



ENVIRONMENTAL LAW & POLICY CENTER

Protecting the Midwest's Environment and Natural Heritage

COMMENTS OF THE ENVIRONMENTAL LAW & POLICY CENTER REGARDING THE IPA'S DISTRIBUTED GENERATION PROCUREMENT PLAN

The Environmental Law & Policy Center (ELPC) and the City of Chicago (City) respectfully submit these comments in response to the Illinois Power Agency's (IPA) July 3, 2014 Request for Comments regarding the Agency's procurement of renewable energy credits from distributed generation (DG) resources. As indicated in the IPA's Request for Comments, the Agency is seeking some ideas, information, and feedback that will be useful to the Agency in developing its proposed 2015 Procurement Plans.

We appreciate the IPA's leadership in facilitating stakeholder discussions regarding program decision and planning for the Agency's procurement of distributed generation resources. Distributed generation, and in particular distributed solar, brings significant economic, environmental and social benefits that will help to strengthen and diversify the Illinois electric grid.¹ In carrying out its various statutory responsibilities, the Agency should strive to maximize opportunities for new distributed generation development in Illinois. It is notable that Illinois has not yet made progress towards its distributed generation targets and goals. *See* 20 ILCS 3855/1-75(c)(1) (setting forth 0.5% by June 1, 2013, 0.75% by June 1, 2014, and 1% by June 1, 2015 distributed generation "carve-out" in the Illinois RPS). It will be important for the

¹ See Clean Coalition, *Distributed Generation of Clean Energy: A Catalog of Benefits* (Aug. 2013) (available at <http://www.clean-coalition.org/site/wp-content/uploads/2014/02/DG-Catalog-of-Benefits-07-tk-9-Aug-2013.pdf>).

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IPA to take full advantage of all opportunities to get Illinois back on track with respect to its DG procurement goals.

Before addressing the specific questions from the Agency's Request for Comments, we will state some underlying principles that we believe will be important for the Agency to consider when developing its distributed generation procurement program.

1) IPA's procurement strategy should focus on new distributed solar projects. Public Act 98-0672, signed into law by Governor Quinn on June 28, 2014, directs the Agency to develop a supplemental solar procurement plan "limited to the procurement of renewable energy credits, if available, from new or existing photovoltaics, including, but not limited to, distributed photovoltaic generation." 20 ILCS 3855/1-56(i). While the statute enables the Agency to procure renewable energy credits (RECs) from either new or existing resources, it does not specify which product or mix of products the Agency is to procure. Thus, the Agency has discretion to select the specific mix of "new" or "existing" resources to be procured through the supplemental solar procurement, in light of the Agency's other specific statutory mandates.

ELPC and the City recommend that the Agency prioritize procurement of new distributed generation resources to the maximum extent possible. Illinois will not meet its DG goals nor will it realize the significant advantages and grid benefits of distributed generation unless steps are taken to promote the development of new DG resources. Incentives for new development will also help catalyze the growth of a larger and more competitive DG industry in Illinois, which will help to bring project costs down for all Illinois customers. Procurement of RECs from projects that have been built and financed years ago will not promote any of these goals and would not be the most effective use of limited IPA resources at a time when the state of Illinois

has fallen behind on its distributed generation goals. If the IPA intends to procure some amount of existing solar (which we do not recommend) then it will be very important for the Agency to set separate market-based benchmarks as RECs from new vs. existing projects are entirely different products.

The statute does not define the terms “new” and “existing” so the IPA will also need to determine which projects qualify as “new” projects for the purpose of this supplemental procurement. There will likely be a need for some flexibility in order to avoid “chilling” the market for closing new sales during the time before the IPA’s DG procurement program opens. The Agency should consider allowing projects that have been energized after the effective date of the recent solar procurement legislation (i.e. after July 1, 2014) to qualify as “new” projects for the purposes of this procurement.

2) The IPA should strive to develop a simple, transparent and sustainable DG procurement program. The best way to promote active and robust participation in the IPA’s procurement program is to make sure that the program is as simple as possible and is transparent to the public and the solar industry. Even though Public Act 98-0672 calls for a “one-time” supplemental solar procurement, the IPA should design the program with a view towards future procurements and should strive to avoid the “boom-and-bust” cycles that have plagued solar incentive programs in other jurisdictions. The IPA can help to encourage investment and job creation in Illinois by signaling the Agency’s intent to use the current procurement process as the first step towards a longer-term solar procurement strategy in Illinois based on a simple and transparent model. This will help create the longer-term stability necessary to foster industry growth and investment in Illinois.

The Agency should avoid injecting unnecessary complexity into the program design. For example, the Agency should not impose “aggregation” requirements where they do not simplify and streamline the process. In many cases, project developers can “aggregate” their own projects. The IPA may also want to consider a single third-party administrator to serve as the “aggregator” for the residential standard-offer program. We look forward to offering more specific feedback on creative approaches to “minimiz[ing] the administrative burden on contracting entities” as required by the statute. *See* 20 ILCS 3855/1-56(i).

3) The Agency should develop a program that recognizes the differences between the residential and commercial solar market and incorporates a “declining capacity block” program design for the residential sector. One of the most important takeaways from the IPA’s 2012 solar workshop process was that a solar procurement program that works for larger, commercial-scale projects will likely not work for smaller residential-scale projects. The transaction costs associated with traditional competitive procurements for the commercial or utility-scale market simply do not work for the residential market. At the conclusion of its 2012 workshops, the IPA proposed a draft program design that derived a “standard-offer” for residential projects by using the clearing price from a competitive process for the larger commercial-scale projects. *See* IPA Plan Complying with Final ICC Order in Docket 12-0544. This represents a process that meets both the IPA’s need to have a competitive procurement, and the residential DG industry’s need to have a simple, transparent process for participation. The basic concepts and program structure incorporated into the IPA’s 2013 Procurement Plan are still valid and should serve as the starting point for the IPA moving forward.

Because the Illinois RPS requires at least half of the distributed generation resources to be procured from devices under 25 kW in nameplate capacity, we believe it makes sense for the IPA to split the available funds evenly between small (under 25 kW) and larger (25 kW to 2 MW) DG projects. The Agency should develop separate programs for each of these market segments, and should also consider further splitting the commercial market into one or more subcategories, recognizing that small commercial projects (under 200 or 300 kW) are much different than larger 2 MW rooftop projects.

We recommend that the IPA consider developing a “declining capacity block” program for the residential (under 25 kW) side of the program. This type of program is modeled after the extremely successful California Solar Initiative, which is widely regarded as reflective of best practices for the residential market. It allows for a great deal of transparency and very low transaction costs while at the same time driving prices lower towards an increasingly competitive result. If constructed correctly, this type of program can help avoid “boom-and-busts” by stretching out the available budget over a longer-term period based on a declining block schedule. Each “tranche” of capacity should be set at a progressively lower price and projects should be allowed to roll forward on a first-come-first-served basis to each new tranche on a continuous basis. There are a number of best practices that the IPA can draw from in constructing the declining block program that we anticipate will be covered in subsequent comments and workshops involving the solar industry. In addition to California, we suggest the IPA review program design that New York and Massachusetts are adopting. In addition, the Agency may want to consider soliciting bids from a third-party administrator to design and administer the residential declining-block program.

This type of program is best for the industry, customers and ratepayers for several reasons. First and foremost it is transparent to the industry, regulators and customers. Residential customers know exactly how much they will get for their RECs from this program, which largely eliminates any possibility of gaming the system or gaming customers. Second, it treats all customers equally, which is a principle that protects consumers and ratepayers alike. Finally, it eliminates confusion in an already confusing market. As a nascent market, Illinois consumers are learning about solar as the market grows. Residential companies spend significant time walking customers through the process, and having a competitive bidding process where one neighbor may receive a wildly different SREC price from another is not conducive to building a strong market. It is for these very reasons that even programs with competitive bid processes for commercial projects have developed a more standard offer for the residential projects. Connecticut's ZREC program is a good example of this for the IPA to consider.

One critical program decision will be determining the method for setting the initial price for the declining-block program as well as the size of each tranche of capacity and the incremental declination in prices from one tranche to the next. We believe that there continues to be validity in using a competitive process (such as the clearing price from the commercial auction) to set the initial price for the residential standard offer. The IPA should take additional comments from the industry to determine the appropriate scaler, if any, to apply to the clearing price from the commercial auctions to use for the residential program. The IPA should solicit input from the solar industry to determine best practices for setting the size/capacity and price declination for each tranche. The IPA should also consider how the declining block program can

be constructed to carry forward to future DG procurements that the Agency will administer to meet the larger Illinois solar and DG carve-out targets.

4) The Agency should take appropriate safeguards to prevent “phantom” projects and speculation.

Many states are having serious problems with speculation and gaming in competitive renewable energy procurements. An abundance of speculation can result in a significant amount of capacity dropping out of the process, which can delay and frustrate the accomplishment of program goals. The IPA should prioritize the identification of best practices to help prevent “phantom” projects and speculation in the Illinois program. This is particularly important given the limited resources available and the need to demonstrate the success of this initial supplemental procurement to help inform a longer-term, sustainable solar market in Illinois.

At the same time, the Agency should strive to avoid onerous credit requirements or other program features that serve to limit the participation and drive up prices. The IPA should solicit input from the industry regarding best practices for application deposits, “clawback” provisions, and bidding requirements to ensure that only “real” projects and not speculative projects are being bid into the program. To address ratepayer concerns, we suggest the IPA make payments only after systems have been energized, eliminating a “take and run” scenario. Systems should be registered with PJM-GATS or M-RETS for tracking and retirement purposes. There will be some projects that do not make it, even with strong protection provisions in place, so there should be a process for determining a waitlist for each size group, and a clear process for developers to determine where their projects are in the line.

The IPA has the opportunity to develop a program that stimulates the market, yet protects consumers and ratepayers. Thankfully we can learn from the trials and errors in other states, and the vast experience the solar industry has now from participating in other programs. We respectfully submit answers to the specific questions posed, though leave opinion on much of the specific details to the industry:

1. For DG between 25 kW and 2 MW in nameplate capacity, should the IPA consider holding procurements for more than one size range category?

Yes, the IPA should consider holding procurements for more than one size range. While we defer to the commercial solar industry on the exact break of these ranges, there are market differences between medium size commercial projects and large commercial/industrial projects. If all were grouped together the likelihood that the large commercial/industrial projects will dominate is forgone. We are hoping to prevent just 2 or 3 projects from consuming all of the procurement. Therefore, in order to diversify the market, the IPA should split this category as well.

2. Are there other attributes that should be considered (e.g., net metering eligibility, community solar projects, residential/non-residential) in determining procurement categories?

There may be some benefit in determining geographic categories to ensure the entire state benefits from this program, though there should be flexibility.

3. How should the IPA define a distributed generation system? Is size of a system defined at the inverter, at the meter, or in some other way?

The system should be defined at the meter, not at the inverter. Defining at the inverter sets up a situation where a large project could use multiple inverters and qualify for a smaller category.

4. If the IPA holds separate procurements for new and existing systems, how should those terms be defined? For example, is a system under development but not in operation at the time of the procurement new or existing?

We do not recommend that the IPA procure RECs from existing systems. The intent of the supplemental procurement is to stimulate the Illinois market, and therefore the focus should be on new projects. We understand, though, that there is concern that there might be a chill on the market as this program is developed, and therefore we suggest that “new” systems be considered anything that is energize after June 30, 2014, the signing of the supplemental procurement bill. The IPA may also want to consider separating out systems that have already received a rebate from DCEO, as these have already received an incentive from the state.

5. If RECs procured from new systems are anticipated to be of higher value than those from existing systems, what can the IPA consider that will prevent the procurement process from having a short-term impact on project development?

As mentioned in our principles above, a declining block program for residential systems, where the largest block is the last, will significantly reduce the likelihood of a boom and bust situation in the market.

6. How long and what flexibility should the IPA allow for new systems to commence operation after the procurement event?

We defer to the industry on this, but it appears that new systems should be given 12 months, with a 6 month optional extension. Money for the RECs should be paid on proof of energizing the system. There should be interim goals, such as proof of interconnection, along the way.

7. What are the advantages and disadvantages of REC contracts of five year terms and those of a longer duration? Please be specific by market segment/size, and between new and existing systems.

We again defer to the solar industry to the best term for this program, but it appears that five year contracts are an appropriate length of contract for new systems in order to stimulate the market without limiting the amount of solar procured. Longer contracts may make the individual REC price somewhat cheaper, but will limit the amount of solar procured.

8. What are the trade-offs between contract terms for new systems that pay for RECs as they are delivered versus contract terms that would allow for some upfront payment upon the system going into operation, but with commensurate enhanced credit requirements and clawback provisions?

There are differences between commercial and residential systems that might make it appropriate to have different procedures for each size range. While it is simpler and likely more cost-effective to get an upfront payment (because of the time value of money), onerous credit requirements would negate any of this benefit. We suggest the IPA solicit best practices from the industry with this in mind.

9. What elements may be necessary to include in clawback provisions to ensure that Agency, ratepayer, and stakeholder interests are properly protected?

We defer to the industry as to the provisions that will ensure that the RECs procured are delivered, but suggest that the IPA review program design in California, Colorado, New Jersey, and Massachusetts for examples.

10. What are the perceived risks that developers, property owners, lending institutions, utilities, utility ratepayers, and other stakeholders may be exposed to as a consequence of the IPA entering into REC procurement contracts with terms of more than 5 years?

There is significant risk on all involved. Given the instability of Illinois budget it makes money set aside for payment of future contract requirements look very appetizing. So even if the next year's payment is available, the state could borrow latter year payments with the intent of paying them back. Developers and financial institutions will have to factor that risk into the price they propose for their project and the cost of capital, respectively. This likely yields a higher price, which means money that ratepayers have paid into this fund get less developed for their money.

11. What credit requirements may be appropriate for aggregators and other counterparties (i.e., self-aggregating system owners)? Should these requirements vary based on REC portfolio size and system size? If so, how?

We defer to the industry on this, but it appears that aggregators are unnecessary for commercial systems. Developers can act as aggregators and the deposit requirement plus performance requirements are sufficient credit requirements for these projects. Adding in aggregators in this category adds an additional transaction cost, thereby assuring that less overall RECs will be procured.

To meet the IPA's desire to not be the counterparty for individual contracts for residential markets, we suggest a program administrator/one aggregators for the entire market with

the understanding that that administrator will set up a declining block program. The administrator would be responsible for ensuring that projects are performing as expected.

12. Are there timing considerations other than those related to DCEO rebates, state and federal tax incentives that the IPA should consider?

Not that we are aware of at this time.

13. If aggregators are allowed to bid speculatively (e.g., not all projects in their aggregation identified at the time of bidding), what would be a reasonable length of time for aggregators to be given to provide evidence of viable projects, and what provisions should be considered to reallocate quantities of RECs to other aggregators if an aggregator is not able to verify progress on project development?

As referenced in our comments above, for the commercial category, the IPA should put in place strong requirements that discourage phantom projects. Deposits, site control requirements, interconnection proof, etc., are all provisions that will prevent this from happening. With the residential declining block program there is no bidding, but projects should have minimum requirements, such as proof of interconnection, etc. to reserve a spot in line.

In both categories projects should be given a year to energize with an optional 6 month extension. If projects fail to meet this deadline, the money will be reallocated to participants on a known waiting list.

14. What additional provisions, if any, should be included to allow entities to be their own aggregator?

Clawback provisions and deposit requirements should be sufficient.

15. Given the framework of the Illinois RPS and provisions of the new Section 1-56(i), what models from other states should the IPA consider? Are there aspects of other state's models that the IPA should be aware of to avoid, and why?

As mentioned above, California, New York, Connecticut and Massachusetts are good examples.

16. Should the IPA consider tracking RECs using systems other than PJM-GATs and MRETS?

No, GATS and MRETS should be used to track system performance.

17. Are there policies and procedures for tracking DG RECs that need updating under current M-RETS and PJM-GATS framework?

We are unaware of any policies and procedures that need updating.

18. Participants in our June 12th workshop included project developers, solar installers, both local and national businesses, utilities, trade associations, environmental organizations, consumer advocacy groups, and state agencies. Are there additional entities (or categories of entities) that should be engaged in this process?

ELPC and the City look forward to further engaging with the IPA's on the development of the implementation plan for the supplemental solar procurement. Representatives of our organizations will plan to participate in any follow-up workshop discussions to answer questions and provide specific examples of the issues discussed in our written comments.

Respectfully submitted,



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