



Clean Grid Alliance feedback and recommendations for implementation of a post-award contract adjustment for indexed-REC contracts

Clean Grid Alliance (CGA) appreciates the opportunity to support the IPA’s efforts to address the need for renegotiation of Indexed-REC contracts. With the passing of the Climate and Equitable Jobs Act (CEJA), Public Act 102-0662, there is an increased urgency to ensure delivery of Renewable Energy Credits (RECs) to meet the General Assembly’s renewable energy generation goals. Utility-scale solar and wind obtained in competitive procurements run by the IPA account for the largest percentage of those RECs. Thus, ensuring to the maximum extent possible that successful bidders can bring their utility-scale solar and wind projects to full operation and to deliver RECs under the procured contract is critically important.

However, as discussed below, the past four years have seen unique challenges to the renewable industry owing to an unforeseeable global pandemic and international conflicts that have disrupted markets, supply chains, and development and construction schedules. Meanwhile, the current interpretation that standard REC contracts, which are not negotiable at the time of bidding, may not be renegotiated or amended at a later date means that the REC contracts are particularly inflexible for dealing with the unexpected—from national and international trends to site-specific and financing challenges. While CGA supports a legislative change to address the contract renegotiation process, such as that proposed in Illinois Senate Bill 3959, we believe that the IPA is both authorized and empowered under current law to revise and amend contract terms in existing and fully signed (or future signed) indexed-REC contracts. Allowing amendments to indexed-REC contracts will assist Illinois in reaching its REC goals while ensuring that projects are economically viable and that bidders are not forced to account for an artificial and unnecessary risk through termination of existing contracts or higher pricing for future bids.

1. Utility-scale renewable energy procurements are critical to meeting the requirements of CEJA.

CEJA requires the Illinois Power Agency (IPA) to procure 45,000,000 RECs delivered annually by 2030. Of that amount, the law directs the IPA to procure 45% from wind and hydropower projects and 55% from photovoltaic projects. For new photovoltaic projects, 47% of these RECs are to be procured from utility-scale (above 5 MW) projects. However, as documented in the 2024 Long Term Renewable Resource Procurement Plan (“Long-Term Plan”), and as discussed below, IPA has faced significant challenges in procuring this level of RECs. This is due to 1) low participation in procurement events due to, among other

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factors, the risk of contract suspension by the utility when the cost cap is exceeded; and 2) significant attrition due in part to projects losing economic viability after delays and outside market forces rendering the awarded untenable. While there appears to have been healthy interest in the early indexed REC procurements—which by their pricing term addressed one industry-identified risk with fixed pricing—CGA understands that some early winning bidders of indexed REC contracts have already run into challenges with particular terms of the contracts.

2. The REC shortfall, as described in the 2024 Long-Term Plan, is a threat to the success of CEJA.

According to the October 2024 RPS REC and Budget Forecast Update, the state of Illinois is on track to fall far short of its REC procurement requirements. Per that Update,¹ RECs under contract peak in delivery year 2027-28, but that peak only meets 49% of the REC target. Further, it is unknown whether that peak will ever be realized given that it includes over 4.75 million RECs from indexed REC contracts for projects that are not yet energized, some of which may never be, as discussed below.

More concerning yet, the IPA recently released data showing that none of the indexed-REC contracts that have been awarded since 2022 have been energized to date. Of the 43 awarded projects awarded during this period, three projects have been dropped, representing over 475 MW of the 3,400 MW or roughly 14%.²

Data from 2017-2019 shows an attrition rate of 32% of awarded RECs in the utility-scale program.³ While the Long-Term Plan notes that IPA remains optimistic that the revised procurement process utilizing indexed REC contracts will result in a lower attrition rate, even though one source of risk (fixed REC pricing) has been removed there is no data available to show that the net effect of the entire contract—with remaining concerns about utility payment, rigid under-delivery provisions, substantial change-in-law risk, and an inability to amend—results in less attrition. The anecdotal evidence CGA has received to date from developers (including its member companies), however, is that indexing RECs has not provided a silver-bullet solution to the broader set of problems even as it does solve some. Assuming that the attrition rate does not significantly change under the indexed-REC contract structure, the shortfall problem described above will only continue to worsen, making Illinois incapable of meeting CEJA's renewable energy requirements. Ensuring that current contracts can be fulfilled, whether in full or in part, is therefore critical to CEJA's success.

¹ October 2024 RPS REC and Budget Forecast Update, Table 3-5, p. 10.

² Illinois Clean Energy Dashboard, <https://cleanenergy.illinois.gov/>. "Competitive Procurements" data retrieved on October 8, 2024. Projects labeled as "not developed" include Freeport Solar South, LLC (3.9 MW), Prairie Creek Wind, LLC (200 MW), and County Run, LLC (274 MW).

³ Table 3-8: 2017-2019 Forward Procurement REC Portfolio Status, 2024 Long-Term Plan, p. 60.

3. Unforeseen Market Volatility Has Led to Major Project Delays and Increased Cost.

As noted by the IPA throughout this process, the renewable energy industry has seen unprecedented market volatility, resulting in significant cost overruns for projects in the development phase. These cost increases have resulted from unforeseeable global influences on supply chains, including the COVID-19 epidemic, delays caused by the Uyghur Forced Labor Prevention Act (UFLPA), and the conflict in Ukraine.

Although these specific market forces have largely settled, continued uncertainty in pricing, interconnection delays, and market volatility present ongoing challenges with the IPA's indexed-REC procurement process. While interest rates have been steady and may decline, labor rates have been escalating as seen with recent auto worker contracts, dock worker union contracts, and many others that are pushing annual labor costs increases above 7%.⁴ In addition, potential escalation of conflict in the Middle East, and devastating storms, such as tropical storm Helena, are examples of unforeseen events that can significantly impact the markets for building supplies and therefore impact the costs to develop projects.

Recent price increases for renewable energy development have far outpaced inflation. Overall inflation as measured by the Consumer Price Index has caused prices to increase by 8% between May, 2022 and July, 2024. However, the IPA's average awarded strike price increased by 39% during that time—and, of course, these awarded projects only include those where the winning bid is below the confidential "benchmark" maximum bid price.⁵ Given the average time between IPA's award of an indexed-REC contract and delivery of the RECs that have been contracted for can easily span 2 years or more, a post-award adjustment presents a necessary mechanism for developers to ensure that projects remain economically viable from contract signing through development, and that bids into the process continue to use reasonable assumptions relating to inflation and other economic risk.

4. Development of utility-scale renewable energy projects requires more flexibility than is currently provided for through the indexed-REC contract process.

CGA's members stand ready to assist the state in meeting CEJA goals through the development of new utility-scale solar and wind energy projects. However, the process is not currently set up to ensure that developers can deliver on these awarded contracts when unforeseeable delays and shifts in global market conditions arise.

As an initial matter, the interpretation of statutory requirements that the IPA use standard contracts that are not negotiated as part of the bidding process to prohibit *any* post-execution amendments (even though all IPA procurement REC contracts that CGA has

⁴ [Unions are the strongest in decades. Nearly a million Americans got double-digit raises as a result | CNN Business.](#)

⁵ May, 2022 average strike price listed at \$52.43/MWh, whereas the July 2024 procurement event results showed an average strike price of \$73.06/MWh.

reviewed contain an amendment provision) derives from a time when the IPA was procuring only commodities such as block energy, capacity, and spot RECs. This interpretation is unsuitable for the complex world of project development, where serious bidders and very real and well-developed projects run into challenges as broad as international forces and as specific as local conditions. While CGA acknowledges that the IPA Act and Public Utilities Act require a standard contract that all bidders must agree to as part of bidding, also prohibiting subsequent amendment rather than providing a rational process to address the unforeseen will only hamper the State's ability to meet its obligations under CEJA.

5. Post-award contract adjustments to indexed-REC contracts provide a benefit to all parties.

CGA supports a process for a post-award adjustments to indexed-REC contracts under clearly defined circumstances. Allowing a post-award adjustment of strike price and, on a case-by-case basis, other contract terms, presents significant advantages to the State of Illinois, developers, and ratepayers alike. The State will benefit from ensuring that RECs secured in procurement events are realized, moving the state closer to its clean energy policy goals. Developers have increased certainty that their projects will remain economically viable. Ratepayers will have increased price certainty for the cost of RECs purchased under the contracts (in contrast to a cancel/rebid process, assuming the post-award adjustment is capped). The state and ratepayers will benefit from lower initial bids that embed less of a risk factor. And, everyone can avoid the need to participate in an onerous cancel/re-bid process.

6. The current structure presents challenges for financing projects.

Overall, the issues indicated above have impacted awardees' ability to access capital. For projects to be successful they must, of course, be subject to rigorous project finance standards established by lenders. The finance markets have not reacted positively to the standard Indexed REC IPA contract. In particular, developers have received negative feedback regarding the production and shortfall requirements. Banks tell developers that the rigid production standard leads to potentially unnecessary defaults, and the concomitant need for cures (via purchase of replacement RECs, or the purchase of additional acreage to make up any potential shortfall).

Renewable energy project developers have received feedback from lenders that there is an unwillingness to underwrite the Indexed-REC contracts' delivery requirements. The financiers require a so-called "P99" standard for underwriting projects (meaning that 99 times out of 100, the project will meet its contract production targets). Because the finance markets now require a P99 production level standard, in practice, this means that solar developers in particular must arrange for larger project sizes and associated acreage. One knock-on impact of the current contract form creates merchant price risk. This is because banks will not finance solar projects under the P99 standard given the existing Indexed-REC contract form. If the developer cannot meet the contract volume requirements, it will be in default, thus ultimately requiring the seller to find an off-taker and assume merchant

risk. In addition, the P99 standard causes the need to gain site control over a larger amount of acreage to meet the P99 standard under the contract's 50% land usage mandate in Section 2.2(e) of the contract.

7. To address these issues, CGA has the following recommendations for implementation of a post-award negotiation process:

- The IPA should allow post-award amendments to strike price as well as other contract terms, including but not limited to the quantity of RECs to be delivered under the contract.
- For changes to the strike price due to changed market circumstances, CGA recommends using a transparent formula that is available to all parties on the IPA website that uses agreed-upon region-specific indices, tracking factors such as component prices for solar and wind, interest rates, and labor rates. This prevents a developer from highlighting a single cost that may have increased without taking into account trends in other major cost categories that would influence the project's economic viability.
- The IPA will publish monthly the indices which can be used in a formula that weighs each index to determine an overall price index for solar and wind projects. The formula can be used by sellers to determine the price adjustment, in dollars or percentage, from the contract award date to a date prior to construction. This increased transparency will also better inform bidding, allowing bidders to reduce risk premiums on those tracked cost components when building up competitive bidding strategy.
- If the published formula shows that the change in contract price is more than 2%, the seller may request an adjustment to the strike price, up to 20% above the original price.
- The seller may, prior to commencing construction on a project, request that the IPA approve a price adjustment for the contract based on the formula results. In addition, the seller may also request a change that results from a project-specific changed circumstance. Such changed terms and conditions could include changes to the REC delivery requirement amounts and the 50% land usage requirement.
- Whether the strike price or other terms are subject to renegotiation, the seller should be required to pay a fee for the renegotiation and post additional collateral. This ensures that a developer is putting additional financial resources behind demonstrating that the project is viable.
- The IPA will evaluate the request and validate the contract adjustment. If the IPA concurs with the request a contract addendum will be prepared for the buyer and seller and a confidential report will be submitted to the ICC. If the ICC approves the request for renegotiation, the contract addendum will be executed by the buyer and seller.

- For individual project-based adjustments, the IPA will evaluate whether the project is viable based on information shared by the seller (or such additional information as may be requested by the IPA) and evaluate whether the proposed change responds to circumstances outside the seller's control that have changed since the bid. The purpose of these changes is to ensure that projects will deliver RECs towards the State's goals at the original bid strike price, which is more beneficial than rebidding the same project or to have the project turn to the private PPA market where the RECs are not counted toward the State's goal—if the project is built at all.
- Contracts awarded from prior procurements as well as future procurements events will be eligible for renegotiation if they qualify under the process outlined above.