



## **Clean Grid Alliance’s Response to Illinois Power Agency’s Request for Stakeholder Feedback on Structure of Spring 2022 Procurement**

December 17, 2021

Pursuant to Public Act 102-0662 a subsequent forward procurement of indexed renewable energy credits from new utility-scale wind, solar, and brownfield projects is to be held in Spring 2022. On December 6, 2021 the Illinois Power Agency posted the Preliminary Proposal Requirements and Draft Key Contract Terms for the Spring 2022 procurement, and a “Stakeholder Request for Feedback.” The IPA invited comments on any aspect of the documents it posted. In addition, the Stakeholder Feedback Request contains six topics for comment.

Clean Grid Alliance’s response addresses Topics 3, 4, 5, and 6, and comments on certain Draft Key Contract Terms described in section III (*infra*). In addition, Clean Grid Alliance (“CGA”) reserves the right to change its position in response to comments made by others or new information presented in the First or Second Draft REC Contracts. CGA’s lack of a response to a question should not be interpreted as not having a position on that topic, or waiving its right to comment in future workshops or litigation on the matter.

### **CLEAN GRID ALLIANCE**

CGA is a not-for-profit 501(c)(3) corporation organized and existing under the laws of the State of Minnesota. Clean Grid Alliance is a collaborative organization dedicated to renewable

*Delivering Midwest Renewable Energy*

<b>ADDRESS</b> 570 Asbury Street, Suite 201, St. Paul, MN 55104	<b>OFFICE</b> 651.644.3400	<b>WEB</b> CleanGridAlliance.org	
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energy's fair access to the electric transmission system and market throughout the Midwest. Clean Grid Alliance's Board of Directors and members are comprised of: owners and operators of wind, solar and battery storage facilities; environmental organizations; wind, battery storage and solar energy experts; contractors that build wind, solar and battery storage facilities; clean energy advocates; and businesses providing goods and services to the renewables energy industry in Illinois and across the country. More than 30 CGA members build, own, and operate wind, solar, or battery storage facilities that are interested in opportunities to develop projects in Illinois.

## **I. RESPONSE TO TOPICS**

Below are CGA's responses to Topics 3, 4, 5, and 6 in the Appendix to the Stakeholder Request for Feedback posted on December 6, 2021.

### **TOPIC 6: Forward Price Curve to establish the Annual Payment Cap**

(a) The forward price curve is to establish an annual impact of each REC contract on the RPS budget. It also serves as an "annual payment cap" on the contract; REC revenues may be capped should energy revenues be lower than the expected revenues based on the forward price curve. REC revenues may be capped such that the sum of the combined revenues from RECs and energy that a developer would receive is less than the strike price multiplied by the annual delivery quantity for that delivery year. The IPA has serious concerns that this restriction may adversely impact procurement participation or the competitiveness of bids received.

- i. Please provide feedback on the calculation of the forward price curve and the annual payment cap as proposed by the Procurement Administrator. Please describe any recommended adjustments to the calculation and the rationale behind them. What alternative approaches, developed consistent with Section 1-75(c)(1)(G)(v)(3) of the IPA Act, could be employed by the Procurement Administrator?
- ii. Please comment on the application of the annual payment cap described above. If there are additional potential drawbacks to this proposal that should be considered, please explain in detail. If there are improvements that should be considered, please explain in detail, noting the need to maintain consistency with governing law.

**RESPONSE:**

CGA is addressing Topic 6 at the outset of its comments, because the notion of imposing an annual payment cap on indexed variable RECs is a significant issue that will have a chilling effect on the success of this product and the Renewable Portfolio Standard.

The interpretation that section 1-75(c)(1)(G)(v)(3) imposes an “annual payment cap” will largely make utility-scale renewable projects unfinanceable and undermines the legislature’s decision to drive utility-scale REC market with the indexed variable REC product. An annual payment cap significantly shifts the risk of the indexed REC product to the seller (well beyond what was discussed during bill negotiations) and perpetuates the risk of NOT being compensated for RECs delivered to the utility. Moreover, this risk cannot be mitigated by actions of the seller, it simply creates an opportunity for losing revenue without the opportunity to recover that lost revenue in subsequent years. A better interpretation, and likely intent of sub-section (v)(3), is that it is a planning tool for the IPA to forecast/estimate (prior to conducting a procurement such as through the LTRRPP) the economic impact of an indexed variable REC on the RPS budget so the IPA can better manage the budget given all the REC products it supports.

The benefit of moving from a fixed REC to an indexed variable REC was to provide greater assurance that utility-scale renewable projects will have a stable revenue stream to cover their costs. The electric market is undergoing extensive changes at the wholesale, retail and distribution system level. These changes will create, and we are seeing in 2021, increased variability in wholesale electric energy prices. The move from a fixed price REC product to an indexed variable price REC mitigates that market uncertainty because a variable REC’s price ensures a seller will attain the strike price it needs to be profitable. Applying an “annual payment cap” to an indexed REC product undoes all of its certainty.

Under the IPAs interpretation, if the annual payment cap is attained, then no further REC payments are to be made by the utilities (except in the ironic instance when the seller has to pay the buyer, then that money can be used to pay for RECs delivered in subsequent months in that Delivery Year). When the forward curve prices are significantly higher than wholesale market real-time prices, the seller will not be made whole for that year. If the forward curve prices are repeatedly (year over year) higher than market real-time prices, the seller will repeatedly lose money. There are no provisions or mechanisms through which a seller can recover those monetary shortfalls. The cap will ensure that over the lifetime the seller’s revenue comes up short of what it needs.

The imposition of an annual cap forces the financing community to more closely scrutinize the risk of potential losses due to the annual cap and the potential accuracy/inaccuracy of the forward curve. Given the variable nature of the market and

the lack of a forward curve track record, lenders will not be able evaluate the risk of the forward price curve deviating from real-time prices. Accordingly, utility-scale projects that would participate in the IPAs competitive procurements would be largely unfinanceable and therefore unviable. Consequently, REC Sellers will look for lower risk deals, such as deals with corporate purchasers.

Furthermore, the IPAs interpretation of section 1-75(c)(1)(G)(v)(3) makes it duplicative of, if not additive to, the price collar in sub-section (v)(4). Sub-section (v)(4) allows the IPA to consider the use of price collars to ensure prices are predictable and affordable. The annual payment cap would be duplicative of the price collar because it would also ensure prices are predictable and affordable. It is additive because it also increases the potential risk of a seller not recovering the needed revenue. Given that a price collar performs a nearly identical function, it would be prudent to interpret section 1-75(c)(1)(G)(v)(3) as providing a different and needed function.

Because an annual payment cap would frustrate CEJAs utility-scale procurement goals, the most likely interpretation of this section is that it is a ***planning tool*** to ensure the RPS Budget can be managed to meet all of the RPS product goals. The language actually states that the forward price curve is to be used for “procurement planning purposes.” A single forward price curve is to be developed for each load zone. That price curve is to be updated annually and used to gauge the obligation utilities would assume if the forecasted amount of RECs were procured in upcoming RFPs. This allows the IPA to gauge the cost obligations of the indexed variable RECs as the market changes over the 20 year life of the REC contracts. This enables the IPA to estimate the cost of indexed variable RECs alongside all of the other REC products to be purchased within the established RPS Budget so that the IPA can appropriately adjust product procurement volumes. These adjustments are to ensure that the RPS Budget is prudently allocated. Therefore, the only real interpretation of sub-section (v)(3) that would not frustrate the purpose of CEJA and the Governor Pritzker’s clean energy goals for Illinois is that it is a planning tool to ensure the annual RPS budget is not exceeded prior to issuing RFPs, and is not a tool to alter established contract payments.

### **Topic 3: Election of the Index Price by Seller**

It is proposed that for purposes of payment under the contract, the Index Price shall be tied to either the real-time market prices of PJM-NIHUB or the real-time market prices of MISO-IL, which shall be at the election of Seller regardless of whether the Project is in the PJM service territory or the MISO service territory (i.e. A Seller with a Project in PJM could choose the Index Price tied to the real-time market price of MISO-IL, and vice versa). A Seller will make this election in the bid form and the election cannot be changed.

- a. Please comment on the appropriateness of this proposal. If there are potential drawbacks to this proposal that should be considered, please explain in detail.

**RESPONSE:**

The flexibility to choose which real-time market to use for payment is helpful.

**Topic 4: Hourly Generation Data to be provided by Seller**

For purposes of calculating the monthly REC price, the IPA will require the hourly MWh production data for the Project to be provided on a monthly basis. In order to verify the production data provided, what other information could be submitted to the IPA from PJM and MISO? (For example, could read-only access to Seller's PJM Power Meter system for the Project be granted to the IPA and Buyer?)

**RESPONSE:**

MISO and PJM should be able to provide read-only access to the seller's power meter. This is standard and should be sufficient.

**Topic 5: Standing Order**

It is proposed that a Standing Order be established within GATS or M-RETS to facilitate the automatic, recurring transfer of RECs from the Project.

- a. Please comment on the appropriateness of this proposal. If there are potential drawbacks to this proposal that should be considered, please explain in detail.

**RESPONSE:**

CGA recommends the seller submit RECs on a monthly basis, rather than having a standing order with GATS or M-RETS for automatic transfer of RECs to each utility. It is problematic to have a standing order for automatic transfer of RECs if there are two payment caps that, once triggered, would prevent a seller from being compensated for RECs delivered after the trigger point.

If the annual payment cap and the quantity cap (see *Draft Proposal Requirements and Key Contract Terms* ("Payment Terms" at 20)) were eliminated (allowing, for example, sellers to deliver a reasonable amount of indexed variable RECs in excess of the annual contract quantity), then a standing order for transfer of RECs would be a reasonable method of compliance.

## **II. COMMENTS ON DRAFT KEY CONTRACT TERMS**

CGA's comments address the following five Draft Key Contract Terms:

- 1) **Draft Key Contract Term Article 2.9 & Part 2 Proposal Requirements:** *Letter of Credit and Corporate Guarantee Should be Allowable Bid Assurance Collateral*
- 2) **Draft Key Contract Term Article 2.17 and Part 2 Bid:** *Maximum Quantity of RECs*
- 3) **Draft Key Contract Terms Article 4 Delivery Terms:** *Amend Definition of REC Shortfall*
- 4) **Draft Key Contract Terms Article 4 Standing Order:** *Disposition of Excess RECs*
- 5) **Draft Key Contract Terms Article 4 Payment Terms:** *Real-time Generation Weighted Average Energy Settlement Price*

**1) Draft Key Contract Term Article 2.9 & Part 2 Proposal Requirements: *Letter of Credit and Corporate Guarantee Should be Allowable Bid Assurance Collateral***

Article 2.9 of the Draft Key Contract Terms proposes terms as follows:

A participant that has bids approved by the Commission may use cash posted as bid assurance collateral to satisfy any collateral requirements under the Indexed REC Contract. A participant that posted cash as bid assurance collateral and that does not have bids approved by the Commission must submit a request to a Company for the return of cash.”

This construct is also reflected in the Part 2 Proposal Requirements for Each Project – Quantity and Bid Assurance Collateral (page 11).

**COMMENT:**

CGA recommends the addition of an option for a participant to provide a corporate guaranty or letter of credit as bid assurance collateral. This will allow a participant to provide collateral through a lender or an upstream corporate parent. For example, Article 2.9 would read, in pertinent part: “. . . A participant that has bids approved by the Commission may use cash, a letter of credit, or a corporate guarantee posted as bid assurance collateral, to satisfy any collateral requirements under the Indexed REC Contract. . . .”

**2) Draft Key Contract Term Article 2.17 and Part 2 Bid: Maximum Quantity of RECs**

Article 2.17 of the Draft Key Contract Terms proposes that

[t]he annual full quantity of Indexed RECs for a project is subject to a maximum, which is calculated based on the output of a facility and either: a 45% capacity factor for utility-scale wind Projects, or a 26.5% capacity factor for both utility-scale solar Projects and brownfield site photovoltaic Projects.  
(p. 7)

The Draft Part 2 Proposal Requirements for Each Project – Bid, on page 12, sets forth the methodology for calculating the maximum bid quantity of RECs from a project.

**COMMENT:**

The proposed REC bid structure sets a bid maximum for solar projects that is calculated as the multiplicative product of the project size in MWac, the 8760 production numbers, and a **set capacity of 26.5%**. While this maximum capacity factor is in line with our understanding of solar-only projects in IL, it does not accurately reflect the potential of hybrid resources or further innovation in photovoltaics and electrical technologies to increase capacity. CGA believes that the financial incentive structure in place already encourages accurate REC bidding, and a methodology for calculating the maximum quantity of RECs from **all** renewable hybrid facilities be more thoroughly considered in the LTRRPP process.

**3) Draft Key Contract Terms Article 4 Delivery Terms: Amend Definition of REC Shortfall**

The Delivery Terms provision of the Draft Key Contract Terms table in Article 4 (page 18) proposes the following:

It is an event of default if a project has a shortfall for three or more years and such shortfall amount cumulatively exceeds the annual quantity; in such event of default, Seller will be allowed to cure through payment of liquidated damages (i.e. loss of collateral requirement posted).

**COMMENT:**

CGA recommends that an event of default occurs when a project has a shortfall for three consecutive years and such shortfall amount cumulatively exceeds the annual quantity, in this three year period.

Page 18:

It is an event of default if a project has a shortfall for three consecutive or more years and such shortfall amount cumulatively exceeds the annual quantity; in such event of default, Seller will be allowed to cure through payment of liquidated damages (i.e. loss of collateral requirement posted).

**4) Draft Key Contract Terms Article 4 Standing Order: Disposition of Excess RECs**

The Standing Order provision of the Draft Key Contract Terms table in Article 4 (page 18) specifies that: "Excess RECS above the contract quantity in a Delivery Year are not eligible for payment. These RECs are the property of the Seller."

**COMMENT:**

CGA recommends that the Buyer be required to buy RECs delivered up to 120% of the annual contract quantity.

Additionally, this section should clarify that excess RECs are the property of the Seller, and as such, the Seller retains all rights to sell such RECs free and clear of any Buyer requirement or encumbrance if not purchased by the Buyer.

Page 18:

Excess RECs up to 120% of above the annual contract quantity in a Delivery Year are to be purchased by the Buyer not eligible for payment. These RECs are property of the Seller, and Seller retains the right to sell RECs that are not purchased by the Buyer. These RECs cannot be used to cover a shortfall in another Delivery Year.

**5) Draft Key Contract Terms Article 4 Payment Terms: Real-time Generation Weighted Average Energy Settlement Price**

The Standing order provision of the Draft Key Contract Terms table in Article 4 (page 19) proposes that the settlement period be

on an hourly interval basis. (This means that strike price and the index price will be compared each hour of a monthly vintage period for purposes of calculating the REC monthly price for such vintage. For avoidance of doubt, invoicing and payment obligations occur on a monthly basis).

**COMMENT:**

IPA should clarify the Draft Key Contract Terms to indicate that the market price shall be weighted by the hours that the project is producing electricity (*e.g.*, MWhs).

Accordingly, CGA proposes the following revisions (expressed in underline format) to the draft key contract terms regarding the forward price curve.

Page 19:

"The index price: the real-time generation weighted average energy settlement price at the applicable Illinois trading hub for a given settlement period. ....

- The settlement period will be on a generation-weighted, hourly interval basis. (This means that strike price and the index price will be compared each hour of a monthly vintage period for purposes of calculating the REC monthly price for such vintage. For avoidance of doubt, invoicing and payment obligations occur on a monthly basis)."

Respectfully submitted for your consideration

Sean R. Brady

Senior Counsel and Regional Policy Manager – East  
**Clean Grid Alliance**  
P.O. Box 4072  
Wheaton, IL 60189

