

## **Adjustable Block Program REC Contract Request for Stakeholder Comments**

April 9, 2020

Public Act 99-0906 (the “Future Energy Jobs Act”) provided for the establishment of the Adjustable Block Program (“ABP”) to procure of Renewable Energy Credits (“RECs”) from new photovoltaic distributed generation and community solar projects through 15-year contracts. A standard REC delivery contract between the utilities and Approved Vendors was developed and was published for use under the ABP in January 2019 (the “January 2019 REC Contract”).

On October 21, 2019, the Illinois Power Agency (“Agency” or “IPA”) filed its first revised long-term renewable resources procurement plan (“Revised Plan”), which was approved by the Illinois Commerce Commission (“ICC”) with modifications in Docket No. 19-0995 on February 18, 2020. Under the Revised Plan, the Agency proposed a substantial refresh of the January 2019 REC Contract based upon lessons learned from the execution and early administration of the initial contracts.

The Agency is issuing this Request for Stakeholder Comments as part of a series of workshops to review the contract structure and key contractual terms for the Adjustable Block Program. The nature and scope of subsequent workshop(s) will be informed by information received through this initial feedback process. It is expected that one or more interactive workshops related to the REC contract development will be held online given the evolving situation of COVID-19. Information related to the workshop(s) will be provided when it becomes available.

Based on the workshops, the Agency will work with the Program Administrator, Procurement Administrator, ICC Staff, and the utilities to develop a draft of the updated contract and will provide stakeholders opportunities to comment on the updated contract prior to its finalization.

Comments received through this Request for Stakeholder Comments will also inform the review process related to the contracts used for the Illinois Solar for All program, and the contracts used for competitive procurements held by the Agency to the extent applicable.

Specific questions on which feedback is sought are found below. Commenters need not respond to every question (some may be inapplicable) and should not feel limited by these questions in providing feedback. Comments are welcome from both participants in the ABP as well as from other interested parties.

**Responses are due by April 30, 2020 and should be sent to: [IPA.Solar@illinois.gov](mailto:IPA.Solar@illinois.gov)**

In general, responses will be made public and published on the ABP’s website (<http://illinoisabp.com/>) or the Agency’s website (<https://www2.illinois.gov/sites/ipa/Pages/default.aspx>). However, should a commenter seek to designate any portion of its response as confidential, that commenter should provide both public and redacted versions. Independent of that designation, if the Agency or its Procurement

Administrator or the ABP Program Administrator determines that a response contains confidential information that should not be disclosed, it reserves the right to provide its own redactions.

A copy of the Revised Plan<sup>1</sup> is available [here](#), the January 2019 REC Contract is available [here](#) and the Illinois Solar for All REC Contracts are available [here](#).

For the convenience of stakeholders and interested parties, Appendix A provides an overview of the contract structure of the January 2019 REC Contract, Appendix B contains contractual elements of the January 2019 REC Contract that are considered non-negotiables and Appendix C contains contractual elements of the January 2019 REC Contract that are expected to change or to be further clarified pursuant to the Agency's Revised Plan and ICC Order in Docket No. 19-0995.

Should you have any questions or need additional information, please contact Brian Granahan at 312-814-4635 or [Brian.Granahan@Illinois.gov](mailto:Brian.Granahan@Illinois.gov).

**The Agency is seeking feedback to inform the structure of the REC delivery contract.**

1. The January 2019 REC Contract uses as a base the ABA-EMA-ACORE REC Purchase & Sale Agreement and includes a Cover Sheet that modifies existing terms of the ABA-EMA-ACORE REC Purchase & Sale Agreement. The Cover Sheet is the main body of the contract that includes specific terms related to project requirements and delivery obligations as well as modifications to the ABA-EMA-ACORE REC Purchase & Sale Agreement by introducing specific edits to existing provisions or the removal of existing provisions.
  - a. The Agency is considering shortening and simplifying the REC Contract (and, if possible, synthesizing the contract into a single set of terms and conditions). This would remove the reliance of a coversheet to modify existing provisions or remove inapplicable provisions in the ABA-EMA-ACORE Master REC Purchase and Sale Agreement. What are key considerations as the Agency undertakes to redraft the REC Contract?
- *SRECTrade agrees that IPA should look to remove all inapplicable provisions as they currently only serve to cause more confusion when interpreting the contract. The contract should be revised as to be consistent with language used across the ABP program and guidebook.*
  - b. 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 for the ABP? What are the advantages of these other contract forms?
- *We believe language from the Master REC PSA regarding RECs and tracking registries should be leveraged but given the unique nature of the ABP program trying to adapt an existing contract would simply lead to the same issues created by attempting to adapt the Master Rec PSA to the ABP program. A unique contract based on the ABP program guidebook and operating procedures should be developed.*
  - c. The January 2019 REC Contract is used for both distributed generation projects and community solar projects, with numerous provisions specific to either distributed generation projects or community solar projects. Should there be separate contracts used for distributed generation projects and community solar projects?

- *Yes, the community solar project language causes a fair amount of confusion as it is interspersed throughout the existing contract. Almost every section has a subsection which says, "if community solar than.....applies". Separating these project types in some way would make it easier to read and interpret for all parties.*

- d. Various exhibits have been developed to record the progress of projects included in the REC delivery contract and to implement the requirements of the ABP. Do you have any specific comments on any of the exhibits appended to the January 2019 REC Contract (such as the form of the annual report or the Schedules to the Product Order)? Are there

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<sup>1</sup> An updated Revised Plan will be posted on April 20, 2020 to reflect the ICC Order in Docket No. 19-0995.

any which you believe are unnecessary? Are there any additional exhibits which should be included?

- *The exhibits provide useful information and help memorialize important changes to the contract at a project by project basis. However, they do not provide much functional value in administering the contract as they are in PDF form. It would be extremely useful for this data to be available for download via CSV on the ABP portal, for both parties.*

- d. The January 2019 REC Contract is structured as a Master Agreement with one or more Product Orders. Each Product Order is associated with a batch of projects and will contain project specific information for each project included in such batch. It is contemplated that only one Master Agreement shall be executed between the utility counterparty and the Approved Vendor. This Master Agreement – Product Order structure is not expected to change given projects are consolidated into batches and are approved by the ICC at the batch level under the ABP. Are there areas where the structure of the contract is currently unclear and should be clarified in respect of obligations or penalties applicable at a project level, or at a batch (portfolio) level, or at a master contract level?

- *The process for evaluating performance and collateral calls is currently not described in a coherent centralized section of the REC contract. We would recommend pulling together all terms of performance evaluation and collateral management into one section of the new REC contract with examples to provide additional clarity.*

**The Agency is seeking feedback on a variety of provisions in the REC delivery contract.**

- 2. Removal of Projects for convenience at the Approved Vendor's Request.** The January 2019 REC Contract requires each project to meet certain development milestones, the failure of which will lead to the removal of the project from the REC contract. The Agency recognizes that in some cases, the developer may learn that development of the project is no longer feasible in advance of the energization deadline and that it would be sensible at such point to remove the project from the REC contract (subject to penalties if applicable). Under the January 2019 REC Contract, prior to the ICC's Order in Docket No. 19-0995, such a project could not be removed from the contract until contract requirements related to the Approved Vendor meeting the project's energization deadline were not timely met. The Agency will introduce provisions that would allow the Approved Vendor to make requests to Buyer for the removal of the project from the REC Contract subject to applicable penalties such as the forfeiture of collateral. In introducing such provisions, are there specific issues that the Agency should consider? Are there other reasons that the Agency should consider for allowing the Approved Vendor to request the removal of a project from the contract or for allowing an early termination of the contract for convenience (subject to applicable penalties)?

*- We believe an approved vendor should be able to remove a project from the contract at any time (subject to penalties). There are likely to be scenarios in addition to a project not being built that would create the need for a project to be removed. For example if an ownership dispute arises or the panels are removed it may make sense to pay back the remaining contract balance rather than be subject to years of performance calls. This flexibility would avoid the need for future contract updates while maintaining REC and collateral obligations.*

- 3. Verification of Community Solar Subscription levels.** For community solar projects, the January 2019 REC Contract requires the Approved Vendor to maintain its subscription level each year. Failure to maintain the subscription levels each year from a baseline set forth in the contract will result in a draw on the Approved Vendor's Performance Assurance. In order for the Agency to verify subscription information, the Approved Vendor is required to provide written authorization in the form of Exhibit I to the contract (Subscription Information Access Authorization) from the owner of each community solar project, authorizing the interconnecting utility to disclose subscription information to the Agency (with any personally identifying information to be afforded confidential treatment by the Parties and the Agency). The Agency proposes for Exhibit I to the contract (Subscription Information Access Authorization) to specify certain verification information that it requires from the interconnecting utility including: utility account number, utility account name, subscription size (kWac), subscription start date, subscription end date (if

any, after the subscription has ended), and any changes to the subscription size over time. The Agency seeks input from stakeholders regarding the information requested and best practices related to obtaining such subscription verification information from the interconnecting utility (which may not be a counterparty to the REC contract) observed in other jurisdictions.

*-No Comment*

- 4. Mechanism of Collateral Holdbacks.** The Approved Vendor's Performance Assurance in the form of a letter of credit or cash is due within thirty (30) business days of the ICC approval of a batch for contract award. The Approved Vendor's Performance Assurance is maintained at a portfolio basis and is returned only after the expiry of the delivery term of all projects in a Product Order. The Agency will introduce flexibility whereby in cases where the Approved Vendor's Performance Assurance was posted through a letter of credit, the Approved Vendor may choose and request for the utility to withhold an amount from the last (or only, if a distributed generation system of 10 kW or smaller in size) REC payment as the Approved Vendor's Performance Assurance in exchange for a release/reduction of the letter of credit. Are there issues related to the process for such release or reduction of the letter of credit amount that the Agency is to consider in implementing this change?

- *A slightly separate issue but we strongly believe that holding collateral funds until the expiry of the delivery term for all projects in a Product Order is not appropriate. Typically unrelated projects are grouped together into Product Orders so it is likely that some project owners will complete their delivery requirement prior to other owners in that batch. This delay could be up to 18 months if a project in the batch had received an extension.*

- 5. Incorporation of Acknowledgement of Assignment forms.** Section 9.2 (page 32) of the January 2019 REC Contract contains assignment provisions. Since the finalization of the January 2019 REC Contract, the Agency has introduced two standalone forms related to assignments to be used in connection with the January 2019 REC Contract; namely: (a) the Acknowledgement without consent form to be used if the Assignee already is a valid Approved Vendor with an existing fully executed REC contract (click [here](#)), and (b) the Acknowledgement and Consent form to be used in all other situations (click [here](#)). The Agency proposes to integrate these forms into the REC Contract and seeks input on any necessary changes or areas where these forms could be improved. What are some key issues that should be considered or captured in the forms? Are there other contract forms from other jurisdictions that could serve as a basis for implementing the provisions related to assignments in the REC contract under the ABP?

*-No comment*

- 6. IPA as Mediator.** The ICC Order in Docket No. 19-0995 calls for the Agency to serve as a mediator between the utility counterparty and the Approved Vendor in disputes. What items should be considered for the Agency to act as a mediator in contract disputes between the utility counterparty and the Approved Vendor? Under what circumstances should the Agency recuse itself from this role? Should the IPA's determinations be binding on all parties, or merely advisory? How should the IPA memorialize or publish its determinations? Please provide proposed language to facilitate our comprehension of your comments on this matter.

- 7. Other Pertinent Issues.** Are there other pertinent issues to consider or areas where the January

2019 REC Contract has proven to be complex or inflexible in ways that may not benefit the Program? Do you have specific feedback on sections such as Extensions (Section 5(b)), Treatment of Performance Assurance in Connection with Interconnection Cost Estimates (Section 4.3(b)), Force Majeure (Article 6) or Assignments (Section 9.2) of the January 2019 REC Contract?

*-We would like to re-iterate the need for a clear and concise description of the performance evaluation and collateral collection process. This process is described in several areas of the REC contract and addressed in the FAQs but in general there is still confusion around the mechanics of how this will be handled. Additionally, we believe the proposed changes to the quarterly payment schedules will over complicate the administration of the contract and payment between utilities and approved vendors. We would recommend keeping the existing quarterly schedule. If the new monthly schedule is adopted, we believe sub 10KW systems should also benefit from the increased frequency of payments by being eligible for invoicing the first month they are P2 Verified.*

- 8. Illinois Solar for All REC Contracts.** The contracts for the Illinois Solar for All program were based on the ABP REC Contract with changes made (a) to conform with the specific requirements of the Illinois Solar for All program, and (b) to conform with applicable State of Illinois requirements for contracts with the Agency (as opposed to contracts with a utility). Are there issues specific to the Illinois Solar for All program that are not also applicable to the ABP REC Contract that should be considered?

Again, you may submit a confidential and a public version (with redactions) of your comments. However, the public version may only contain redactions of specific information for which you request confidential treatment.



## Appendix A

### Current Structure of the January 2019 REC Contract

The January 2019 REC Contract is available [here](#). To facilitate the review of the January 2019 REC Contract by interested parties, we provide the following notes:

- (a) The REC Contract contains a “Cover Sheet,” and ten (10) exhibits as follows:
- Exhibit A – Form of Product Order
  - Exhibit B – Bi-Annual System Status Form
  - Exhibit C – Community Solar Quarterly Report
  - Exhibit D – REC Annual Report
  - Exhibit E – Form of Letters of Credit
  - Exhibit F – Delivery Schedule Example
  - Exhibit G – Surplus RECs and Drawdown Payments Example
  - Exhibit H – Community Solar First Year Payment Adjustment Example
  - Exhibit I – Community Renewable Energy Generation Project Subscription Information Access Authorization
  - Exhibit J – ABA-EMA-ACORE Master REC Purchase and Sale Agreement (“Master REC Agreement”)

(b) The Cover Sheet modifies the terms of the Master REC Agreement (Exhibit J). The exhibits and the guidance notes appended to the end of the Master REC Agreement shall not apply; and the only exhibits that are applicable are those indicated in (a) above.

(c) Capitalized terms used in the REC Contract are provided in pages 14-23 of the Cover Sheet. Capitalized terms used and not otherwise defined in the Cover Sheet or modified by the Cover Sheet shall have the same meaning as in the Master REC Agreement.

(d) The REC Contract may include multiple Transactions. One batch of projects submitted by the Approved Vendor and approved by the ICC corresponds to one Transaction, and the key terms of such Transaction (such as pricing and size of the projects within the batch) are specified in the Product Order applicable to such Transaction.

(e) The form of the Product Order is provided in Exhibit A, and each Product Order contains three (3) schedule forms, Schedule A, Schedule B and Schedule C. One (1) Schedule A form is to be completed for each project under the Product Order and shall include summary information of each project in a batch that has been approved by the ICC. Once a project is Energized, the Agency or its designee shall prepare and complete Schedule B to the Product Order for such project, which includes updated summary information related to the project, and which shall be the basis for determining applicable payments under the REC Contract. Hence, each Product Order may include multiple Schedule A and Schedule B forms. Schedule C contains a summary list of projects included in the Batch associated with a Product Order, which shall be updated from time to time when a project included in such Product Order is removed or summary information is changed.

**Note: Information here is provided for the convenience of interested parties to facilitate review. At this time, the Agency is proposing to simplify the 2019 January REC Contract and is seeking stakeholder input on alternative contract structure (Please see Question 1(a)-1(e) above on page 2).**

## Appendix B

### Examples of Contract Elements that are NOT expected to Change

The January 2019 REC Contract contains elements pursuant to Section 1-75(c) of the IPA Act and the Agency's initial long-term renewable resources procurement plan ("Initial Plan"), which was approved by the ICC with modifications in Docket No. 17-0838. In addition, several elements of the January 2019 REC Contract were affirmed for use under the Revised Plan in Docket No. 19-0995.

For the convenience of interested parties, below we provide elements that the Agency considers as non-negotiable items that are not expected to change as part of this REC contract development process. This list is not exhaustive and interested parties are encouraged to review the Agency's Initial Plan and ICC Order in Docket No. 17-0838 dated April 3, 2018 as well as the Agency's Revised Plan and ICC Order in Docket No. 19-0995 dated February 18, 2020.

1. Once a batch of project(s) is approved by the ICC, the applicable utility will execute the contract if it is for the initial batch with an Approved Vendor or will execute a Product Order for subsequent batches with an Approved Vendor. The Approved Vendor will then be required to sign the contract or Product Order within seven (7) business days of receiving it.
2. A collateral requirement shall be held by the utility equal to 5% of the total contract value will be required in the form of either cash or a letter of credit with the utility within thirty (30) business days of the ICC approval of a batch for contract award.
3. RECs must be from new projects which have been energized on or after June 1, 2017.
4. A project is not and will not be a generating unit whose costs are being recovered through rates regulated by Illinois or any other state or states.
5. A project must be installed by Qualified Persons in compliance with Section 16-128A of the Public Utilities Act and any rules or regulations adopted thereunder.
6. A distributed generation project will be given 12-months to be developed and energized. A community solar project will be given 18 months to be developed and energized, which includes a demonstration that 50% of the project's nameplate capacity is subscribed. A project that is not completed in the time allowed (plus any extensions granted) will be canceled and removed from the contract, and the REC volume associated with the project will be eliminated. The Approved Vendor will also forfeit the posted collateral associated with the project.
7. The Agency will reserve the right to request more information on an installation, and/or conduct on-site inspections/audits of projects to verify the quality of the installation and conformance with the project information submitted to the Agency. Projects found not to conform with applicable installation standards and requirements, or projects found not to be consistent with information provided to the Agency will be subject to removal from the program if the deficiencies cannot be remedied.

8. The Approved Vendor will provide the Program Administrator with a status update on each project that is under development, but not yet energized at least every six months and will inform the Agency of any significant changes to the project. For community solar projects, the update will include an update on the status of acquiring subscribers.
9. The standard of “energization” includes registration of the project in GATS or M-RETS and the establishment of an irrevocable standing order so that assignment of RECs to the applicable utility will be automatic.
10. For projects up to and including 10 kW, one-time lump-sum full payment for RECs is authorized at the time the facility is energized. For distributed generation systems greater than 10 kW and up to and including 2,000 kW and community solar projects, 20 percent of payment for RECs is authorized at the time the facility is energized and the remaining portion will be paid ratably over the subsequent 4-year period.
11. The quantity of RECs used for the calculation of the payment for RECs will be based on the RECs calculated using the capacity factor and the lesser of the proposed system size and final system size. For community solar projects, payment also will be based on the percent of the actual nameplate capacity of the project that has been subscribed.
12. For community solar projects, the calculation of the number of RECs for payment will be updated after one year of operation to allow for the acquisition of additional subscribers. The Approved Vendor will report subscription levels on a quarterly basis during the first year. To the extent that an Approved Vendor demonstrates additional subscriptions or updated subscription mixes that would entitle the Approved Vendor to a greater payment, the contract will require that the second payment reflect the increased value for quarters where the additional subscriptions or updated subscription mix entitled the Approved Vendor to additional revenue. If subscriber levels (or mixes) change in such a manner that contract value is reduced, the additional payments would also be adjusted downwards accordingly.
13. Annual REC delivery commitments will incorporate a 0.5% per year degradation factor and REC delivery performance will be evaluated on a three-year rolling-average basis.
14. Contracts will be assignable. The assignee must agree to, and abide by, the applicable terms and conditions required of an Approved Vendor. The assignor and the assignee will be required to notify the contracting utility of any assignment, and provide the utility with all pertinent financial, settlement and contact information.
15. On an annual basis, each Approved Vendor will submit an Annual Report of the contracts and projects in its portfolio. Approved Vendors will be given 90 days to cure any deficiencies. The Annual Report will serve as the basis for verifying that RECs from projects are being delivered to the applicable utility, and, absent corrective actions taken by the Approved Vendor, will be used to determine what actions should be taken by the utilities to enforce the contractual requirements that RECs are delivered, including, but not limited to, drawing on collateral.

## Appendix C

### Examples of New Contract Elements that will be Implemented

Under the Agency's Revised Plan, several proposed changes have been approved by the ICC in Docket No. 19-0995. A list of such changes is provided below for the convenience of interested parties. This list is not exhaustive and interested parties are encouraged to review the Agency's Revised Plan and ICC Order in Docket No. 19-0995 dated February 18, 2020.

1. **Quarterly Payment Cycles.** The January 2019 REC Contract features invoicing and payments to occur on a quarterly basis. Under the Revised Plan, the Agency is to implement invoicing and payment requirements on a quarterly basis that could start at any month. For example, a project approved for payment in January would be on a quarterly schedule of payments occurring in February, May, August, and November; a project approved for payment in February would be on a quarterly schedule of payments occurring in March, June, September, and December; and a project approved for payment in March would be on a quarterly schedule of payments occurring in April, July, October, and January.
2. **Collateral Requirement is applicable to all projects.** In the Initial Plan, the Agency provided an option to allow an Approved Vendor to be able to forgo posting collateral for a project that was already energized and instead have that collateral withheld from the REC payment. Under the Revised Plan, upfront collateral will be required in all cases, including for energized projects.
3. **Option for Collateral to be Withheld from Last REC Payment.** In cases where collateral was posted through a letter of credit, the Approved Vendor may choose for the utility to withhold the collateral amount for each project from the last (or only, if a distributed generation system of 10 kW or smaller in size) REC payment in exchange for a release/reduction of the letter of credit.
4. **Early Removal of projects from Contract at the Approved Vendor's Request.** In some instances, the developer of may learn that development of the project is no longer feasible—whether due to financing falling through, the system host no longer wanting to move forward with the project, or myriad other circumstances. Under the January 2019 REC Contract, until the ICC's Order in Docket No. 19-0995, such a project could not be removed from the contract until contract requirements related to the Approved Vendor meeting the project's energization deadline were not timely met, a contract violation which may not occur until over one year from the point at time in which the Approved Vendor learns that development is no longer feasible. Under the Revised Plan, the Approved Vendor may request an amendment to the contract to allow for a project's removal from the contract should the Approved Vendor no longer wish to develop that project. Under these circumstances, the Approved Vendor would forfeit the posted Performance Assurance applicable to the project.
5. **IPA as Mediator.** Pursuant to the ICC Order in Docket No. 19-0995, the REC Contract is to adopt a measure that incorporates a proposal for the Agency to act as mediator between utilities and Approved Vendors in some REC Contract disputes, with the understanding that in areas where the Agency would be an interested party, this would be obviously inappropriate.