

JOINT SOLAR PARTIES COMMENTS ON CHAPTER 5

TOPIC 1: RPS Budget Rate Impact Cap

Questions

1. How has the RPS budget impacted participation in procurement events?

JSP RESPONSE: The impact of the RPS budget is a bidder-by-bidder decision. As trade associations, the Solar Energy Industries Association, Coalition for Community Solar Access, and the Illinois Solar Energy Association are not privy to the decision-making process of individual members. However, given the downward pressure on prices from competitive procurements and risk over a 20-year contract (which will not begin the delivery period in many cases for at least 1-3 years after selection), the Joint Solar Parties would not be surprised if some market participants were concerned about the risks of exceeding the RPS budget.

2. What suggestions do you have for how the Agency can administratively limit Seller risk given a capped RPS budget?

JSP RESPONSE: While a full fix would almost certainly have to have a legislative component to ensure continuing payment to existing contracts, an administrative fix might include additional clarity (beyond analogies to the anticipated budget shortfalls in the months before CEJA) to how a shortfall would be handled. Topics of interest might include: (1) will RECs generated during a budget shortfall period be paid at a later date or simply returned to Seller? (2) will the REC Contract be extended to match the suspension? (3) Under what circumstances can a utility exercise discretionary termination?

3. Contracts featuring a price collar offer more RPS budget certainty, but also carry an acute contract risk for non-payment at the strike price should wholesale energy prices be extraordinarily low or high.

a. Are there appropriate price collar structures that would result in more stable/predictable budget estimates for the Agency while minimizing cost/risk premiums for future participants in the IPA's procurement events? If so, what are those structures?

b. If utilizing a price collar, how should the Agency determine the most appropriate/least costly ceiling and floor? Symmetrically or asymmetrically distributed around the strike price? Should the ceiling and floor be set as a percentage of the strike price, or perhaps as stated in a predetermined \$/MWh?

JSP RESPONSE: The Joint Solar Parties do not take a position on this question.

Topic 2: Post-Award Contract Negotiation

Questions

1. How can the IPA protect the integrity of a competitive, price-based procurement process utilizing standardized Indexed REC contracts while accommodating necessary adjustments should circumstances materially change?

a. What are the proper guardrails to consider in thinking through what components of a contract could possibly be reconsidered?

b. Is there an administrative pathway to contract revision without ICC approval?

JSP RESPONSE: Currently, the Indexed REC contracts allow for amendment if mutually executed in writing (*see* Section 15.7(c) of current Indexed REC Contract for the Spring 2023 procurement). The Joint Solar Parties oppose any renegotiation of price. However, development frequently relies on circumstances outside of the control of the bidder or that change subsequent to development. One potential solution is to provide certain terms that utilities may, in consultation with the IPA, agree to amend without approval (because the Commission has explicitly provided such authority in an approved LTRRPP). Examples of sections where the Commission might allow renegotiation in consultation with the IPA might include Sections 2.4 (to allow for different or additional extensions), 7.1 (to allow for mutually agreed alternative performance assurance), or Exhibit E.

2. Which states or processes could the IPA look to as an example of allowing post-award contract modifications with appropriate guardrails in place?

Topic 3: Collateral Requirements, Including Possible Buyer-Side Collateral

Questions

1. Are the Seller's collateral requirements from the Agency's 2022 procurement events adequate?
 - a. What collateral requirement changes should be included in the Agency's REC contracts going forward?
 - b. Are collateral requirements a barrier to participating in procurements?

JSP RESPONSE: The collateral requirements are neither insufficient nor excessive.

2. Should Buyer-side collateral be considered for future Indexed REC procurement events?
 - a. From where would Buyer-side collateral be taken? If taken from RPS budget collections, would this be a prudent use of RPS funds?
 - b. What would be the appropriate level of and structure for Buyer-side collateral to effectively manage potential non-payment risks?

JSP RESPONSE: The Joint Solar Parties support in principle a mechanism to ensure payments are timely made and to cover for temporary budget shortfalls. The Joint Solar Parties have no recommendations about the source of such funds.

TOPIC 5: Brownfield Site Photovoltaic Project REC Procurements

Questions

1. What changes to brownfield site photovoltaic REC procurements are appropriate given successful brownfield bids in the Agency's 2022 procurement events?
2. Section 1-75(c)(1)(C) also allows for the Agency to "consider other approaches, in addition to competitive procurements," to bring brownfield site photovoltaic project RECs under contract.
 - a. Should alternatives to competitive brownfield site photovoltaic REC procurements be considered as part of the 2023 Long-Term Plan?

b. If so, what alternative procurement approaches would be preferable to competitive procurements and why?

JSP RESPONSE: As long as brownfield solar procurements continue to meet statutory targets, there is not necessarily a need to impose new approaches. However, if in future years there fails to be successful brownfield solar procurements, JSP recommends revisiting how best to adjust approaches to meet goals of CEJA (including the statutory goals for non-community solar generation on brownfield sites) within the competitive bidding or ABP construct.

TOPIC 6: Labor Requirements in the Agency's Competitive Procurements

Questions

1. What challenges do utility-scale or brownfield project developers face in implementing these labor requirements?

JSP RESPONSE: As long as the Project Labor Agreement is not required to be submitted at a commercially unreasonable point in development—which is not currently the case under the Indexed REC procurements that allow filing at several different points tied to construction and negotiation—the administrative implementation of statutory requirements is not unnecessarily burdensome.

a. What impact, if any, is there upon bidder participation in competitive procurements as a result of prevailing wage requirements and project labor agreements?

2. Currently, the IPA requires project labor agreements to be submitted to the Agency within the later of 60 days prior to project construction, 30 days after the execution of the project labor agreement, or 30 days after the execution of the REC Contract.

a. Are these guidelines sufficient to ensure the compliance with the requirements of 1-75(c)(1)(Q)(2)?

b. For bidders seeking REC Contracts for projects that have commenced construction prior to the solicitation of bids, should the Agency require the submission of the project labor agreement with the bid qualification materials?

JSP RESPONSE: The Joint Solar Parties believe the current deadlines are adequate to ensure compliance because in no case will a project commence construction without demonstrating a PLA as the Joint Solar Parties interpret the requirements unless construction already commenced at the time of bidding—in which case the PLA would be demonstrated well before delivery of the first REC and payment obligations except in extreme cases where construction is completed before the REC Contract is signed. Under those very limited circumstances, the 110% clawback is sufficient contractual protection for ratepayers.

Topic 7: Minimum Equity Standard Requirements

Questions

1. How do these equity requirements impact bidders' participation in competitive procurement events?

JSP RESPONSE: The Joint Solar Parties anticipate that—like all new requirements—there will be adjustments in the market as the compliance framework is built out. The Joint Solar Parties support

the goals of the minimum equity standard and note that it is a statutory requirement applicable to all participants.

2. Given that the structure of the required reporting for the Minimum Equity Standard is tied to annual delivery years (beginning June 1 of a given year and ending May 31 of the following year), what is the best way to align the reporting requirements for utility-scale and brownfield projects? Should entities receiving REC contracts submit their Compliance Plans on June 1 at the start of each delivery year? At some time after REC contract execution? Some other point?

JSP RESPONSE: The Joint Solar Parties suspect that compliance plans submitted 30 days after bids—assuming many are in early study or pre-interconnection stages at the time of bidding—are unlikely to have much more than aspirational goals when an EPC contract likely has not been negotiated. The June 1-May 31 schedule allows better update and alignment with EPC agreement negotiation and construction progress (if any is anticipated in that delivery year).

3. How should the Agency evaluate Minimum Equity Standard (“MES”) compliance by Equity Eligible Contractors that bid into the Indexed REC procurements?

JSP RESPONSE: The Joint Solar Parties recommend evaluation of all information submitted but with a particular attention to plans and follow-through once construction gets closer. The Joint Solar Parties anticipate that the EEC ecosystem and available EEPs will grow as time goes on and the MES program is internalized by the solar market.

4. Section 1-75(c-10)(3) directs the Agency to “develop bid application requirements and a bid evaluation methodology for ensuring that utilization of equity eligible contractors... is optimized.” In addition to requiring that bidders receiving a REC contract meet the MES and providing a bid adjustment for those that commit to exceed that MES, what other steps might the Agency take to facilitate greater utilization of Equity Eligible Contractors?

JSP RESPOSNE: The Joint Solar Parties do not have any current recommendations because of the tension between actual achievement with the project workforce and contracts based on pay-as-bid pricing with no adders for MES over-compliance. However, JSP does encourage and support the IPA in building the EEC and EEP list so there is increasing geographic and skill diversity to ensure there is robust participation and partnership.

Topic 9: Procurement Quantities and Timing

Questions

1. Is this the optimal approach to procurement frequency and quantities? If not, what alternative is preferable and why?

JSP RESPONSE: The current approach has worked well, with procurements being frequent enough to allow for continual applications but not too frequent to overlap.

2. How can the IPA provide more certainty around future procurement schedules to help attract interest from parties that may seek to participate in repeat solicitations?

JSP RESPONSE: The Joint Solar Parties do not propose any changes to the scheduling at this time.