Responses to Questions from the Illinois Power Agency
Regarding its Upcoming Wind Only REC Procurement
from
[redacted]

March 30, 2020

[redacted] would like to offer the following responses to the Illinois Power Agency's (IPA's) request for feedback on barriers that may limit the successful participation in upcoming wind energy procurements.

[redacted]

[redacted]

As such, we strongly recommend the IPA consider updating its contract structure to allow for the procurement of both energy and Renewable Energy Credits (RECs) through either bundled contracts or a variable REC construct as described in our responses below. The ability to find a purchaser of energy only, without RECs, is extremely limited, making participation in the IPA's procurement process less attractive.

We appreciate the ability to provide the following comments in response to the detailed questions proposed by the IPA.

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)?*

The latest date for an award to use the PTC provisions would be in Q2 2021; however, we would encourage an earlier award date to capture the best prices for ratepayers. The earlier the award is provided, the more likely the project will be able to be built in 2023, which likely will result in lower prices for consumers than projects built in 2024. We anticipate a high demand for resources to build projects in 2024 based on the current cliff of the PTC at the end of that year. The strain on the workforce, materials, and suppliers will likely result in higher costs to construct in 2024 than in 2023. However, without an extension of the PTC, projects that can deliver in 2024 will still be lower cost than projects delivered in later years. Therefore, we recommend the IPA issue an award no later than Q2 2021, and earlier if possible.

While the timing of the completion of the procurement is relevant, it is secondary to the structure of the RFP. To receive bids that are the most competitive and beneficial to consumers, the IPA should consider contracts that are either bundled with energy, or that allow for variable priced RECs.

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?*

It is important to update the contract if the contract will allow for the procurement of both energy and RECs (structured as either a contract for differences or as a simple bundled PPA – paying a single price for energy and RECs), or to allow for "variable" REC pricing. A REC-only, fixed-price contract, while helpful, would not incentivize the delivery of wind projects as much as a fully bundled contract, which removes wholesale price risk for generators, thereby making the project possible to finance with the single offtake contract.

    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?*

As mentioned in the previous section, a REC-only fixed price contract alone does not allow a project to attract finance since it only covers a small portion of the overall revenue needed to underpin the costs of the project. A fully-bundled (RECs + energy) offtake contract would remove this significant risk and would significantly boost the viability of a project once it holds such a contract.

In addition to this overall restructuring, [redacted] has six suggestions to improve the form of the contract used by the IPA:

1) **Section 3(f) – Gives IPA undue control over other purchasers' RECS**

The IPA's standard contract requires projects to deliver a fixed quantity of RECs from the project every year (the "Annual Quantity" in Table 1). Typically, REC contracts from a specifically designated facility are written not in a fixed quantity obligation, but instead are formulated in

terms of a proportional output of the facility in a 'buyer's fraction' concept. The ramifications of the current, detrimental IPA formulation are that the project owes the fixed Annual Quantity of RECs to the IPA off-takers regardless of generation at the project. This concept is harmful when an IPA contract is added to a project which has additional off-takers and places the IPA off-taker in an unfair premium position to every other off-taker at the project who is taking a 'buyer's fraction' of output.

In 3(f) of the cover letter the project is forced to represent that if it fails to deliver the REC quantity to the Buyer, that the project has not delivered RECs *from the project* to anyone else. This representation is not limited to the percentage of output that the developer bid into the auction; it is made on the generation of the entire project. This representation demands that projects withhold deliver RECs to any other off-takers at the project who have an established 'buyer's fraction' of output before satisfying the IPA contracts.

We suggest changing the bidding quantity to represent a fractional output of the facility and then limit the above representation to the fractional quantity bid only. This would allow projects to 'carve-out' a portion of the RECs for the IPA off-takers, and another portion for a bundled off-taker without jeopardizing its IPA contracts.

2) 5(d): Public Interest Criteria

This construct puts all the risk for failure to meet Illinois' standard for "public interest criteria" to the project if it signs this contract. If the project fails to meet the criteria (which would be determined by the ICC after the execution of this contract), it is an Event of Default, and the project owes damages equal to 1 year's revenue. This is an unfair burden to place on projects participating from adjacent states and stifles competition.

We suggest the Event of Default for a project's failure to meet the Public Interest Criteria should be changed to a no-fault walk away for the project owner if the ICC rules the project isn't in the public interest.

3) Section 2.2. of the General Contract: Buyer ability to Suspend/Terminate

The section added to 2.2 gives the Buyers the complete ability to walk away from the contract if they are unable to recover their costs associated with this contract from their ratepayers. As projects with IPA contracts look to be financed, banks interpret a Buyer's ability to unilaterally pause a revenue instrument's settlement for an indefinite period of time due to factors beyond the Seller's control as a significant risk, which increases the cost of financing and drives up the cost of the overall project. While we occasionally see utilities require a one-time condition precedent to obtain approval for cost recovery for a PPA from a state PUC or similar before a contract becomes effective, an ongoing, unilaterally exercisable option is out of the market.

4) MRETS and PJM GATS

This contract does not discuss what happens if MRETS and PJM GATS cease to exist. Typically contracts will specify that the registries are defined as "MRETS or its successor," and the

contract should provide a mechanism for the parties to agree on an alternative method of Delivery in the case where the registries cease to exist (attestation or similar).

5) Article 7: RECs considered Regulatorily Continuing

The RECs are considered Regulatorily Continuing. This means that if the standards change, the project is expected to meet the current standard in-place at whatever time it owes Deliveries. The IPA's amended and restated Article 7 in the main body of the contract does allow for some wiggle room: the contract is torn up in a no-fault walkaway only if:

> "To the extent that Government Action (i) renders Delivery illegal under Applicable Law or (ii) renders the Product ineligible to comply with the Applicable Program in such a manner that **no modification to the Product or action taken by Seller would allow the Product to comply with the Applicable Program."**

We suggest the IPA revise the bolded text above to include a commercial reasonableness test, similar to what is provided in other typical contracts. Without this language, the project is required to spend literally any possible sum of money to modify the facility to still comply with a new standard. If the project does not spend this unlimited amount of money and does not comply, then, the project is in default. We suggest the IPA add a commercially reasonable qualifier in front of the modification language such as: "...in such a manner that no **commercially reasonable** modification to the Product or action taken by Seller..."

6) Letter of Credit: Seek input on form from major lending institutions

The IPA's form Letter of Credit is inconsistent with the forms used by major lending banks, making it difficult for projects to meet the IPA's requirement. We suggest the IPA seek input from a few major lending banks on the form of LC and guaranty to make sure the IPA's language is reasonable.

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?*

We suggest reviewing other contract structures such as those seen in contracts from Hoosier Energy, Wabash Valley Power Association, and Evergy (formerly KCP&L).

3. *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?*

[redacted]

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*.

We applaud the IPA in having a maturity requirement for projects as this reduces the risk of attrition for the off-taker. [redacted] supports a project maturity requirement of either:

- Land control of 50 acres per MW of wind.

OR

- A completed System Impact Study (SIS) for PJM, or DPP Phase 1 report for MISO.

A full Interconnection Agreement is not needed since this usually comes much later in the process. It can take a substantial amount of time and cost that may not be likely without the commercial certainty of an off-take agreement. Having the SIS or DPP Phase 1 report would demonstrate that the project can likely be interconnected.

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.

We do not believe that a fully executed Interconnection Agreement is needed. The System Impact Study (SIS) in PJM and DPP Phase 1 report in MISO should provide the IPA with enough comfort that the project can be interconnected to the grid.

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?

Wind farm siting authority in Illinois is determined at the county level. While some counties have successfully permitted several wind farms with clear and timely processes, other counties have not. Unfortunately, permitting energy projects at the County level can turn into a highly political process, at any point, and this can be unpredictable. Projects which should be evaluated on the merits can be delayed at best or turned down at worst due to local politicking.

We have found that early and frequent engagement with County officials and with the public can assist with reducing these obstacles. Conducting open meetings early in the process and being open and transparent with development activities can provide valuable local feedback to help shape your project in a way that will be more welcomed by the community.

The IPA could ask developers to provide a summary of any outreach and education activities provided to the local community and permitting authorities, and an overview of plans for future activities. This would help to ensure all project developers are conducting these important activities. In New York, developers are required to provide a letter of acknowledgment from the local jurisdiction explaining that they are aware of the project.

5. *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.*

These amounts are appropriate for a REC-only transaction. We strongly encourage the IPA to shift their RFP to a bundled contract, or variable REC contract. If this shift were to occur, we would recommend increasing the post-bid security to reflect the increased value of the RFP. Market standard credit postings for bundled energy & REC contracts (or 'variable REC' contracts) are in the range of $100,000/MW of contracted nameplate capacity at contract execution.

6. *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]