



Illinois Shines

Stakeholder Feedback Request:

Escrow Process for Approved Vendors that
Do Not Pass Through Promised Incentive Payments

September 16, 2024

The Illinois Power Agency proposed the creation of an escrow process in the 2024 Long-Term Renewable Resources Procurement Plan (“2024 Long-Term Plan”). The escrow process will be used to ensure that customers who participate in IPA solar incentive programs and who have been promised a pass-through of the REC incentive payment in fact receive the payment. The Agency is now fleshing out the proposal for the escrow process and seeks stakeholder feedback on all aspects of the proposal.

Stakeholders may comment on as many or as few of the items outlined within this document as they would like. Stakeholders should not feel limited by the questions offered below and may provide comments on these proposals beyond the scope of these specific questions.

Please provide comments via email attachment to IPA.Solar@illinois.gov with the subject “[Responder’s Name] – Stakeholder Feedback on CP Proposals” by October 7, 2024.

In general, responses will be made public and published on the IPA’s website. Should a commenter seek to designate any portion of its response as confidential and proprietary, that commenter should provide both public and redacted versions of its comments. Independent of that designation, if the Agency determines that a response contains confidential information that should not be disclosed, the Agency reserves the right to provide its own redactions.

Background

The [Final 2024 Long-Term Renewable Resources Procurement Plan](#) provides background on the need to develop an escrow process:

[A] consumer protection concern that has arisen specifically in the context of Illinois Shines DG customers is the situation where some Approved Vendors have told the customer that they would pass through some or all of the REC incentive payment, and then have not actually passed through that money. While the Agency can take disciplinary action against Approved Vendors who fail to comply with contractual requirements and marketing statements, the Agency is not a party to the REC Contract and generally does not have authority to interfere with the flow of money for projects that are under contract between the utility and the Approved Vendor. This means that an Approved Vendor may be suspended from the Program for not passing through promised REC incentives, but may still receive REC incentive payments from the utility

ILLINOIS POWER AGENCY

for projects under REC Contracts in the Program that predate the Approved Vendor's suspension.

The Agency intends to develop an escrow process to be activated in situations where an Approved Vendor is very likely not going to pass through promised incentive payments to customers. An outline of the Agency's plan is provided here, and the Agency will fully develop the initiative now that the Commission has approved the Long-Term Plan. The escrow process will address a different situation and benefit a different set of customers than the REC adder for stranded projects. The escrow process will complement the restitution program (see Section 9.9) by hopefully reducing the number of customers who ultimately seek a restitution payment.

Funding: *The necessary administrative costs will be paid out of the general RPS collections fund held by the public utilities. The Agency intends to use a third-party professional escrow service as the escrow agent. If the escrow process is implemented for an Approved Vendor that is suspended from the Program, repayment of escrow fees may be considered as a requirement for re-entry. In addition, the Program Administrator may condition re-entry on the Approved Vendor no longer making offers that include a lump-sum REC payment pass-through.*

Activation of Escrow Process: *The escrow process would be activated when there is a high likelihood that the Approved Vendor would not pass through promised REC incentive payments to customers. For example, this would be the case if the Approved Vendor has demonstrated a pattern and practice of not passing promised REC incentive payments through to customers. The escrow process might also be used when an Approved Vendor files for bankruptcy. The Program Administrator would also be empowered to apply the escrow process to close affiliates of an Approved Vendor that is required to use the escrow process.*

In addition, the following requirements would need to be met:

- *The Approved Vendor at issue has promised to directly pass through part or all of the REC incentive payment to one or more customers;*
- *The Approved Vendor has projects participating in the Program where some or all of the REC incentive payment(s) have not yet been paid to the Approved Vendor by the utility; and*
- *The contracting utility agrees with the Program determination to implement the escrow process for the specific Approved Vendor.*

In determining whether the Approved Vendor has a pattern and practice of not passing through REC payments, the Program would not consider delays in application processing by the Program Administrator. The determination would be based only upon the Approved Vendor receiving the incentive payment and then not passing it through to the customer as promised in a reasonable amount of time. The Program Administrator would not be required to take disciplinary action against the Approved Vendor before the escrow process can be triggered. The Agency wants to be able to

ILLINOIS POWER AGENCY

swiftly implement the escrow process when appropriate, and expects that in some situations, the disciplinary and escrow processes will be triggered simultaneously.

Once the above requirements have been met, the Program Administrator would notify the Approved Vendor, who could appeal the decision to implement the escrow process to the Agency using the normal appeal process.

The Agency is now proposing the following additional details related to when the escrow process would be activated for an Approved Vendor. The Agency believes that the implementation of the escrow process is a very important consumer protection, but does not expect that it will be implemented very frequently. If the escrow process is activated, future REC payments will be transferred from the utility to the escrow agent instead of the Approved Vendor. The escrow agent will then pass the appropriate payments through to the customer and Approved Vendor. The Program Administrator may activate the escrow process if it concludes there is a high likelihood that an Approved Vendor will not pass through promised REC incentive payments to its customers. The Agency proposes that such a conclusion can be reached only in specific situations, after a specific process has been followed.

Specific Situations that Could Lead to the Activation of the Escrow Process

The first situation that could lead to the implementation of the escrow process would be if the Program Administrator has received credible reports that the Approved Vendor has not passed through promised incentive payments in compliance with the timing outlined in the contract, or, if the timing is not specified by contract, within a certain number of days after the Approved Vendor received the payment from the utility. (Note that if the customer has caused the delay, for example, by not providing information necessary for the Approved Vendor to make the payment, this would not be considered unreasonable delay on the part of the Approved Vendor and therefore would not be considered evidence of likelihood of the Approved Vendor not passing through payments.)

The Agency is also proposing that, even if the established threshold of credible reports/complaints *could* lead to implementation of the escrow process, the Approved Vendor would be provided multiple opportunities to respond to the concerns (and potentially prove that there is *not* a high risk of an ongoing failure to pass through incentive payments).

Questions for stakeholders:

1. What should the minimum threshold be for the number of reports/complaints to potentially lead to the implementation of the escrow process? The Agency is considering a set number of reports/complaints (such as 2 or 5 credible reports within a 45-day period) or a percentage approach (such as 1% of the number of projects included in invoices for the Approved Vendor over the past three months). The Agency is attempting to balance consumer protection risks, which would weigh in favor of a low threshold, against the uncertainty and potential financial risk to Approved Vendors, which would weigh in favor of a higher threshold. Another option could be to use a combination of absolute numbers and percentages, such as “the greater of X reports or Y%.”
2. If the contract between the customer and the Approved Vendor does not specify a deadline or time frame for the Approved Vendor to pass through the promised REC payment, what

ILLINOIS POWER AGENCY

timeline should the Program Administrator use as a threshold to determine if there is a high risk that the Approved Vendor will not pass through the promised incentive payment to customers? Would a deadline of 30 or 45 days for the Approved Vendor to pass through a REC incentive payment (measured from the time that the Approved Vendor receives the payment from the utility) be reasonable?

The Agency Proposes that a **second situation** that could lead to implementation of the escrow process would be if the Program Administrator receives a credible report or acknowledgment (regardless of whether it is submitted as a “complaint”) from a current (or recent former) employee or staff of the Approved Vendor that the Approved Vendor has not passed through a promised incentive payment in compliance with contractual obligations or, if the timing is not specified by contract, within a certain number of days after the Approved Vendor received the payment from the utility.

Questions for stakeholders:

3. What should the standard be for determining if a former-employee whistleblower is making a credible report related to the failure to pass through incentives to customers? Should the Program Administrator confirm with a certain number of customers that those customers in fact did not receive their promised REC incentive?

The Agency is also considering whether the filing of bankruptcy by an Approved Vendor that uses the model of passing through lump-sum REC incentive payments to customers should lead to the implementation of the escrow process. If an Approved Vendor has filed for bankruptcy, that is a strong indication that the company is insolvent, which may create a high risk that incoming REC incentive payments may be used for other purposes rather than being passed through to customers. The Agency acknowledges that the filing for bankruptcy is an Event of Default under the master REC Contracts between Approved Vendors and utilities (or IPA, in the case of some ILSFA projects). If an Event of Default occurs due to actions of the approved Vendor, the contracting utility (or IPA, in the case of some ILSFA projects) may terminate the REC Contract, such that no future payments would be made under the REC Contract. However, the Agency’s understanding is that the utilities may not always move promptly to terminate a REC Contract even if the Approved Vendor files for bankruptcy, especially if the Approved Vendor continues to meet its obligations under the REC Contract. The Agency also understands that in the case of bankruptcy, the bankruptcy court may issue orders that impact the contracts involving, and payments made to, the bankrupt Approved Vendor. Finally, the implications of a reorganization bankruptcy may be different than a dissolution bankruptcy.

Questions for stakeholders:

4. The Agency seeks feedback from stakeholders on whether and/or when an Approved Vendor filing for bankruptcy should activate the possibility of the escrow process being used, and any relevant implications or considerations.

Additional Steps before the Escrow Process is Activated

In the first two situations described above (where the Program Administrator has received information that the Approved Vendor has already violated program requirements by not passing through promised REC incentives), the Program Administrator would first issue a Notice of Potential

ILLINOIS POWER AGENCY

Violation to the Approved Vendor and would notify the Approved Vendor of the possibility of implementing the escrow process. The Approved Vendor would be provided a reasonable opportunity (including a reasonable amount of time) to respond before the Program Administrator determines whether a complaint or report is credible. The Approved Vendor would also have the opportunity to demonstrate to a reasonable degree of certainty that the failure to pass through promised REC incentives will not be repeated; the Program Administrator may decide not to move forward with the escrow process if it believes the Approved Vendor has successfully demonstrated this.

Similarly, in the case of bankruptcy, the Program Administrator would provide the Approved Vendor with a reasonable opportunity to prove, if asserted, that it has not, in fact, filed for bankruptcy, or otherwise respond. The Program Administrator may choose not to move forward with the escrow process if the Approved Vendor is able to demonstrate to a reasonable degree of certainty that it will comply with its contractual obligation to pass through promised REC incentives notwithstanding the bankruptcy process.

Once one of the above circumstances has been satisfied, including notice and an opportunity to respond, if the Program Administrator still believes it is appropriate to move forward with the escrow process, the Program Administrator will provide its determination to the relevant utility for agreement. If the utility agrees to the implementation of the escrow process, the Program Administrator will notify the Approved Vendor that the escrow process will be activated. The Approved Vendor would then have two weeks to appeal the decision to implement the escrow process to the Agency. As with normal appeals, the Approved Vendor may request that the decision be stayed pending a determination on the appeal, which the Agency may grant or deny in its discretion.

The Agency also proposes that the Program Administrator may temporarily pause the generation of invoices and/or the verifying of an Approved Vendor's Part II project applications in its reasonable discretion while investigating whether the circumstances that would lead to the escrow process have occurred, waiting for utility concurrence, during the appeal period or determination of an appeal that the escrow process should be activated, or during the implementation of the escrow process.

Details of the Escrow Process Implementation

The 2024 Long-Term Plan provides:

If the Approved Vendor does not appeal, or the appeal is denied, the escrow process could be used for (1) all REC incentive payments for the Approved Vendor at issue, (2) just for batches of projects where there is a promised pass-through payment to the customer, or (3) only for payments for individual projects where there is a pass-through payment. The Agency also intends to provide a process by which an Approved Vendor may request to no longer be subject to the escrow process. No more than once every 12 months, an Approved Vendor may submit such a request to the Program Administrator. The burden would be on the Approved Vendor to demonstrate that there is no longer a risk that it would fail to pass through promised REC incentives.

ILLINOIS POWER AGENCY

The Agency is now proposing that the escrow process would be implemented at the contract level, which is the same level as invoicing. In other words, the Program Administrator would generate invoices according to its normal processes, except that the payee would be changed to the escrow agent for the entire invoice. It is possible that this would mean that incentive payments would pass through the escrow agent for projects and/or batches where the customer has not been promised a pass-through incentive. However, the Agency believes this is the best approach to reduce administrative burden on the utilities and to reduce the possibility for error in the amounts to be paid to the escrow agent.

As explained above, not more than once every 12 months, an Approved Vendor may submit a request to the Program Administrator that it no longer have its payments diverted to the escrow agent. The Approved Vendor must demonstrate to a reasonable degree of certainty that it will not fail to pass through promised REC incentives. The Agency proposes that the Program Administrator may implement reporting requirements if it grants the request, such as requiring the Approved Vendor to provide updates and proof that it is making promised payments to customers. If the Program Administrator denies the request, the Approved Vendor may appeal to the Agency using the normal appeal process.

The 2024 Long-Term Plan continues:

***Escrow Process:** Once the escrow process has been activated, the Program Administrator would notify the Approved Vendor and the affected customers. The Approved Vendor would continue invoicing as normal and on the pre-existing schedule, and the utility would make the payment to the escrow agent instead of directly to the Approved Vendor. For each of the Approved Vendor's projects that is still receiving REC payments (for Small DG, this would mean the payment had not been made; for Large DG, this would mean at least one payment was remaining), the Program Administrator would determine the proper disbursement of the payment. The Program Administrator would review the Disclosure Form (if generated on or after June 1, 2023) and any contracts and other relevant documentation submitted by the Approved Vendor or customer to determine how much of the REC incentive payment should be disbursed to the customer, and how much (if any) should be disbursed to the Approved Vendor. The Program Administrator would provide its recommendation to the Agency. The Agency would review the recommendation, and while it would consult with the applicable utility, the ultimate determination of the payment amount would be made by the Agency, which would approve or modify the Program Administrator's disbursement proposal. Upon final determination, the escrow agent would make the disbursement. This approach is consistent with the Commission's Final Order approving the escrow process.¹*

As explained above, the utility would be required to agree with the determination to activate the escrow process. The Agency proposes that it would request that the utility provide its determination within 14 calendar days. Once that agreement is confirmed, the Program Administrator would notify the Approved Vendor and affected customers. Once the escrow process is initiated, the Approved

¹ Final Order at 113, ICC Docket No. 23-0714 (Feb. 20, 2024).

ILLINOIS POWER AGENCY

Vendor will still submit the invoice to the utility, but the utility will make payments under the relevant REC Contract to the escrow agent instead of to the Approved Vendor.

The Agency expects that determining the exact amount of money promised to the customer may, in some situations, be difficult, and that the Approved Vendor and customer may disagree on the appropriate amount. The Agency intends that the Program Administrator will consider all information available to it before arriving at a determination of the amount that should be paid to the customer.

If the customer's Disclosure Form was generated on or after June 1, 2023, it will include a field indicating the amount of the pass-through payment to the customer. For these customers, the Agency proposes that there will be a rebuttable presumption that the amount disclosed on the Disclosure Form is the amount that the customer should receive. This presumption may be rebutted by information presented by the Approved Vendor (or Designee) or the customer. If the Disclosure Form was generated prior to June 1, 2023, it will not include a field for the REC payment pass-through and the Program Administrator will rely on other documentation.

The Program Administrator may request from the Approved Vendor any information or documentation related to the pass-through payment amount owed to customers. The Program Administrator may also request information and documentation from customers regarding the amount of pass-through payment that they were promised. The Program Administrator may also request information or documentation from any involved Designees.

In determining the amount of the pass-through payment, the Program Administrator may consider sizing or other changes to the system design that would affect the overall REC payment amount, if relevant based on other documentation of the specific offer. For example, the Agency understands that some Approved Vendors promise to pass through a certain percent of the total REC payment amount, and that if project specifications change, this may affect the total REC payment amount and also the amount promised to the customer.

The Agency proposes that the Program Administrator will endeavor to make its determination as fair as possible. For example, say a solar project was initially designed at 8 kW AC and the customer's Disclosure Form stated that the pass-through payment would be \$6,000, and the customer's contract stated that the pass-through payment would be 75% of the total REC incentive payment. If the Approved Vendor or Designee actually only installed a 5 kW AC system, such that 75% of the total REC incentive would be only \$3,500, but the customer was unaware of the change and did not sign a change order or an updated Disclosure Form, the Program Administrator may find that the proper payment to the customer would be the full \$6,000 originally promised. If on the other hand, the customer signed a change order and an updated Disclosure Form that disclosed the updated pass-through amount as \$3,500, the Program Administrator would find that the payment to the customer should be \$3,500.

If the Approved Vendor does not submit information or documentation about the amount of the pass-through payment, but the customer does present information that is reasonably substantiated, the Program Administrator may make a determination based solely on the information presented by the customer, and vice versa if only the Approved Vendor submits information.

ILLINOIS POWER AGENCY

If the Program Administrator does not receive any information or documentation that appears to validate the pass-through amount, it may—after a reasonable amount of time given to all parties to submit information—determine that it does not have enough information to determine the amount owed to the customer. In this case, the Program Administrator will recommend that the escrow agent disburse the entire payment to the Approved Vendor. Similarly, if the Program Administrator and/or escrow agent is unable after reasonable efforts to obtain necessary information from the customer in order for a payment to be made to the customer, the full REC incentive for a project may be disbursed to the Approved Vendor. In both of these situations, the payment of the entire amount to the Approved Vendor would not be intended to discharge any legal or other obligation between the Approved Vendor and customer.

Questions for stakeholders:

5. The Agency seeks feedback on the above proposal for how the Program Administrator would determine the appropriate amount of payment to each customer whose project is part of the escrow process. Are there any situations or considerations that the above proposal does not address? Is the proposal fair to both customers and Approved Vendors/Designees?
6. How long should the Program Administrator wait—while attempting to obtain information about the promised pass-through payment, or while attempting to get necessary payment information from the customer—before directing the escrow agent to disburse the entire incentive payment to the Approved Vendor?

The 2024 Long-Term Plan then explains:

The Program Administrator would provide its recommendation to the Agency, which would review and consult with the applicable utility, and the Agency would approve or modify the disbursement proposal. Upon final determination, the escrow agent would make the disbursement.

The Agency is further proposing that after the final determination of the payment disbursement, the Program Administrator would notify both the Approved Vendor and customer of the determination. There would not be an opportunity to appeal this determination, as it would already have been approved by the Agency.

The Agency is interested in stakeholder feedback on the best way for the escrow agent to make payments to customers and Approved Vendors. The Agency would prefer to avoid having to obtain individuals' and companies' banking information if possible and seeks feedback on having payments made exclusively by check mailed to the customer at the registered address of the solar project (unless the customer requests the check to be sent to another address) and to the Approved Vendor at the address included in its most recent Approved Vendor application (unless the Approved Vendor requests the check be sent to another address).

Questions for stakeholders:

7. What is the best method for the escrow agent to make payments to customers and Approved Vendors? What considerations are important to assess for different payment approaches?

Availability of Escrow Process under Existing REC Contracts

Finally, the Long-Term Plan explained:

The Agency previously held the position that it did not have authority to interfere with the flow of REC incentive payments to Approved Vendors under existing REC Contracts. The Agency's 2022 Long-Term Plan explained,

The Agency does not believe that the authority to “revoke a vendor’s ability to receive program-administered funding status” is the same as authority to revoke a vendor’s ability to receive program-administered funding—such as through the suspension of REC delivery contract payments—which the counterparty utility is contractually obligated to provide for REC deliveries, unless that consequence follows as a violation of certain REC delivery contract terms.²

The Agency therefore sought explicit Commission approval for the proposed escrow process in Docket No. 23-0714 approving this 2024 Plan. The Agency notes that under the escrow process, the Approved Vendor would still receive any REC payment amount beyond the amount promised to the customer.³ In its Final Order, the Commission approved the Agency’s proposed development of the Illinois Shines escrow process.⁴

The Agency is aware that there is another circumstance under which customers may not receive promised incentive payments. Instead of Approved Vendors receiving the REC payment and failing to pass it through to the customers, Approved Vendors may instead choose to not invoice for the REC payment in the first place. This may be especially likely for Approved Vendors for whom the escrow process has been initiated—if the Approved Vendor will only receive a small portion of the REC incentive payment from the escrow agent, it may have less incentive to submit the invoice. As the Agency is already planning several large new consumer protection initiatives in the 2024 Plan, it is hesitant to attempt to address this additional issue at this time. Instead, the Agency will monitor the situation and determine if the issue of Approved Vendors not invoicing becomes a significant problem. If so, the Agency may consider a new process by which the Program Administrator may submit an invoice on behalf of an Approved Vendor that refuses to invoice (and that has promised to pass through REC incentives to customers).

The Agency intends to develop an amendment to the REC Contract to implement the escrow process proposal (as well as the stranded customer REC adder proposal) and anticipates seeking stakeholder comment on that topic later this calendar year.

² 2022 Long-Term Plan at 9.3.3 (emphasis in original).

³ The Agency intends to develop an escrow process specifically for Illinois Shines, as that is where the Agency has seen unfulfilled promises to make lump-sum pass-through payments. The Agency is investigating the use of the delayed lump-sum payment pass-through model in ILSFA and whether it is consistent with ILSFA requirements. The Agency may initiate a stakeholder process to consider restrictions or a prohibition on this model in ILSFA, or to consider other approaches such as developing an escrow process for ILSFA as well.

⁴ Final Order at 113, ICC Docket No. 23-0714 (Feb. 20, 2024).



ILLINOIS POWER AGENCY

The Agency seeks stakeholder feedback on any and all of the above additional details, even if there is a not a specific question included about the item. Please note that the high-level approach outlined in the 2024 Long-Term Plan has been approved by the Illinois Commerce Commission in [Docket 23-0714](#) and cannot be changed at this time, and that additional details must be consistent with that approach.