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ILLINOIS POWER AGENCY

ADJUSTABLE BLOCK PROGRAM REOPENING GUIDANCE DOCUMENT
10 DECEMBER 2021

The IPA deeply appreciates stakeholder comments received through its stakeholder comment processes and associated webinars held in October and November of 2021.[1] Comments received were very helpful to the Agency in planning for the reopening of the Adjustable Block Program on December 14, 2021. Not all comments received could be accommodated at this time, and the Agency will continue its consideration of those comments as it develops the draft of the 2022 Long-Term Renewable Resources Procurement Plan, which is scheduled to be released for public comment on January 13, 2022.[2]

The Agency understands that many decisions about block reopening carry significant consequences for market participants and other stakeholders. Thus, contemporaneous with publishing its Adjustable Block Program Guidebook, which provides insight into how many aspects of Adjustable Block Program reopening will be handled consistent with Public Act 102-0662, known as the Climate and Equitable Jobs Act ("CEJA"), the Illinois Power Agency also provides the following explanations for why certain decisions were made. Those are broken down by issue area below.

Block Size & Block Closing

With the exception of the traditional community solar project category (which contains a specific 250 MW capacity allocation amount), Section 1-75(c)(1)(G)(iv) of the IPA Act provides that blocks be sized to "at least" minimum quantities specified by statute. As the Agency understands that it does not have the authority to open additional blocks until such time as its 2022 Long-Term Renewable Resources Procurement Plan has been approved, it sought to size blocks in a manner suited to supporting ongoing market activity during this interim period. Thus, for blocks featuring waitlists of already-submitted projects (the Small Distributed Generation and Large Distributed Generation project categories), the Agency sized blocks in a manner which added the existing waitlist capacity to the statutory minimum block size (75 MW, in the case of each of these categories) to ensure at least 75 MW of capacity for new project applications. While this approach risks creating a slight initial imbalance between the percentage-based proportions between ABP categories outlined in Section 1-75(c)(1)(K) of the Act and first-program-year category participation, the Agency can take comment for whether and how to rebalance category

[1] See: https://illinoisabp.com/reopening-updates/ for more information on that process and webinars.

[2] After the draft Long-Term Plan is released, stakeholders will have until February 28, 2022 to submit comments on that draft Plan. The Agency then expects to file the Plan with the Illinois Commerce Commission for approval on March 21, 2022, with Commission approval expected by July 19, 2022.

participation through block size in future years through the Long-Term Renewable Resources Plan development process.

As the Public Schools, Community-Driven Community Solar, and Equity Eligible Contractor categories do not presently feature waitlists, the Agency simply chose the statutorily-identified minimum block size as the applicable block size for those categories. While the Agency hopes for robust participation levels that exhaust the block size of each of these categories, the limited data points available from the Adjustable Block Program's first years of operation (including public school participation levels in the prior Large DG category, stakeholder comments received on Community-Driven Community Solar challenges and long timelines, and the dearth of self-identified MWBE firms availing themselves of a smaller initial batch size) do not provide evidence necessitating larger block sizes than those amounts identified in Section 1-75(c)(1)(G)(iv).

Nevertheless, the Agency cannot accurately predict actual category participation levels upon reopening. As a consequence, and in light of the Agency's inability to open additional blocks until Plan approval, the Agency has elected to utilize a more permissively soft approach to block closing. Thus, when a block's capacity is fully allocated, the Program Administrator will announce that the block will close in seven calendar days or when the next project application submitted to the block would exceed the block's capacity by 10 MW from the original published block size, whichever comes first. This soft closing approach somewhat mirrors an approach found in the initial Program Guidebook, but provides a more generous cushion of program capacity should demand for a given category be greater than can be accommodated by initial reopening block sizes. Because the Agency cannot predict the extent to which newly allowed projects between 2 and 5 MW might apply, this larger cushion is also designed to accommodate the potential for such very large projects to apply as blocks close (for those categories allowing larger projects).

Public Schools Projects

Implementing requirements from Public Act 102-0662 within the Public Schools category giving "priority" to "projects located within environmental justice communities or within Organizational Units that fall within Tier 1 or Tier 2" carried challenges, especially given that Section 1-75(c)(1)(G)(iv)(4) requires that REC prices be "fixed, without further adjustment under any other provision of this Act or for any other reason" at the last open Large DG block REC prices. Consequently, the Agency understood "priority" to require dedicating a portion of block capacity for a time certain before being made available for non-prioritized project participation. The Agency ultimately settled on 70% of the block being made available for prioritized public school projects for 180 days; this approach, which sets aside more than a majority of block capacity for more than half of the time period available until the next set of annual blocks open, seemed generally well-received by stakeholders and thus was maintained in final Guidebook edits.

However, the Agency's initially-proposed approach to allocating capacity by project size was not maintained, as many stakeholders pointed out that the Agency should expect more project applications in the 250 kW to 1 MW range than in the 1 MW or greater range. In light of that

feedback, the Program Guidebook now allocates 25% to systems below or equal to 250 kw in size, 50% to projects in the 250 kw to 1 MW range, and 25% of capacity to systems above 1 MW in size. On this issue (and on many others), the Agency hopes that initially-observed participation levels will provide valuable insights to inform proposals made in its next Long-Term Plan.

The Agency also notes that Approved Vendors will be afforded some flexibility into which category certain projects may apply. For example, should the Public Schools category fill up rapidly and capacity is available in the Large DG category, a project located at a public school could be submitted to the Large DG category.

Finally, the Agency has determined that for the initial block of capacity, only distributed generation projects will be eligible to apply within the Public Schools category. Section 1-75(c)(1)(G)(iv)(4) provides a process for setting REC prices for this category referencing only REC prices applicable to distributed generation projects, but provides no mechanism for pricing community solar projects within the Public Schools category. Given the complexity of establishing community solar REC prices, the Agency views this as evidence that the legislature did not intend for community solar projects to participate in this category at block reopening. The Agency will propose REC prices for community solar projects within this category in the 2022 Long-Term Plan, and will also propose those projects may apply in future blocks.

Prevailing Wage

Section 1-75(c)(1)(Q) of the Illinois Power Agency Act as amended by Public Act 102-0662 requires that "[e]ach facility listed … for which a renewable energy credit delivery contract is signed after the effective date of this amendatory Act of the 102nd General Assembly is subject to … the prevailing wage requirements included in the Prevailing Wage Act." Section 1-75(c)(1)(Q)(1) lists the types of facilities to which this section applies, including new utility-scale wind and photovoltaic projects, new brownfield photovoltaic projects, new community solar projects, new community-driven community solar projects, new solar projects at public schools, and new small and large distributed generation projects (except where exemptions apply). Section 1-75(c)(1)(Q)(1) also outlines which projects are exempt from prevailing wage requirements (those projects that qualify as residential or a house of worship), with additional provisions regarding the applicability of prevailing wage requirements found in Section 1-75(c)(1)(G)(v).

The Prevailing Wage Act ("PWA") establishes a labor compensation standard that applies to labor performed by employees or contractors of public bodies engaged in public works (820 ILCS 130/1). The prevailing wage is a minimum compensation level set by the Illinois Department of Labor by county for construction activities related to public works. Section 1-75(c)(1)(Q) of the IPA Act (20 ILCS 3855) now requires that individuals engaged in the construction of applicable projects submitted to the Adjustable Block Program ("ABP") are paid the relevant prevailing wage. Additionally, Public Act 102-0673, enacted on November 30, 2021, now clarifies that new renewable energy projects subject to prevailing wage requirements under the IPA Act are "public

works" under the Prevailing Wage Act—which makes them subject to notice requirements and related provisions as well.

After review of these new provisions and stakeholder comments, the Illinois Power Agency ("IPA" or "Agency") provides the following analysis to help explain decisions made in implementing these new requirements.

1. Compliance Verification

The IPA will require that all Approved Vendors (and their relevant contractors and subcontractors) that have a project participating in the ABP that requires compliance with the PWA submit a Certified Transcript of Payroll ("CTP") to the Department of Labor and to the Program Administrator. The Department of Labor does not review each individual CTP nor verify its accuracy through site visits; therefore, the Agency has opted to direct the ABP Program Administrator to conduct random audits of the submitted CTPs and verify their accuracy. The IPA will work with the Program Administrator and with other Illinois agencies that perform similar audits to design the most efficient and effective system for this audit.

The IPA understands that the Department of Labor has extensive experience in enforcing the Prevailing Wage Act and does not intend to replicate or interfere with that existing system. However, the Agency also recognizes that this will be a new requirement for many renewable energy developers and their subcontractors and that the prevailing wage requirement is a core piece of the Climate and Equitable Jobs Act's intention that the transition to clean energy create a vibrant, fair, and sustainable renewable energy workforce. The current enforcement apparatus relies on complaints filed by workers, which is a reasonable approach for industries that have been subject to the prevailing wage requirements for some time. However, in light of the novelty of this requirement in the solar industry, the Agency deems it appropriate to institute additional verification procedures. Many of the actors and businesses involved in the Illinois solar industry are unfamiliar with the contours of the Prevailing Wage Act and having the ABP Program Administrator perform randomized audits to verify compliance will provide an additional layer of enforcement and oversight.

The IPA also asked for stakeholder feedback regarding the potential use of benchmarks for the average number of hours of labor that the construction of a project of a particular size would require. The Program Administrator could theoretically use any such benchmarks to evaluate the accuracy of the submitted Certified Transcript of Payroll, allowing for an efficient system to gauge compliance. However, several stakeholders contended that the number of work hours required for project construction can vary due to numerous factors other than project size. Some also noted that using benchmarks to evaluate the accuracy of the CTP's might disincentivize more efficient construction work. Due to the complexity of developing a set of benchmarks that would comprehensively and accurately represent the range of projects that participate in the ABP, the Agency has decided not to utilize any benchmark system at this time. However, as previously

mentioned, the Agency is assessing the best options for auditing the CTP's submitting by ABP participants and reserves the right to revisit benchmarks as a potential tool in that process.

2. Retroactive Application

In its request for stakeholder feedback, the IPA asked whether the prevailing wage requirements should apply retroactively to projects that have already been built. After considering the responses the Agency received on this point, and due to the foundational legal principle against retroactivity, the Agency will not require applications for projects that were constructed on or before September 15, 2021 (the effective date of P.A. 102-0662) to include an attestation that the project complied with the Prevailing Wage Act. Given the documents generated contemporaneously with a system's development (including a signed disclosure form, interconnection agreement, net metering application, and other documents available to be provided upon request), the Agency is confident in the Program Administrator's ability to verify the timeline for a project's development and limit this exemption to only warranted circumstances.

However, this principle against retroactivity does not encompass applications for projects that were built before applying to the ABP, but where that construction took place after the effective date of P.A. 102-0662. In those cases, the developers will have had notice that prevailing wage requirements apply to that facility.

Equity Eligible Contractor Category

The Agency is deeply committed to ensuring that development of the clean energy economy in Illinois reflects principles of diversity, equity, and inclusion, and strongly hopes that the Equity Eligible Contractor ("EEC") category of the Adjustable Block Program can ultimately support progress on these fronts across all firms participating in the Adjustable Block Program – and not only through Approved Vendors themselves, but also through their agents, subcontractors, and workforce.

However, Section 1-75(c)(1)(K)(vi) expressly limits participation in the Equity Eligible Contractor category to "applicants that are equity eligible contractors." In reopening the Adjustable Block Program, the Agency cannot interpret the term "applicants," as used in this context, to represent a universe of participants other than the Approved Vendors who "apply" projects into the Program. Perhaps this term could eventually be read more expansively, but the Agency believes the Long-Term Plan development and approval process is the proper forum for discussions related how the very important principles informing the EEC category may necessitate a more expansive reading of express limitations placed on who may participate. Thus, the Equity Eligible Contractor category remains restricted to only Approved Vendors constituting Equity Eligible Contractors for block reopening.

The Agency also grappled with how to handle whether to identify an Equity Eligible Contractor as such when that entity may not wish to be self-identified as an Equity Eligible Contractor, given the sensitivity around certain ways in which qualification can be demonstrated. Ultimately, the

Agency determined that while Equity Eligible Contractors will not be *required* to actively self-identify as such externally themselves or through Agency Approved Vendor directories, they may choose to do so. But because of the strong public interest in understanding which entities qualify for dedicated categories of publicly-administered funds, Approved Vendors participating in the Equity Eligible Contractor category may be revealed as such passively through project application reports and similar public records. Additionally, Equity Eligible Contractors need not submit projects only through the EEC category until the block of capacity for that category is filled; given that CEJA seeks to maximize market participation by Equity Eligible Contractors (with progressively climbing minimum participation levels), and given the absence of statutory requirements indicating otherwise, Equity Eligible Contractors with projects qualifying for the EEC category may apply that project to either the EEC category or any other category for which the project qualifies (and in which there is available block capacity).

The Agency ultimately determined, however, that the Equity Eligible Contractor category should be limited to only distributed generation projects for block reopening. Statutory intent to do so can be gleaned from Section 1-75(c)(1)(G)(iv)(6)'s language stating that a) allocations of block capacity within the EEC category on reopening must generally match "the historical share of block capacity allocated between the category described in items (i) and (ii) of subparagraph (K) of this paragraph (1)" and b) REC prices for the initial block of capacity for the EEC category "shall be 4% less than the price of the last open blocks in the categories described in items (i) and (ii) of subparagraph (K) of this paragraph (1)." As items (i) and (ii) of subparagraph (K) are the Small DG and Large DG categories, no price or share appears to have been contemplated for community solar projects. However, the Agency understands that community solar projects may eventually participate in the EEC category through later years' annual blocks approved through the Long-Term Renewable Resources Procurement Plan.

The Agency additionally considered how requirements to maintain status as an Equity Eligible Contractor would relate to a project's development timeline. The Agency has determined that an Approved Vendor must maintain its EEC status through the Part II approval stage of project development to ensure that initial REC payment(s) from the project flow to the Equity Eligible Contractor. The Agency recognizes that there are a variety of long-term ownership and management models for projects; thus, after Part II approval, a project in the Equity Eligible Contractor category may be sold or assigned to a non-Equity Eligible Contractor Approved Vendor. However, if a project is sold or assigned to a non-EEC Approved Vendor before Part II approval, or if the Approved Vendor fails to maintain its status as an Equity Eligible Contractor through Part II approval (subject to the exception outlined below), then the project would no longer qualify for the EEC category such that the project's Part II application could not be successfully processed by the Program Administrator (leading to termination of contract obligations associated with the project and the forfeiture of collateral associated with that project). However, the Approved Vendor would be permitted to resubmit that project in the appropriate non-EEC distributed generation category/group.

As noted above, one exception to the requirement that the Approved Vendor maintain EEC status through Part II will be provided where an Approved Vendor's EEC status is based upon individuals who live in an equity investment eligible community and those individuals subsequently move out of such a community prior to Part II approval. This limited exception is intended to balance ensuring that projects submitted in this category meet the goals of the category, while also recognizing that an Approved Vendor cannot control the living circumstances of its owners or board members.

Community-Driven Community Solar

Section 1-75(c)(1)(G)(iv)(5) of the Act requires that the Community-Driven Community Solar category be opened with the Agency evaluating the viability of projects "as described in its long-term renewable resources procurement plan that is approved as of the effective date of this amendatory Act of the 102nd General Assembly." Thus, the Agency leaned heavily on the stakeholder comment processes conducted in developing (and receiving subsequent feedback on) that Long-Term Plan proposal, and will utilize a project evaluation system very similar to that proposed in its Long-Term Plan and later refined through stakeholder comments.

One consistent comment throughout those processes was that given the complexity of these projects, a long lead-time may be required before accepting project applications. In light of that feedback, the Agency proposed a 180-day initial project application window. While the IPA sees some merit in comments arguing for a shorter window (noting the long period across which parties have been on notice of this category's introduction), the Agency also fears that certain steps in developing a successful application may not have been able to been completed by serious, well-intentioned applicants until a firm market opportunity became available—and that opportunity was not clearly available until CEJA's passage. Further, this category requires distinguishing between applicant projects on a qualitative basis (albeit using quantitative scoring for those qualitative attributes), and the Agency hopes for a robust pool of applicant projects scoring highly to ensure that the spirit behind establishing a Community-Driven Community Solar project category is met. As a longer application window increases the likelihood that the Agency will be choosing between a pool of high-quality, high-scoring project applications, the Agency maintained its proposed 180-day application window in finalizing reopening requirements.

The Agency also appreciates comments received on alternatives to municipal or community-driven Requests for Proposals as a sign of community engagement. Due to the complexity inherent in implementing alternatives, the IPA will defer the development of alternatives to the 2022 Long-Term Plan process. For the initial opening of the Community-Driven Community Solar category, the Agency will maintain its initial proposed approach of awarding points in that scoring category only for projects proposed in response to an RFP. For similar reasons of complexity in evaluation, the Agency will not award points based on a project's demonstration that it does not take agricultural land out of production. The Agency will instead consider other approaches to land-use in the development of the 2022 Long-Term Plan, such as how solar and agriculture can co-exist and support pollinator-friendly habitats, and will defer determinations of how such projects

may demonstrate offering certain land use benefits to the longer and more comprehensive Long-Term Plan development and comment process.

Demographic & Geographic Data Collection

The Agency has determined the collection of demographic and geographic data will occur at the Part II stage rather than periodically. The Agency is concerned that a lag between project completion and data collection increases the risk of data not being available, or not easily obtained, and resulting in a significant decline in the quality of information received.

The Agency is still in the process of finalizing the data that will be collected at the Part II stage and will be issuing further guidance at a later date. In making that determination, the Agency continues to assess how to the appropriately balance the statutory goals of the data collection and the pragmatic concerns raised by stakeholders in comments, including what information an Approved Vendor will be able to collect about the workforce employed on project development (in particular related to employees who were formerly incarcerated or participated in the foster care system). The Agency is cognizant that this guidance is needed by Approved Vendors as soon as practicable given that some project development activity is already underway, and thus Approved Vendors need to know what information should be collected and maintained during that process. Thus, the IPA will work diligently to publish that guidance and will soon release a deadline by when these requirements will be available.

REC Pricing

Public Act 102-0662 statutorily established the REC prices used for block reopening for most categories of the Adjustable Block Program. An exception, however, exists regarding REC prices applicable to new (i.e., non-waitlist) applications in the Large DG category. Unlike waitlisted Large DG projects, for which the applicable REC price is 4% less than the last open block price and prevailing wage requirements do not apply, the IPA is directed to establish a REC price for non-waitlisted Large DG projects for which prevailing wage requirements may apply. Thus, the IPA understood its task as generally reflecting the incremental cost (if any) of new prevailing wage requirements in a Large DG REC price, and establishing prices recognizing this new requirement.

The Agency proposed an adjustment to Large DG REC prices based upon an analysis of the potential impact of prevailing wage requirements on the project cost inputs into the REC Pricing Model. The Agency appreciates the additional stakeholder feedback received on impact of prevailing wage, but ultimately determined that further increasing REC prices, and thus committing more publicly-administered funds to individual projects, requires the development of a more robust record through the 2022 Long-Term Plan development process. Commentors also provided feedback concerning other changes in cost inputs to the REC pricing model, such as increasing materials costs. As those are dynamic and changing concerns, those will likewise benefit from a more thorough analysis through the 2022 Long-Term Plan development.

Should those prices ultimately prove insufficient for supporting additional Large DG project applications, the Agency maintains it statutorily-prescribed ability to adjust REC prices up to 10% from published prices to support activity in this category.

Traditional Community Solar Waitlist Capacity Allocation

The Agency has released a separate guidance document on the process for the allocation of capacity for waitlisted projects in the Traditional Community Solar category, including how (and why) certain requirements of Section 1-75(c)(1)(G)(iv)(3) of the IPA Act have been implemented.