

# Chapman Client Alert

May 15, 2017

Current Issues Relevant to Our Clients

## Illinois' Future Energy Jobs Act Update

On December 7, 2016, Public Act 99-0906 (the "Act") was enacted into law, with an effective date of June 1, 2017. The Act calls for updates to Illinois' Renewable Portfolio Standard ("RPS"), net metering, and energy efficiency standards, as well as a new zero emissions credits plan. See [Chapman Insights](#), dated February 2, 2017, for additional detail regarding the Act.

Under the Act, the Illinois Power Agency (the "IPA") is required to conduct an initial forward procurement (the "Initial Forward Procurement") for renewable energy credits ("RECs") from utility-scale (greater than 2 MW) wind projects and solar projects. The Act then requires the IPA to develop a plan for follow-on REC procurements (the "Long Term Procurement Plan") setting forth the rules for procuring RECs from other renewable energy sources, such as distributed generation and community solar.

Following passage of the Act, the IPA announced a series of workshops to discuss the implementation of revisions to RPS, the first of which was held on May 10, 2017. On May 11, 2017, the IPA issued a request for comments to interested stakeholders on two of the topics discussed at the May 10th workshop. As additional workshops are held concerning other aspects of the Act, Chapman anticipates that the IPA will seek additional comments from interested parties on those topics.

Set forth below is a brief summary of the items discussed at the May 10th workshop. Chapman will provide summaries of the future workshops as they are held.

### May 10th Workshop

At the May 10th workshop, the IPA shared its proposed plan for the Initial Forward Procurement, which is expected to take place in August 2017, as well as some of the material contractual terms expected to be part of such process. Specifically, the following points were discussed:

#### Bidding/RFP Process

- NERA (the procurement administrator) will establish a confidential benchmark price for RECs, which benchmark price will not be shared publicly.

- Suppliers will submit their bid, which will consist of:
  - a fixed contract price;
  - a fixed contract quantity;
  - the address, size, and technology for the proposed project;
  - a copy of signed interconnection agreement or representation that bidder understands interconnection requirements; and
  - a bid participation fee.
- To qualify, wind or solar projects must be "new" – (i.e., energized on or after June 2, 2017). Facilities located in Illinois will definitely be eligible and facilities located in adjacent states may be eligible.
- Any bid that exceeds the confidential benchmark price will not be awarded a contract.
- Bids that meet the project procurement criteria under the Act, as further developed by the IPA and approved by the Illinois Commerce Commission, will be awarded contracts based only upon pricing, starting with the lowest price.
- If a bidder is unsuccessful, the bidder will not receive any information as to why the bidder was unsuccessful (i.e. bidders will not know if their failure to win was because their bid price was above the benchmark price or because their bid price was below the benchmark price but higher than other successful bidders' pricing).
- If a bidder is selected, the bidder will likely be required to enter into three separate contracts (one contract with each Illinois utility) for the purchase and sale of RECs. The

terms of the REC contracts (including REC quantity) may differ slightly for each utility, but the proposed key provisions are expected to be the same across all three utilities. The currently proposed provisions are set forth below.

- Bidders will have no opportunity to negotiate the contracts.

#### Proposed contractual provisions

- Term

- A contract delivery period of 15 years.
- Delivery of first RECs under the contract must begin on or after June 1, 2019, but no later than June 1, 2021.

- Quantity

- The REC quantity will be fixed for the 15 year delivery period.
- Excess RECs generated by the project cannot be sold to any utility.

- Price

- Pricing for RECs will be based on price specified by supplier in the bid.
- Price will be the same across all three utility contracts.
- Price will not escalate over time.

- Delivery

- RECs transferred in the delivery year must be issued in the same delivery year. A “delivery year” begins on June 1 and ends on May 31 of the following year.
- For clarity, RECs from previous vintages cannot be used to satisfy REC delivery requirements for the current delivery year (i.e. no banking of RECs).
- A vintage year is based on when RECs are issued by GATS/MRETS (versus when the power is generated).

- Termination for failure to deliver RECs

- Failure to deliver the annual quantity of RECs to any utility on three separate occasions will result in the termination of the contract for default and the supplier will forfeit its collateral.

- If failure is due to delivery of RECs to any party other than the utilities, the contract will terminate for default and the supplier will forfeit its collateral.
- There will be no opportunity to purchase RECs from other sources or to use banked RECs to cover any shortages in the delivery obligation.

- Credit provisions

- Supplier must provide development security in an amount equal to 50% of the annual quantity of RECs from the project, subject to a floor, along with the suppliers' bid.
- Upon contract execution, Supplier must provide a letter of credit in an amount equal to 1 year of the annual quantity of RECs from the project.
- Upon contract execution, Supplier must provide an unsecured credit line in an amount equal to 1 year of the annual quantity of RECs from the project.
- As currently proposed, credit security would be owed separately to each of the utilities based on the RECs required to be delivered to the utility.

\*Note that some of these contractual provisions, including, for example, contract term and delivery period, are required pursuant to the Act and are not subject to change. However, other terms are open for discussion, comment, and may be changed.

#### May 11<sup>th</sup> Request for Comments

Based on discussions at the workshop between interested stakeholders and the IPA, the IPA released a Request for Comments on May 11, with comments due by May 17, 2017. The IPA has asked for comments with respect to the following: the appropriate level of site control that bidders should have to demonstrate in order to bid on REC contracts; whether a performance guarantee should be acceptable in lieu of providing evidence of site control; whether RECs should be bankable for use by projects to meet REC delivery requirements in subsequent years, and to what extent RECs should be bankable (quantity, vintage); and whether underperformance that cannot be remedied through banking or replacement should lead to termination or alternative penalty provisions.

## Chapman Perspective

---

Based on our experience, Chapman believes that a number of the items discussed at the May 10th workshop concerning the Initial Forward Procurement may adversely impact the financeability and development of the utility scale projects that are the subject of the Initial Forward Procurement. Moreover, we expect that the IPA's decisions with respect to the Initial Forward Procurement will carry forward with respect to its Long Term Procurement Plan, which may then adversely impact the financeability and development of the non-utility scale projects, as well. Therefore, Chapman encourages interested stakeholders to be proactive in the IPA's implementation efforts and provide guidance in the form of comments to the IPA so as to ensure that the IPA implements a framework that is

workable for all interested parties and ensures the success of renewable energy in Illinois.

## For More Information

---

If you would like further information concerning the matters discussed in this article, please contact any of the following attorneys or the Chapman attorney with whom you regularly work:

**Sameer A. Ghaznavi**  
Chicago  
312.845.3949  
ghaznavi@chapman.com

**Bruce A. Bedwell**  
Chicago  
312.845.3755  
bedwell@chapman.com

# Chapman and Cutler LLP

Attorneys at Law · Focused on Finance®

This document has been prepared by Chapman and Cutler LLP attorneys for informational purposes only. It is general in nature and based on authorities that are subject to change. It is not intended as legal advice. Accordingly, readers should consult with, and seek the advice of, their own counsel with respect to any individual situation that involves the material contained in this document, the application of such material to their specific circumstances, or any questions relating to their own affairs that may be raised by such material.

To the extent that any part of this summary is interpreted to provide tax advice, (i) no taxpayer may rely upon this summary for the purposes of avoiding penalties, (ii) this summary may be interpreted for tax purposes as being prepared in connection with the promotion of the transactions described, and (iii) taxpayers should consult independent tax advisors.

© 2017 Chapman and Cutler LLP. All rights reserved. Attorney Advertising Material.