

Comments of Cypress Creek Renewables to Illinois Power Agency Request for Follow-up Comments

Introduction & Overview

Cypress Creek Renewables (CCR) is a developer of utility-scale and community solar (CS) generation. CCR is actively developing a portfolio of CS assets across Illinois, and have been working closely with landowners, local and state officials, trade groups and allies to ensure that our project pipeline is as advanced and “shovel-ready” as possible.

CCR appreciates the diligent work the Illinois Commerce Commission (ICC), Illinois Power Agency (IPA) and its procurement administrator InClima have put into the development of this program, and we offer these brief comments in an effort to ensure program success. We also understand that IPA is likely receive a wide variety of comments to this request for comment, so in an effort to expedite the process, we offer these key points:

- 1. The collateral requirements in IPA’s proposed lottery process document are essential for program success and should not be diminished or altered**
- 2. The IPA should modify the definitions used to implement the Developer Cap.**
- 3. The IPA should clarify that the final project included under a developer’s cap shall be included in its entirety**

Further detail about the above points is outlined in the following pages.

- 1. The collateral requirements in IPA’s proposed lottery process document are essential for program success and should not be diminished or altered**

The collateral amount and deadline described in the IPA lottery and guidebook documents are an important element that will ensure program success. The requirements should deter vendors from submitting projects into the program without consideration of development risks. If a developer doesn't have confidence in the costs that could come due upon the project, then it should not enter that project into the program. If a project is awarded a REC contract, that project should be held accountable for delivery of the RECs regardless of remaining development risks. As such, IPA’s proposal is sound.

The IPA's proposed collateral due date will create a strong mechanism that will ensure IPA hits program goals. If a developer bids a project without confidence about costs and development risks, that project may fail to deliver, which poses a risk that the program does not achieve statutory goals. While a failed project may eventually "refund" its REC award and see those RECs re-assigned to the next project on the waiting list, it is unclear when those refunded RECs would be awarded, or if the next project on the list will even be eligible and/or hold a valid IA, thus has the potential to displace what would have been construction-ready projects.

2. The IPA should modify the definitions used to implement the Developer Cap

Because "affiliated family of developers" is a wholly new concept that is not mentioned in FEJA, the IPA's Long-Term Plan, Final ICC order or subsequent filings, these terms must be clearly defined. Ambiguity about the terms "developer" and "control" especially could restrict commercial activity in ways beyond the goals of the developer cap.

For instance, the Lottery procedure states that "this capacity cap will not be applied at any point after the initial lottery," but it is not explicitly clear whether the entity with ownership of a project selected in the lottery can sell that project to another entity at some point in the future without triggering the cap for the buying entity. Similarly, it is not explicitly clear if an entity that sells a project *before* the lottery will have that project counted toward its cap if the project (now under new ownership) is the selected in the lottery.

Language recommendation (footnote to Section D.1)

Developer' means the entity that, at the time of the Part I application, holds legal ownership of a project that is entered into the ABP.

If the IPA uses the definition above, there is no reason to define "control." If the current definition of "control" remains, it could cause unintended consequences that exceed the goals of the cap. Most notably, two completely unrelated developers that share a common equity investor could be caught up in a single developer cap. Lenders often provide financing to multiple developers, and under the IPA's definition of "control" the unrelated clients of that lender would share "common debt and equity financing arrangements." Further, a developer's arrangement with a particular lender may give the

lender some contractual ability to “direct the management [or] policies” of that developer. Under the IPA’s definition of “control” two unrelated developers that have similar contractual arrangements with the same lender would be subject to a single cap.

These concerns are especially acute because there are a relatively small number of lenders active in community solar finance. If every bank were unintentionally limited to 20% of any particular block, this could create enormous instability in the market and risk achieving program goals.

However, concern about this term is not limited solely to financing parties. Many companies interested in the Illinois ABP have a national or global focus. As such, it is very likely that two unrelated developers, installers or contractors could have any variety of contractual arrangements to buy, sell or construct projects in other markets. Any contract language that provides one party any recourse over the other could be perceived as “power to direct the management and policies” of the counterparty. Under the IPA’s definition of “control” those two unrelated developers would be subject to a single cap even though the contract that makes them “affiliated” relates to a completely separate transaction in another state.

The Joint Solar Parties do not believe this cap was intended to be applied so broadly, and IPA can eliminate this uncertainty by making the changes recommended here.

Language recommendation (footnote to D.1):

~~“Control” means the possession, directly or indirectly, of the power to direct the management and policies of an entity, whether through the ownership of voting securities, by contract, or otherwise. Affiliates may not have shared sales or revenue sharing arrangements, or common debt and equity financing arrangements.~~

3. The IPA should clarify that the final project included under a developer’s cap shall be included in its entirety

The IPA should clarify that if the developer cap is triggered, the final project selected should be included in its entirety under that party’s cap. If the final project were not included under the cap, a party will almost certainly receive less than 20% of the capacity of a Block, yet still have the cap applied.

Language recommendation (End of Section D.1):

In the event that the last project selected for any affiliated family of project developers in a Group/category would exceed the 20% capacity cap, that project would be approved in its entirety.