[redacted]'s RESPONSE to IPA's REQUEST for COMMENTS REGARDING its NEXT WIND PROCUREMENT

[redacted]'s ("[redacted]") comments are in response to the Illinois Power Agency's March 16 request for general feedback on barriers that may have or may limit successful participation in the Next Wind Procurement, and responses to specific questions enclosed in its notice for feedback[1].

[redacted] has prepared and submitted a confidential version of its comments.

IPA QUESTION #1. *With the recent extension of the Production Tax Credit ("PTC") for 2020, and assuming that there is no further extension, what would be the latest date a procurement would need to be completed in order for you to make use of the PTC for a project participating in the procurement (for example by utilizing the safe harbor provisions)?*

[redacted] **ANSWER**:

For Illinois to take advantage of the PTC extension, a procurement would need to occur prior to or in Q1 2021, and no later than the first-half of Q2 2021.

IPA QUESTION #2. *The IPA has the option of using the contract form from previous utility-scale wind procurements with minor updates (previous contract here, and a summary of the contract structure can be found on slides 16-21 of this presentation), or updating the contract structure as described in the Revised Long-Term Renewable Resources Plan (see Sections 5.3 and 6.7). If the IPA updates the contract structure, the IPA intends to hold workshops on the contract structure and to seek at least one round of written comments on specific contract terms. Such a process is expected to result in the Next Wind Procurement being held no earlier than in late fall 2020 and possibly as late as Spring 2021. If the IPA uses the existing contract with minor updates a procurement could be held in late Summer 2020.*

> ***a. How*** *important is updating the contract given the likely impact of such an update on the timing of the Next Wind Procurement? In particular, if the timeline for updating the contract conflicts with the timing needed to make use of the PTC, which would be more important to prioritize?*

[redacted] **ANSWER**:

See [redacted] response to IPA question #6.

[1] IPA, "Wind Procurement Stakeholder Request for Feedback."

__b. Assuming__ that it is more important to prioritize an update to the contract, what specific provisions from the contract form used in previous utility-scale wind procurements presented a barrier to participation?

[redacted] **ANSWER**:

See [redacted] response to IPA question #6. In addition, there are components of the Fall 2019 wind procurement contract that make the REC contract difficult, if not impossible, to finance. Below is a list of the provisions that hinder financing that [redacted] members have shared with us. This is not a comprehensive list.

- **General Contract §2.2**. Section 2.2 gives the Buyer unilateral authority to suspend the contract if it cannot recover costs from its customers through its pass-through tariffs. This issue is completely outside the control of the Seller, yet it is assuming the risk under the most recent contract. Banks identify this provision as a significant risk, and it drives up the cost of project bids.
- **Article 7**. Article 7 requires the Seller to deliver RECs, even if contract obligations change pursuant to ICC order or legislative amendments that occur after execution of the contract. This provision requires the Seller to make changes necessary to Deliver REC amounts required under the contract, *without limit on cost or burden*. This risk is too great for banks to finance. [redacted] suggests the IPA use a commercial reasonableness test when a regulatory order, legislative change or court order changes a substantive requirement of the contract. The commercial reasonableness test would allow the contract to be voided if the change makes it commercially unreasonable for the Seller to comply with the contract.
- **Successor to MRETS and PJM GATS.** The contract specifies that the delivered RECs are certified by PJM GATS or MRETS. The contract is silent on the course of action to be taken if either one of these REC validating programs ceases to exist. If MRETS or PJM GATS were to cease, it would likely result in the contract being unintentionally voided. To avoid that from occurring, the IPA should replace references to 'MRETS' with "MRETS or its successor." Similar language should be used for PJM GATS.
- **Contract Quantity is Generally Inconsistent with Current Market Practice (Table 1/§3f).** The contract requires the Seller to deliver a fixed quantity of wind RECs each

Delivery Year. REC contracts commonly require a project to deliver a fraction of the facilities annual output. Because these contract only procure long-term wind RECs, the wind project owner still owns the energy portion of the REC that the owner is forced to sell to another entity. The sale of energy is typically quantified as a fraction of the project's annual output. The inconsistency between the long-term REC contracts fixed output and any supplemental contract a wind project owner enters into to sell energy can cause an owner to default on the contract selling the energy portion of the plant's output if that year's energy output is below average. [redacted] recommends changing the bidding quantity to a fraction of the bid quantity. This gives the Seller (i.e., wind project owner) the ability to control its output, and manage its risk.

In addition, the combination of the fixed volume requirement and penalties related to underperformance cause Sellers to bid roughly 70% to 75% of their average forecasted energy generation. This either drives up bid costs or makes the long-term RFP incapable of providing economic benefits.

c. ***Assuming*** *that it is more important to prioritize an update to the contract, are there other contract forms that you have used or reviewed from other jurisdictions that could serve as a basis for updating the contract structure in Illinois? What are the advantages of these other contract forms?*

[redacted] **ANSWER**:

No response.

IPA QUESTION #3*. [****CONFIDENTIAL****]* *Crucial to a successful competitive procurement event is ensuring that a sufficient number of qualified and competitive bids are received, and crucial to obtaining those bids is ensuring that bidders are given sufficient time to achieve the required level of project maturity. How much time would you require to have a project or projects ready for submittal assuming that the level of project maturity required is unchanged from prior utility-scale wind procurements? Are there advantages that would be presented by a later (Spring of 2021) rather than an earlier (Summer or Fall of 2020) bid date that are not captured by previous questions?1 For this question, "completed" means the date that the REC delivery contracts between the utility and the winning bidders are fully executed, which would be three business days after the Illinois Commerce Commission approves the procurement results and seven business days after the bid date.*

[redacted] **ANSWER**:

[redacted]

IPA QUESTION #4. *The project maturity requirements in previous utility-scale wind procurements are contained in Section IV.2.3 of that procurement's Rules. A participant could either provide an executed Interconnection Agreement for the project or demonstrate sufficient site control.*

a. ***Please*** *comment on the appropriateness of these requirements for demonstrating that a project is sufficiently advanced in its development to be eligible to bid, or suggest alternative criteria for consideration. If you propose alternative criteria, please explain your rationale in detail.*

[redacted] **ANSWER**:

[redacted] recommends these requirements be adjusted. [redacted] proposes the project maturity requirement be related to either a site control standard or an RTO interconnection milestone. [redacted] would recommend a site control standard of 50 acres of land per MW of nameplate wind capacity. And the interconnection milestone standard would be MISO's completion of the Phase 1 study report or PJMs completion of the system impact study.

In addition, [redacted] believes it is important to minimize defaults on awarded contracts. To that end, [redacted] recommends the IPA review projects that have defaulted on contracts awarded through the IPA procurements and solicit information on how those instances can be prevented from occurring in future procurements.

b. ***One*** *way in which a project could meet the project maturity requirements in prior utility-scale wind procurements was to provide a fully executed Interconnection Agreement. Please comment on the current delays in obtaining an Interconnection Agreement and any uncertainty around the timing of completing interconnection.*

[redacted] **ANSWER**:

No response.

***c. Please** comment on current obstacles that may be presented by selecting and securing a site for new utility-scale wind projects. Are there ways for the project maturity requirements to accommodate the presence of these obstacle while still ensuring that a project is sufficiently advanced in its development to be eligible to bid?*

[redacted] **ANSWER**:

No response.

***<u>IPA QUESTION #5</u>**. The previous procurement required pre-bid collateral of $5,600/MW (with a maximum of $4 million for all projects submitted by a bidder) and a post-bid collateral requirement of $4 times the annual REC quantity (note contract will be for 15 years of REC deliveries). Please comment on whether these amounts are appropriate for pre-bid collateral to ensure bids are from viable projects, and for post-bid collateral to ensure successful completion of projects and REC deliveries during the term of the contract.*

[redacted] **ANSWER**:

These amounts are appropriate for REC-only products.

***<u>IPA QUESTION #6</u>**. [**CONFIDENTIAL**] Illinois features a unique market structure, with the majority of the state's load served by retail suppliers, all while PPAs for energy off-take are unavailable through the state's electric utilities. To what extent is long-term revenue certainty for energy off-take necessary (by opposition to desirable) to finance your proposed project? To what extent do the limited options for long-term certainty around that energy off-take present a barrier in Illinois versus other markets?*

[redacted] **ANSWER**:

[redacted]

[redacted] appreciates the opportunity to submit comment on this topic.

[redacted]