Clean Grid Alliance Feedback

IPA Draft Proposal for Adjusting the Indexed REC Procurement Process

Clean Grid Alliance appreciates IPA's efforts to work toward a solution for developers who face unexpected cost spikes or other hurdles in project development under an indexed-REC contract. Having a process in place to allow for post-award contract adjustments is critical to ensuring that renewable energy projects get built and that Illinois can progress toward its renewable energy procurement requirements.

The January 17, 2025 proposal put forward by the IPA offers promise that some of these hurdles may be addressed. However, CGA believes that there are some remaining questions and concerns about IPA's proposed approach, which are outlined below.

In CGA's view, the price adjustment mechanism provides a streamlined solution that allows the IPA to adjust contract prices when market forces outside a developer's control render a project financially unviable under the original contract terms. This protects both the developer, who in reliance on the REC contract, moves forward with developing a renewable energy project, and the Utilities, who as counterparties to the REC Contract, rely on annual REC deliveries to meet their state mandated RPS requirements. Inability to deliver on the contracts hurts all parties, developers, utilities and the State of Illinois. Utilities cannot mee their REC procurement requirements, leading to the State of Illinois not achieving its clean energy goals and the developers must terminate their contracts, which can result in penalties and potential prohibitions on bidding into future procurement events. Therefore, it is critical that the adjustment mechanism is properly structured and implemented in a way that supports its intended objectives and promotes its use.

1. Inflation adjustment mechanism components

Although the IPA's proposal indicates that the inflation-adjustment mechanism will "account for, but will not be limited to, changes to project costs, due to inflation," the proposal does not specify other cost risk factors that may be built into the mechanism. CGA understands that IPA plans to more fully develop the adjustment mechanism at a later date. However, in addition to inflation, CGA submits here that IPA should include key financial risk components, including,

but not limited to, the impact of interest rates and tariffs on overall project costs that may not be otherwise included in the general data on inflation.

Second, CGA has reservations about the automatic nature of the adjustment mechanism. A developer should have the discretion to determine whether, and when, to invoke the adjustment mechanism. This would better allow for the project-to-project variables that affect the overall economic viability of a project. If a price adjustment is tied to a specific time period expressed in months, weeks, or days, that price adjustment may not accurately capture the projects' stage of development and may cause undue delay by requiring a developer to wait until after the price adjustment date passes before entering into final contracts.

Tying the adjustment to a project development phase may be a more viable option (i.e. when component/materials prices are locked-in), but IPA would need to rely on developers to signal when those development phases are reached for each contract or project. Each developer may have different procedures for executive level or board approval of project phases which may not align with the nature of an automatic adjustment mechanism. Developers have significant capital at risk for the projects and may potentially face undue risk with an automatic adjustment.

During the workshop process, IPA along with the stakeholders should determine at what stage or stages of development and based on what criteria a project can request a price adjustment rather than setting a fixed and automatically-invoked standard for all.

2. Bid evaluation

The proposal states that the inflation adjustment mechanism will be available on contracts if the contracting party "opts-in" at the bid stage. Making an apples-to-apples comparison of bids may be additionally complicated considering the proposal's contemplation that an "opt-in" means agreeing to an as-yet unknown potential price *decrease*. Concerns and possible outcomes of this potential risk of a price decrease are discussed in further detail below. Given these considerations, CGA requests clarification in the ICC filing of the following:

- How will bids that have chosen to "opt-in" to the adjustment mechanism be evaluated against bids that do not select the "opt-in"?
- How will the IPA's benchmark calculation reflect the consideration of both bids that include the opt-in and bids that do not? (i.e. will there be a separate benchmark developed for bids that have opted for the perceived less-risky path that assumes a lower cost built into the benchmark price for risk?)

3. Downward price adjustment – financing considerations

CGA has concerns about the potential for a future downward price adjustment under the IPA's proposal. As described, CGA understands that an "opt-in" results in an automatic price adjustment, at an as-yet unknown point in time, in an amount determined by an as-yet unknown formula, with an as-yet unknown cap on the amount of the price increase or decrease. Without

knowing the specifics of IPA's proposal, it is difficult to weigh in on the potential effects of this mechanism, but our members have expressed concern that an automatically-triggered decrease could have two possible effects that would make this proposal unworkable. First, the potential for an automatic price decrease may jeopardize developers' ability to secure funding for projects, as financers could be reluctant to finance a project that includes this level of unknown risk. Second, in an attempt to offset this risk, developers may add a premium to their bid prices to protect against a decrease, thus undermining the mechanism's benefit to the IPA and ratepayers of receiving a bid amount that more closely reflects current market conditions.

4. Proposed Change to Delivery Obligations Section of the Indexed REC Contract

CGA appreciates IPA's responsiveness to previous feedback on the need for the ability to adjust REC delivery obligations under Indexed-REC contracts based on the actual project build. Developers understand the importance of delivering on the intended nameplate capacity to ensure that the state reaches its intended RPS goals. However, providing flexibility to adjust the annual REC delivery amount when a project, for reasons outside of the developer's control, cannot reach its originally-planned scale, will provide a significant safeguard against contract default.

To that end, CGA supports IPA's approach on this issue. However, we offer the following suggestions to improve IPA's proposed approach:

- CGA suggests an additional project development category that would substantiate a request to adjust the REC delivery requirement. Namely, CGA requests that IPA add the ability to change the REC delivery requirement based on a significant nameplate capacity size reduction based on technological changes or availability. This would cover instances where supply chain or other materials issues require a developer to use components other than those planned upon bid submission that result in the project producing less than the contracted RECs.
- CGA suggests a different approach for defining a triggering event for a REC-delivery issue. Challenges associated with project development that would result in a need for this contract adjustment are not always one discrete event. Rather, they can result from a series of events or snowballing complications. Instead of tying the ability to request this to six months from a single "triggering event," we suggest tying this to a one-time request by a developer prior to commencement of construction.
- Please clarify what IPA considers to be a "significant size reduction" for the purposes of this modification, and how IPA will determine whether the change affects "project viability"? What type of documentation or burden of proof will be required for developers to establish that this standard has been met?

5. General questions and feedback

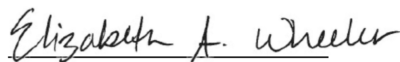
CGA notes that, while the IPA's proposal outlines a general approach to substantively how the contracts may be changed, it does not detail the procedure for doing so. CGA requests additional transparency on IPA's proposed adjustment procedure including answers to the following:

- Will a change to the REC-delivery requirement require an entirely new contract or simply an updated transaction agreement?
- Once the IPA approves a price or REC delivery adjustment, who is responsible for amending the contract with the utilities?
- Will IPA revise or amend the contract and ensure that all the relevant parties sign? Or will this responsibility fall on the developers and, if so, will the IPA provide guidance and a directive to the utilities for the necessary revisions to the contract?
- Will the amended contract need to be approved by the ICC and if so who is responsible for filing the amendment for approval?
- What is required of all parties to the contract to finalize the amendment?
- What is the role of the utilities in this process, aside from countersigning the amended contract? And how can developers be assured that the utilities will agree to amend the contract?

Finally, please clarify whether a developer may take advantage of both the inflation adjustment mechanism and the REC delivery adjustment.

Please do not hesitate to reach out if you have questions or would like to discuss further with CGA. We are happy to discuss our comments and questions at any time.

Respectfully submitted this 3rd day of February, 2025.



Elizabeth Wheeler
Senior Counsel, Director of Regulatory Advocacy
Clean Grid Alliance
ewheeler@cleangridalliance.org