

Adjustable Block Program REC Contract Request for Stakeholder Comments

July 24, 2020

Background

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.¹ A copy of the Revised Plan is available [here](#).

In connection with the development of a refreshed REC Contract, the Agency issued an initial Request for Stakeholder Comments on April 9, 2020 for which written comments were received on May 12, 2020. The Request for Comments and the stakeholder comments are available [here](#).

On July 24, 2020, the Agency posted the first draft of the refreshed REC Contract (July 2020 Draft REC Contract), which is available [here](#). This Request for Stakeholder Comments is to seek feedback on the July 2020 Draft REC Contract. The deadline to submit written comments is on August 14, 2020 and two (2) workshops have been planned to facilitate stakeholder engagement on the REC Contract development process prior to the written comments submission deadline.

Workshops

- **Workshop #1: July 31, 2020 at 12PM-2PM (Central Prevailing Time):** This workshop will provide an overview of the July 2020 Draft REC Contract, a walkthrough of the key changes relative to the January 2019 REC Contract and answer any clarifying questions participants may have. This first workshop is primarily explanatory in nature and is intended to facilitate a common understanding of the July 2020 Draft REC Contract and its proposed terms. This workshop is not intended to receive feedback or comments from stakeholders.
- **Workshop #2: August 7, 2020 at 12PM-2PM (Central Prevailing Time):** This workshop is to engage stakeholders in an interactive dialogue on the proposed contract provisions contained in the July 2020 Draft REC Contract in advance of the receipt of written comments. To assist the Agency in preparing for this workshop, feedback is sought on potential topics for discussion. Appendix A provides a list of questions that the Agency would like to discuss at this workshop (as

¹ The refreshed contract would also serve as the basis of a refreshed Illinois Solar for All REC delivery contract.

well as receive subsequent written comments on), and stakeholders are invited to provide preliminary responses to those questions as well as to propose additional topics. Comments and proposed workshop topics should be submitted by email to: IPA.Solar@illinois.gov no later than August 5. Commenters need not respond to every question. As described in more detail below, in general, comments will be publicly posted.

Both workshops will be held online and will be recorded. Information on how to participate:

Workshop #1. Friday, July 31, 2020. Noon to 2:00 PM (Central Prevailing Time)

Meeting link:

<https://illinois.webex.com/illinois/j.php?MTID=m66a21457209dfc822f99302adf9c9d3c>

Meeting number: 141 480 7927

Password: GBffDbzJ687

Join by phone:

+1-312-535-8110 United States Toll (Chicago)

+1-415-655-0002 US Toll

Access code: 141 480 7927

Workshop #2. Friday, August 7, 2020. Noon to 2:00 PM (Central Prevailing Time)

Meeting link:

<https://illinois.webex.com/illinois/j.php?MTID=m5c0c83b14040248d73973e2e7f55c9e7>

Meeting number: 141 642 8775

Password: 38DGbDM7MB7

Join by phone

+1-312-535-8110 United States Toll (Chicago)

+1-415-655-0002 US Toll

Access code: 141 642 8775

Process for Submitting Comments and Proposed Edits to the Draft REC Contract

All comments/proposed edits received in accordance with the process outlined below will be reviewed by representatives from the IPA, the Program Administrator (InClimate), Ameren Illinois, ComEd, MidAmerican, Staff of the ICC, and NERA Economic Consulting. The timeline and process for interested parties to provide comments is as follows:

Written Comments are due by 5:00 PM Central Prevailing Time (“CPT”) on August 14, 2020 and should be sent to: IPA.Solar@illinois.gov

- Please provide telephone and email contact information in the event that the Agency or its Program Administrator seeks clarification regarding your comments.

- Each of your comments must be clearly indicated by tracked changes to the Microsoft Word version of the draft contract. We strongly encourage you to provide explanatory notes either in a separate document or highlighted in tracked changes.

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.

Additional Information

For the convenience of stakeholders and interested parties, we have appended the following information as follows:

- Appendix A provides a list of questions that the Agency would like initial feedback on to inform the agenda of the August 7 workshop.
- Appendix B provides an overview of the contract structure of the July 2020 REC Contract
- Appendix C contains contractual elements of the July 2020 REC Contract that are considered non-negotiables
- Appendix D provides an overview of the changes to the contractual elements of the July 2020 Draft REC Contract relative to the January 2019 REC Contract. Some of these changes are made 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.

Appendix A

Questions to Inform the Agenda and Discussion Topics for the August 7 Stakeholder Workshop

The August 7 workshop is to engage stakeholders in an interactive dialogue on the proposed contract provisions contained in the July 2020 Draft REC Contract in advance of the receipt of written comments.

In addition to preliminary feedback on these questions, to assist the Agency in preparing for this workshop, feedback is sought on potential additional topics for discussion. Please email your responses to the IPA at IPA.Solar@illinois.gov no later than August 5, 2020.

- 1. Timing of the Implementation of the refreshed REC Contract.** Section 6.7 of the Revised Plan states that once the refreshed REC Contract is finalized, “projects approved by the Commission after the contract finalization date would use the new contract, regardless of application date. The Adjustable Block Program will also provide an “off-ramp” option offered for any already applied projects that were expecting to be subject to the original contract and could now be non-financeable (or otherwise unable to be developed) under the updated contract.” The Agency would like feedback on whether stakeholders and interested parties have a view of the timing of release of the final refreshed REC Contract (or if it is preferable for the final updated contract to be released only after a certain date). In particular with Large DG and Community Solar Blocks 1-4 closed (and new project applications being processed through a waitlist), and Small DG Blocks 1-3 potentially filling up by the end of the year, should the refreshed REC Contract be finalized for potentially only a relatively small number of projects, or should finalization be postponed until funding becomes available for new blocks of capacity to be opened? How would Approved Vendors with projects under the January 2019 REC Contract be impacted by having projects under multiple contract structures?
- 2. Suspension of Payments under Section 1-75(c)(1)(L)(vii) of the IPA Act.** Under the IPA Act, the utility is not required to advance any payments or pay any amounts that exceed the actual amounts of revenues collected by the utility under Section 1-75(c)(6) of the IPA Act and Section 16-108(k) of the Illinois Public Utilities Act. With this provision being expressly included in the draft refreshed REC Contract (See Section 5.4 of the July 2020 Draft REC Contract), the Agency seeks input from stakeholders regarding the inclusion of this provision into the Agreement.
- 3. 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. Section 15.2 of the July 2020 Draft REC Contract provides provisions that allow for the Agency to serve as mediator and has also introduced other dispute resolution procedures. The Agency seeks input from stakeholders regarding these new provisions in general, and seeks input in particular on what items should be considered for the Agency to act as a mediator and under what circumstances should the Agency recuse itself from this role, and how should the IPA memorialize or publish its determinations? Should *only* the Agency be allowed to serve as a mediator, or should another party be appointed as a mediator if one party objects to the Agency in that role?
- 4. Form of the Letters of Credit.** Under the REC Contract, the Approved Vendor must post collateral in the form of cash or a letter of credit. The form of the standard letter of credit to be used in

provided as Exhibit E to the July 2020 Draft REC Contract. The Agency seeks input from stakeholders regarding whether it has been restrictive to use this form of letter of credit and, if so, what are the issues related to this form and what are the possible alternatives to be considered.

5. **Other Pertinent Issues.** Are there other pertinent issues to be considered for discussion at the stakeholder workshop such as areas where the July 2020 REC Contract continues to be complex or inflexible in ways that may not benefit the Program?

Appendix B

Current Structure of the July 2020 REC Contract

To facilitate the review of the July 2020 Draft REC Contract by interested parties, we provide the following notes:

- (a) The July 2020 Draft REC Contract contains a main body and six (6) exhibits as follows:
 - Exhibit A – Form of Product Order
 - Exhibit B – Contact Information for Notices
 - Exhibit C – Form of Reports and Notices
 - Exhibit D – Form of Invoice
 - Exhibit E – Form of Security Instruments
 - Exhibit F – Examples
- (b) Exhibits are provided as samples and the actual forms and reports used may reflect non-material differences to facilitate the administration of the REC Contract, and some forms and reports are to be completed or updated online using the ABP platform.
- (c) 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; as such, one Transaction may include multiple projects. The key terms of each a Transaction are specified in the Product Order applicable to such Transaction; project specific information such as pricing for RECs and nameplate capacity of the projects within the batch are provided in the schedules (such as Schedules A and B) to the Product Order.
- (d) The January 2019 REC Contract featured a different contract structure and different section ordering. In order to facilitate a meaningful review of the changes between the July 2020 REC Contract and the January 2019 REC Contract, a Base Agreement has been prepared. The Base Agreement is a restructured version of the January 2019 REC Contract that conforms to the structure and section ordering of the July 2020 REC Contract without any substantive changes. A redline comparison between the July 2020 REC Contract and the Base Agreement has been provided along with the July 2020 Draft REC Contract for your convenience.
- (e) The July 2020 REC Contract includes notes to draft (“NTD”) in the format of footnotes to refer to specific provisions under the Revised Plan. While the contractual language proposed to implement the provisions in the Revised Plan is subject to stakeholder comments, elements prescribed in the Revised Plan as approved by the ICC in No. 19-0995 are considered non-negotiable and are not expected to be changed.

Appendix C

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

The July 2020 Draft REC Contract contains elements pursuant to Section 1-75(c) of the IPA Act, the Agency's initial and revised long-term renewable resources procurement plans ("Initial Plan" and "Revised Plan", respectively), which were approved by the ICC with modifications in Docket No. 17-0838 and Docket No. 19-0995, respectively.

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 ≥ 25 kW 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 proposed 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 projects 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 lesser of (a) the capacity factor and the proposed project size and (b) the capacity factor and the final project 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 D

Examples of New Contract Elements

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.

In addition, the list below also includes other contract modifications aimed to streamline contract administration processes, provide for a consistent application of existing mechanisms across situations, and to clarify contract provisions. This list is not exhaustive and interested parties are encouraged to review the July 2020 Draft REC Contract for all changes).

The following changes are specifically provided in the IPA's Revised Plan.

1. **Quarterly Payment Cycles.** 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. (See Sections 3.4 and 5.1 of the July 2020 Draft REC Contract).
2. **Collateral Requirement is applicable to all projects.** Under the Revised Plan, upfront collateral will be required in all cases, including for energized projects. This is a departure from the original contract where already energized projects may request for the first payment to be withheld as collateral (See Section 7.1 of the July 2020 Draft REC Contract).
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 project of 10 kW or smaller in size) REC payment in exchange for a release/reduction of the letter of credit (See Section 7.1 of the July 2020 Draft REC Contract).
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 project host no longer wanting to move forward with the project, or myriad other circumstances. Under the July 2020 Draft REC Contract, 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. Unless the removal is pursuant to Force Majeure, the Approved Vendor would forfeit the collateral requirement applicable to the project and any applicable extension fees associated with the project's development deadline. (See Section 2.4 of the July 2020 Draft REC Contract).

5. **IPA as Mediator.** The July 2020 Draft REC Contract adopted 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. (See Section 15.2 of the July 2020 Draft REC Contract).
6. **Contract Capacity Factor.** A new term is introduced and its used is clarified. The Contract Capacity Factor is the capacity factor for the first delivery year and is subject to a 0.5% degradation for subsequent delivery years. (See Section 4.2(b) of the July 2020 Draft REC Contract).

The following changes are not specifically provided in the IPA's Revised Plan, but are provided to streamline contract administration processes, provide for a consistent application of existing mechanisms across situations, and to clarify contract provisions.

1. **Initial Delivery Obligations.** If an Approved Vendor is unable to deliver at least one REC from the project after it has been energized, payments for that project will be suspended until at least one REC has been delivered. Approved Vendors will have a certain amount of time to resolve the issue and deliver at least one REC from the project. Failure to do so will lead to removal of the project from the agreement. (See Section 4.1(b) of the July 2020 Draft REC Contract).
2. **Extensions to Scheduled Date of Energization.** The process and provisions related to extension requests have been clarified and streamlined. (See Section 2.4 of the July 2020 Draft REC Contract).
3. **Drawdown Payment from Performance Assurance.** In connection with under-deliveries/under-performance by the Approved Vendor, the process for making drawdown payments by Buyer has been streamlined, and Buyer will draw upon the posted Performance Assurance unless a direct payment in the amount of the drawdown payment has been received by Buyer first. (See Section 4.2(c)(v)(A) of the July 2020 Draft REC Contract).
4. **Net Out of Settlement Amounts in an Event of Default.** Events of default and triggers for removal of systems have been clarified. The process for terminating the agreement due to default, including the calculations of the termination payment is clarified. (See Section 9 of the July 2020 Draft REC Contract).
5. **Force Majeure and the removal of a project from the Agreement.** The Approved Vendor may now request for the early removal of a project if it is determined that the damage to the project is irreparable. If the request is granted, then the project shall be removed and any prior payments made for undelivered RECs shall be returned to Buyer. (See Section 10 of the July 2020 Draft REC Contract).
6. **Confidentiality Provisions.** The confidentiality provisions have been enhanced to protect information that are confidential, proprietary or otherwise non-public, including subscribers' utility account information. (See Section 15.4 of the July 2020 Draft REC Contract).