rights to the project's RECs; and there is an option for Seller to indicate a percent of the project's output it elects to commit to the Buyer under the applicable Indexed REC contract so as to allow for a third party off-taker to procure a portion of the project's output that is not committed to the Buyer under the applicable the Indexed REC contract; and
- g. A process for Seller to 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).

Although these accommodations provide the Indexed REC contract with a good amount of flexibility, some commenters on the draft Plan sought a shift to "unit-contingent" contracts through which delivery requirements would map strictly on actual project output. While the IPA was hesitant to change the overall Indexed REC contract structure, in the 2024 Long-Term Plan filed with the Commission in October 2023 for approval, the

¹ As defined in the Indexed REC Contract, the "Shortfall Amount" is the quantity of RECs that Seller fails to deliver to satisfy the Delivery Year Requirement for a Delivery Year.

² These accommodations are provided for exemplary purposes and may be changed through the standard contract development process.

Agency proposed additional contract flexibility on three of the accommodations listed above to better manage the variability in project output.³

Regarding item a., the Agency proposed to change the Event of Default to occur if Seller fails to meet the Delivery Year Requirement for five (5) or more years (which do not need to be consecutive), rather than the current three (3) or more years. This change should allow additional flexibility should weather or other factors result in unforeseen system underproduction.

Regarding item b., under the current Indexed REC contract, delivery underperformance through the first full Delivery Year is excused and will not constitute a Shortfall Amount. To provide additional accommodation for the period directly following project energization, the Agency proposed to change this underperformance allowance to extend through the first two (2) full Delivery Years, during which delivery underperformance would be excused and will not constitute a Shortfall Amount—a twelve (12) month extension of the excuse period versus the current contract. The Delivery Year Requirements that prevent RECs eligible for payment to exceed the Maximum Contract Quantity would remain the same.

Regarding item e., the current Indexed REC contract uses a Delivery Year Requirement Calculation based on a 0.5% Delivery Year Degradation Factor adjustment for Utility-Scale Solar Projects and Brownfield Site Photovoltaic Projects. However, the Agency is aware that some projects under contract may expect or experience degradation levels above this amount. To accommodate potentially higher levels of degradation and better match contracted REC deliveries with anticipated project projection, the Agency proposed to enable Utility-Scale Solar Projects and Brownfield Site Photovoltaic Projects to self-designate a Delivery Year Degradation Factor up to 1%, which would be built into the Indexed REC contract Delivery Year Requirement Calculation. As with the current contract, the Delivery Year Requirement for the last Delivery Year would still be adjusted so that RECs delivered under the contract may not cumulatively cause the Maximum Contract Quantity to be exceeded.

Beyond these changes to the Indexed REC contract under this 2024 Plan, further changes to the contract may occur during the contract development and comment process prior to the next procurement event.⁴

Section 5.8 of the IPA’s 2024 Long-Term Plan: Benchmarks

Prior to the revisions to the RPS contained in Public Act 99-0906, benchmarks used for renewable energy resources procurements (i.e., confidential price levels above which no bids would be accepted) were developed pursuant to a statutory provision requiring that the price paid for renewable energy resources being procured “not exceed benchmarks based on market prices for renewable energy resources in the region,” and required that such benchmarks “be developed by the procurement administrator, in consultation with the Commission staff, Agency staff, and the procurement monitor” and “subject to Commission review and approval.”⁵

As modified through changes found in P.A. 102-0662, “cost-effective” means that the prices for RECs

do not exceed benchmarks based on market prices for like products in the region. For purposes of this subsection (c), “like products” means contracts for renewable energy credits from the same or substantially similar technology, same or substantially similar vintage (new or existing), the same or substantially similar quantity, and the same or substantially similar contract length and structure. Benchmarks shall reflect development, financing, or related costs resulting from requirements imposed through other provisions of State

³ As with the accommodations already utilized in the Indexed REC contract outlined above, the three new proposals may still be modified through the Indexed REC Contract development process if further changes are warranted, although the IPA is committed to pursuing implementation of these proposals for Indexed REC procurements covered by the 2024 Plan.

⁴ 220 ILCS 5/16-111.5(e)(2).

⁵ 20 ILCS 3855/1-75(c)(1) repealed effective June 1, 2017.

*law, including, but not limited to, requirements in subparagraphs (P) and (Q) of this paragraph (1) and the Renewable Energy Facilities Agricultural Impact Mitigation Act. Confidential benchmarks shall be developed by the procurement administrator, in consultation with the Commission staff, Agency staff, and the procurement monitor and shall be subject to Commission review and approval. If price benchmarks for like products in the region are not available, the procurement administrator shall establish price benchmarks based on publicly available data on regional technology costs and expected current and future regional energy prices.*⁶

Changes through P.A. 102-0662 clarified that a) benchmarks are “confidential” (which is separately required under Section 16-111.5 of the PUA) and b) benchmarks developed shall reflect any costs imposed by “other provisions of State law” (which the Procurement Administrator would generally otherwise seek to do). By law, these benchmarks are not to be used to curtail or otherwise reduce contractual obligations entered into by or through the Agency prior to June 1, 2017.⁷

Due to the sensitive nature of the benchmark development process and how the release of information related to the level of the benchmark could impact bidder behavior in competitive procurements, additional information has never been provided regarding the process for developing the benchmark or any range of potential benchmark prices. Potential bidders have never been provided with an opportunity to comment on benchmark inputs or have been given visibility into the methodology itself, including around how project-related “development, financing, or related costs” are being estimated. In comments on prior Long-Term Plans and comments offered on procurement documents, potential bidders have sought to ensure that the Procurement Administrator is incorporating the most relevant, up-to-date market information into the methodology used for benchmark development.

The Agency recognizes that potential bidders have a strong interest in understanding and helping shape the inputs and assumptions informing benchmark development, even if the benchmark prices themselves must remain confidential. In light of these concerns, but given the need to maintain the confidentiality of benchmarks and ensure the integrity of the competitive bidding process, in the Plan filed with the Commission in October 2023 for approval, the IPA proposed process changes to the Indexed REC benchmark development process:⁸

First, as part of the development of procurement requirements and standard contract forms leading up to each Indexed REC procurement event, the Procurement Administrator will release the following:

- Categories of cost, revenue, and other inputs and assumptions utilized within the benchmark development methodology; and
- General data sources potentially utilized by the Procurement Administrator, without revealing any specific data points or values anticipated to be utilized and without linking any specific data source to any specific input category.

Next, potential bidders will be allowed at least two weeks to comment on the Procurement Administrator’s release, including the ability to provide their insights around appropriate market assumptions and to propose additional sources of data or information that the Procurement Administrator should consider in establishing benchmarks. Potential bidders may designate confidential, proprietary, or commercially sensitive portions of their comments as confidential, in which case only redacted versions of those comments will be published.

⁶ 20 ILCS 3855/1-75(c)(1)(D).

⁷ Id.

⁸ These proposed changes are only for Indexed REC procurements, where benchmarks are developed for evaluating the economics of specific projects, rather than gauging wholesale market conditions. The Agency does not intend to make similar changes to the development of benchmarks used for energy and capacity procurements that are outside the scope of this 2024 Long-Term Plan.

Those new data sources, inputs, and insights outlined in comments will then be reviewed for consideration by the Procurement Administrator, Procurement Monitor, IPA, and Illinois Commerce Commission staff in the development of benchmark prices used for that upcoming Indexed REC procurement event. However, the proposed benchmark prices submitted to the ICC for approval will remain confidential, and whether any specific data source proposed by potential bidders was indeed relied upon will remain confidential.

While not a wholesale overhaul, the IPA is hopeful that these benchmark development changes will provide increased transparency into the Indexed REC procurement process in a manner that better accommodates participants to procurement events.