



## **Rationale Document – MES Waiver Request and Evaluation**

March 17, 2023

On February 8, 2023, the Illinois Power Agency (“IPA” or “Agency”) released a [Request for Stakeholder Feedback](#) regarding process to request a waiver for the Minimum Equity Standard (“MES”), a requirement for both Adjustable Block Program/Illinois Shines participants and participants in IPA competitive REC procurements. The Agency received comments from eight parties and appreciates the thoughtful responses. The IPA released the final MES waiver request forms and associated scoring rubric on March 10, 2023. This document provides an explanation of the decisions that informed the finalized materials.

### Scoring Rubric

The Agency evaluated the comments and proposed alternative scoring rubrics provided by stakeholders in response to the request for comments. The IPA has adjusted the scoring rubric slightly, the points available for each category, and developed a separate rubric for entities which use organized labor in their workforce. The threshold to qualify for the waiver is a score of 20 points or above. One commenter requested that the Agency award points for each category of the scoring rubric in a binary fashion, such that the applicant either demonstrates efforts in a scored category and receives the full number of points, or they do not demonstrate these efforts and receive no points in that category. To ensure consistent and transparent scoring across all waiver requests, the Agency agrees with this request and has adopted a binary scoring approach.

Additionally, the Agency received comments regarding the differences in hiring practices of unionized workforces and non-unionized workforces. The Agency understands the significant differences across the hiring practices for each business model, and agrees that this necessitates waivers that account for the different approaches. Accordingly, the Agency created separate waiver request forms to better reflect the activities that would be considered due diligence in seeking to recruit an equity eligible workforce in both models. Labor organizations noted several key differences in the types of hiring platforms and events that are likely to yield union member applicants. The Agency has integrated these comments into the organized labor scoring rubric to better reflect organized labor hiring practices.

Overall, the Agency calibrated the points awarded to each category in both scoring rubrics to ensure that the choice of whether or not to use organized labor would not impact the likelihood of qualifying for a waiver. The Agency also agrees with comments that the more “passive” activities, such as posting a position on a hiring platform, should receive fewer points than the more proactive efforts, such as directly coordinating with workforce training programs.

Accordingly, the Agency adjusted the original points and the suggested points for the organized labor waiver rubric to properly weigh the effort involved in each activity. In the waiver request scoring rubric for projects using organized labor, the Agency also requested that any letter from a local branch of the union stating that no Equity Eligible Persons were available for the project also describe efforts the local chapter has taken to recruit Equity Eligible Persons.

The Agency made no changes to the criterion of whether similarly situated firms were able to meet the MES because Section 1-75(c-10)(4)(E) of the Illinois Power Agency Act (“IPA Act”) explicitly requires that “[w]hen considering whether to grant a waiver, and to what extent, the Agency shall consider the degree to which similarly situated applicants have been able to meet these minimum equity commitments.” The Agency also added a category of points for efforts not captured by any of the specific scored activities, to ensure that applicants receive credit for creative or unexpected approaches that the Agency had not contemplated in the final waiver. Such efforts could include offers made to Equity Eligible Persons that were declined, mentorship of a prospective or new EEC, or including requirements regarding hiring EEPs in contracts with vendors.

#### Rolling MES Waiver Timeline

Section 1-75(c-10) of the IPA Act requires that entities participating in Illinois Shines and the Agency’s utility-scale REC procurements must submit an MES Compliance Plan and an end-of-year MES compliance report at specified points in the delivery year. However, the law does not specify when the Agency should accept or grant MES waivers within the program year.

Therefore, the Agency posed several questions designed to gain a broader understanding of the hiring practices and project timelines of entities that participate in Illinois Shines and Agency’s utility-scale REC procurements. Responses from stakeholders indicated a wide range of hiring practices and project timelines. Estimates from stakeholders indicate that a project crew or contractor may be hired just a few weeks before construction began, while others would need to hire contractors and employees several months before project construction. Similarly, while feedback from utility-scale developers indicates it is possible to know months in advance how many projects will be construct in a given year, feedback from Illinois Shines participants indicated more limited insight into hiring needs, in part because project construction may depend on securing a REC contract.

Considering the variety of timelines, hiring practices, and workforce structures across the industry explained in the feedback from stakeholders, the IPA has determined that a rolling MES waiver request process is appropriate. Therefore, entities performing project construction in a given program year may submit a waiver request at any time during that program year, including concurrently with their end-of-year MES compliance report.

Additionally, the IPA will allow both prospective and retrospective waiver requests, acknowledging that there may be unpredictable situations under which an entity is unable to

comply with the MES due to reasons beyond their control, such as, if several Equity Eligible Persons resign or are reassigned to other projects.

Finally, the IPA has determined that waivers will be available on an annual basis only, regardless of whether the timeline for construction of a project exceeds one year. While the IPA appreciates that utility-scale developers will delegate hiring activities to local contractors, providing a waiver for a single year will encourage participating contractors to continue efforts to increase the number of employed Equity Eligible Persons over the course of the project development and more appropriately aligns with the goals of the statute to increase the portion of the equity eligible project workforce from 10% to 30% by 2030.

### MES Waivers on a Project or Portfolio Basis

Approved Vendors in the Illinois Shines program may request a waiver for a portfolio made up of distributed generation projects, as explained in the request for stakeholder feedback. One commenter suggested that the Agency should also allow portfolio waiver requests for community solar projects in the Program, given that administrative employees may work across several projects, thus creating difficulty in accounting for those employees in a project-based waiver. While the Agency understands this workforce structure, the purpose of the portfolio-based waiver is to ease the administrative burden for Approved Vendors with a significant number of small distributed generation projects submitted in a single year. Community solar projects do not face a similar burden, and Section 1-75(c-10) of the IPA Act makes project-level waivers, rather than portfolio waivers, the standard. Given the directive from the Act to approve waivers on a project level, and the possible administrative burden related to a large number of waiver requests from distributed generation developers, the Agency finds that it is appropriate to require community solar waiver requests to be submitted on a per-project basis.

### Minimum Equity Standard Calculation

#### *Project Workforce Clarifications*

Several commenters posed questions regarding the scope of the “project workforce” for calculating compliance with the MES. The Agency believes that this feedback is outside of the scope of the development of the waiver and accompanying scoring rubric. The Agency defined the term “project workforce” through the Long-Term Plan and plans to issue additional guidance in the form of an FAQ on the Illinois Shines website to clarify various scenarios and provide greater understanding of the term.

#### *Accounting for Equity Eligible Contractors*

Several respondents provided comments regarding the Agency’s proposed approach to accounting for the collaboration with an Equity Eligible Contractor (“EEC”) towards the MES. The differing positions of the commentors demonstrates the tension between recognizing and encouraging the increased participation of EECs while also recognizing that, although an EEC must be *owned* by Equity Eligible Persons (“EEPs”), the EEC’s workforce may not be made up of EEPs.

The Agency acknowledges the concerns with its proposed approach and agrees that refinement may be necessary to encourage more partnerships with EECs. However, the Agency does not agree that *all* employees of an EEC should automatically count as Equity Eligible Persons towards the 10% project workforce target. This approach could inadvertently reduce the potential for EEPs to participate in the development of RPS-supported renewable development and ultimately artificially inflate the reported number of Equity Eligible Persons engaged in the project workforce. This would, in turn, lead to inaccurate estimates of the number of Equity Eligible Persons working in the clean energy sector and reduce visibility into that number. This approach would not further the equity objectives of the IPA Act and the Agency.

Therefore, the Agency will count Equity Eligible Persons employed by an EEC-certified subcontractor, including the Equity Eligible Person majority owner, 1.5 times in calculating compliance with the MES. Additionally, the IPA has determined that an Approved Vendor or utility-scale developer that subcontracts with an EEC on a project and yet is unable to meet the MES will receive additional points towards the waiver request for the project.

The Agency believes this approach will best advance the interests of both EECs and Equity Eligible Persons. Non-EEC Approved Vendors and Designees will encourage their EEC subcontractors to employ Equity Eligible Persons, thus increasing opportunities for Equity Eligible Persons within the industry. Likewise, Approved Vendors and utility-scale developers will be incentivized to partner with EECs in the development of projects. This approach will still require entities to employ Equity Eligible Persons within a project workforce beyond the majority-owners of any contracted EECs.