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PRATT'S

# ENERGY LAW

## REPORT



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# Illinois' Future Energy Jobs Act

*By Bruce A. Bedwell, Sameer A. Ghaznavi, Melanie J. Gnazzo,  
and Kristin L. Parker\**

*The authors of this article discuss Illinois' Future Energy Jobs Act, which calls for updates to its renewable portfolio standards, net metering, and energy efficiency standards, as well as a new zero emissions credits plan.*

The Future Energy Jobs Bill (SB 2814) was enacted into law on December 7, 2016, as Public Act 99-0906, with an effective date of June 1, 2017 (the "Act"). The Act calls for updates to Illinois' renewable portfolio standards, net metering, and energy efficiency standards, as well as a new zero emissions credits plan. Under the Act, the Illinois Power Agency (the "IPA") is charged with developing various plans and the utilities are charged with collecting and distributing funds and entering in to contracts for the procurement of emissions credits. This summary is focused on the Renewable Portfolio Standard, the Initial Forward Procurement, the Long Term Procurement Plan, the Zero Emissions Standard, and Net Metering. The Act also includes significant energy efficiency, job creation, and training provisions, which are not described in this summary.

## **RENEWABLE PORTFOLIO STANDARD (THE "RPS")**

The previous target of 25 percent of retail energy to come from renewable energy sources by 2025 has not changed.<sup>1</sup>

New Interim Goals <sup>2</sup>
<ul style="list-style-type: none"><li>• 13 percent of each utility's load for eligible retail customers (and 13 percent of load for 50 percent of retail customers who are not eligible) to come from renewable energy in 2017</li><li>• 14.5 percent of each utility's load for eligible retail customers (and 14.5 percent of load for 75 percent of retail customers who are not eligible) to come from renewable energy in 2018</li></ul>



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<sup>1</sup> 20 ILCS 3855/1-75(c)(1)(B).

<sup>2</sup> *Id.*

New Interim Goals <sup>2</sup>
<ul style="list-style-type: none"> <li>16 percent of all retail customers load to come from renewable energy in 2019, increasing by 1.5 percent per year for all retail customers load thereafter to 25 percent by 2025, and continuing at a minimum of 25 percent thereafter</li> </ul>

The new interim goals will be met by the procurement by the IPA of renewable energy credits (“RECs”) in amounts that correspond to the RPS requirement for each given year.<sup>3</sup> RECs will be procured using funds from Alternative Compliance Payments and from a charge on customers’ electric bills.<sup>4</sup> These funds will be held by the utility to create separation of funds from government.<sup>5</sup>

In the event the RPS goals, and the corresponding procurement of RECs, conflict with the new wind and new solar REC procurement goals described under the Long Term Procurement Plan, the new wind and new solar procurement goals will take priority over the RPS goals.<sup>6</sup>

### INITIAL FORWARD PROCUREMENT

Notwithstanding whether a Long Term Procurement Plan (the “LTPP”) is approved, the IPA must conduct an initial forward procurement for (i) RECs from utility-scale wind projects (each such REC, a “WREC”) and (ii) RECs from utility-scale solar projects and brownfield site solar projects (each such REC, a “SREC”) within 160 days after the effective date of the Act with the following terms (the “Initial Forward Procurement”):<sup>7</sup>

Wind and Solar <sup>8</sup>
<ul style="list-style-type: none"> <li>1 million WRECS and 1 million SRECS per year beginning June 1, 2019 (if available, but no later than June 1, 2021)</li> <li>15-year delivery period</li> </ul>

The Initial Forward Procurement will call for payment upon delivery.<sup>9</sup> If there is any conflict between the requirements for the Initial Forward Procurement and the LTPP, the Initial Forward Procurement requirements will

<sup>3</sup> *Id.*

<sup>4</sup> 220 ILCS 5/16-108(k).

<sup>5</sup> 220 ILCS 5/16-115D(d)(4.5).

<sup>6</sup> 20 ILCS 3855/1-75(c)(1)(F)(1).

<sup>7</sup> 20 ILCS 3855/1-75(c)(1)(G)(i).

<sup>8</sup> *Id.*

<sup>9</sup> 20 ILCS 3855/1-75(c)(1)(G)(ii).

control.<sup>10</sup> RECs procured under the Initial Forward Procurement will count towards LTPP goals.<sup>11</sup> Note that there are certain limitations, such as the procurement of WRECs must not exceed procurement of SRECs in subsequent years.<sup>12</sup>

**LONG TERM PROCUREMENT PLAN**

Overall Goals <sup>13</sup>
<ul style="list-style-type: none"> <li>• 13 percent of electricity supplied to eligible retail customers from renewable energy sources (by way of RECs) by 2017 delivery year</li> <li>• Increase by 1.5 percent each year to 25 percent for 2025, and at least 25 percent thereafter</li> </ul>

**New WRECS and SRECS Goals:**

Of the RECs procured under the LTPP, at least 75 percent must come from wind and solar projects.<sup>14</sup> The price for RECs will be determined through a procurement process, but must be “cost effective.”<sup>15</sup> Specifically, the following minimum amount of RECs must be procured by the end of the delivery year specified:

2020 <sup>16</sup>
2,000,000 WRECs from new wind projects 2,000,000 SRECs from new solar projects, split as follows (to the extent possible): <ul style="list-style-type: none"> <li>• 50 percent of SRECs under the Illinois Solar For All Program from distributed renewable energy generation devices or community renewable generation projects</li> <li>• 40 percent from utility-scale projects</li> <li>• Two percent from brownfield site solar projects that are not community renewable generation projects</li> </ul>

<sup>10</sup> 20 ILCS 3855/1-75(c)(1)(G)(i),(ii).

<sup>11</sup> 20 ILCS 3855/1-75(c)(1)(G)(iv).

<sup>12</sup> *Id.*

<sup>13</sup> 20 ILCS 3855/1-75(c)(1)(G)(iii).

<sup>14</sup> 20 ILCS 3855/1-75(c)(1)(B).

<sup>15</sup> 20 ILCS 3855/1-75(c)(1)(C).

<sup>16</sup> 20 ILCS 3855/1-75(c)(1)(D).



2025 <sup>17</sup>
<p>3,000,000 WRECS from new wind projects</p> <p>3,000,000 SRECS from new solar projects, split as follows (to the extent possible):</p> <ul style="list-style-type: none"> <li>• 50 percent of SRECs under the Illinois Solar For All Program from distributed renewable energy generation devices or community renewable generation projects</li> <li>• 40 percent from utility-scale wind projects</li> <li>• Two percent from brownfield site solar projects that are not community renewable generation projects</li> </ul>

2030 <sup>18</sup>
<p>4,000,000 WRECS from new wind projects.</p> <p>4,000,000 SRECS from new solar projects, split as follows (to the extent possible):</p> <ul style="list-style-type: none"> <li>• 50 percent of SRECs under the Illinois Solar For All Program from distributed renewable energy generation devices or community renewable generation projects</li> <li>• 40 percent of SRECs from utility-scale solar projects</li> <li>• Two percent from brownfield site solar projects that are not community renewable generation projects</li> </ul>

### Adjustable Block Program (the “ABP”)

The ABP is for the procurement of RECs from new solar distributed renewable energy generation projects or community renewable generation projects with the purpose being to provide a transparent schedule of prices and quantities, and series of steps (with associated nameplate capacity and purchase prices that will adjust for each step).<sup>19</sup> Projects will be selected to ensure that they come from different geographical areas.<sup>20</sup> Only projects energized on or after June 1, 2017 will be eligible for the ABP.<sup>21</sup>

The ABP will include at least the following block groups, in the following amounts, which amounts may be adjusted upon review by IPA and approval by Commission:<sup>22</sup>

<sup>17</sup> 20 ILCS 3855/1-75(c)(1)(C)(i).

<sup>18</sup> 20 ILCS 3855/1-75(c)(1)(C)(ii).

<sup>19</sup> 20 ILCS 3855/1-75(c)(1)(C)(iii).

<sup>20</sup> 20 ILCS 3855/1-75(c)(1)(K).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

- At least 25 percent of RECs must come from distributed renewable energy generation projects with a nameplate capacity of no more than 10 kW;
- At least 25 percent of RECs must come from distributed renewable energy generation projects with a nameplate capacity of more than 10 kW and no more than 2,000 kW; and
- At least 25 percent of RECs must come from community solar.

The ABP contract terms will include the following provisions:<sup>23</sup>

- 15-year term;
- Utility will receive and retire all RECs for 15-year term;
- If procured under (1) of (d) above, then REC purchase price will be paid in full for SRECs when the project interconnects to utility; and
- If procured under (2) or (3) of (d) above, then 20 percent of price will be paid when the facility interconnects with the utility and the remaining price will be paid ratably over the subsequent four-year period.

**Illinois Solar For All Program (the “SFAP”)**

The SFAP is created under, and will use the funds of, the Renewable Energy Resources Fund (the “RERF”), a special fund in the state treasury administered by the IPA that is used to purchase RECs according to any approved procurement plan developed prior to June 1, 2017.<sup>24</sup> The SFAP includes incentives for low-income distributed generation and community solar projects.

Contracts that are paid with funds in the RERF will be executed by the IPA, and contracts that will be paid with funds collected by the electric utility will be executed by the utility.<sup>25</sup>

SFAP Incentives
<ul style="list-style-type: none"> <li>• <i>Low-Income Distributed Generation Incentive:</i> 22.5 percent of funds must be allocated to providing incentives for low-income customers, directly or through solar providers, to increase participation in solar on-site development. Companies participating must commit to hiring job trainees for a portion of their low-income installations.<sup>26</sup></li> </ul>

<sup>23</sup> 20 ILCS 3855/1-75(c)(1)(K)(i),(ii),(iii).

<sup>24</sup> 20 ILCS 3855/1-75(c)(1)(L)(i),(ii), (iii).

<sup>25</sup> 20 ILCS 3855/1-56(a),(b)(1).

<sup>26</sup> 20 ILCS 3855/1-56(b)(2).

SFAP Incentives
<ul style="list-style-type: none"> <li>• <i>Low-Income Community Solar Project Initiative:</i> 37.5 percent of funds must be allocated to incentives that will be offered to increase participation of low-income subscribers of community solar projects.<sup>27</sup></li> <li>• <i>Non-Profits and Public Facilities:</i> 15 percent of funds must be allocated to provide incentives for non-profits and public facilities to participate in solar.<sup>28</sup></li> <li>• <i>Low-Income Community Solar Pilot Projects:</i> 25 percent of the funds, but not more than \$50,000,000, must be allocated to persons, including but not limited to electric utilities, that propose pilot community solar projects.<sup>29</sup></li> </ul>

### Priority of Programs

If the IPA is unable to meet all of the LTPP goals due to the limited availability of funds, the IPA is to prioritize the funds as follows:<sup>30</sup>

- Existing contractual obligations for RECs;
- Funding for Illinois Solar For All Program;
- Procurement of RECs to comply with LTPP WRECs and SRECs goals; and
- RECs for remaining LTPP goals.

### Alternative Retail Electric Suppliers

If alternative retail suppliers report that they are generating RECs from renewable resources that are not wind or solar, the procurement goals under the LTPP for wind and solar will be reduced pro rata by the amount of such RECs that are generated by the alternative retail suppliers; provided, that, beginning in delivery year June 1, 2018, the amount of RECs that can be supplied by alternative retail supplier to set off the WRECs and SRECs requirements is limited to a certain amount, which is reduced over time.<sup>31</sup>

Target REC quantity for alternative retail suppliers:

- Delivery year beginning June 1, 2018: 14.5 percent of total metered

<sup>27</sup> 20 ILCS 3855/1-56(b)(2); 20 ILCS 3855/1-56(b)(2)(A).

<sup>28</sup> 20 ILCS 3855/1-56(b)(2); 20 ILCS 3855/1-56(b)(2)(B).

<sup>29</sup> 20 ILCS 3855/1-56(b)(2); 20 ILCS 3855/1-56(b)(2)(C).

<sup>30</sup> 20 ILCS 3855/1-56(b)(2); 20 ILCS 3855/1-56(b)(2)(D). Projects may exceed 2 MW in nameplate capacity, but amounts paid per project under this program may not exceed \$20,000,000 and must result in economic benefits for the members of the community in which the project will be located.

<sup>31</sup> 20 ILCS 3855/1-75(c)(1)(F).

electricity delivered that delivery year.

- Increases by 1.5 percent each year to 25 percent in 2025 and continuing at 25 percent thereafter.

**Excluded RECs**

RECs cannot be sourced from a facility whose costs were being recovered through regulated rates by Illinois or another state on or after January 1, 2017, though there are certain exceptions for pilot programs and approved projects under Section 1-56 of the Act.<sup>32</sup> The Act includes certain consequences for selling such RECs under the LTPP, such as contract termination and repayment of 110 percent of REC payments received for such RECs.<sup>33</sup>

**ZERO EMISSIONS STANDARDS**

The Act provides for the procurement of zero emissions credits (“ZECs”) with the following targets:

ZEC Targets <sup>34</sup>
Beginning delivery year commencing June 1, 2017, for any electric utility serving at least 100,000 retail customers in Illinois, the IPA to procure ZECs to cover 16 percent of actual amount of electricity delivered by such utility to its retail customers in 2014 calendar year.
Beginning delivery year commencing June 1, 2016, for electric utilities serving less than 100,000 retail customers in Illinois and that requested that the IPA procure electricity for utility for all or a portion of its load in Illinois, the IPA to procure ZECs to cover 16 percent of power and energy procured by the IPA for the utility.

ZEC contracts will be for a period of 10 years, ending May 2027.<sup>35</sup> The price per ZEC will be based on the “Social Cost of Carbon,” which will be determined as follows:<sup>36</sup>

- \$16.50/MWh (minus a price adjustment based on power market indices) for the year 2017;
- Beginning in the year 2023 the price/MWh will increase by \$1 each year.

<sup>32</sup> 20 ILCS 3855/1-75(c)(1)(H). Note that alternative retail suppliers have certain reporting and notice obligations in relation to this provision.

<sup>33</sup> 20 ILCS 3855/1-75(c)(1)(J).

<sup>34</sup> *Id.*

<sup>35</sup> 20 ILCS 3855/1-75(d-5).

<sup>36</sup> 20 ILCS 3855/1-75(d-5)(1).

The Act includes certain provisions that must be included in the procurement contracts for ZECs, including force majeure and termination terms.<sup>37</sup>

Though the IPA will run the procurement, the utility will enter into the contracts with the winning suppliers. The utility will be able to recover its costs related to the purchase of ZECs.<sup>38</sup>

Notably, each year, the number of credits that will receive payments will be reduced, if necessary, such that the net increase in cost to retail customers for all power costs resulting from the purchase of ZECs is no more than 1.65 percent of the amount paid for all power costs in the delivery year ending May 31, 2009.<sup>39</sup>

## QUALIFIED PERSONS

RECs procured from new solar projects or distributed renewable energy generation projects must be from devices installed by qualified persons in compliance with 16-128A of the Public Utilities Act.<sup>40</sup> The Act calls for the creation of various training and jobs programs.

## NET METERING

Net metering incentives vary based on the customer class. The available incentives are as follows:

### Residential<sup>41</sup>

- Status quo (customers credited retail rate) till five percent cap reached.
- Energy only thereafter with solar rebate.

### C&I<sup>42</sup>

- \$250/kW solar rebate till five percent cap reached (new net metering customers must have a smart inverter to receive rebate)
- After five percent cap is reached, ICC to set value of rebate based on location of system.

### Community Solar<sup>43</sup>

- Utilities must allow virtual net metering/meter aggregation projects.

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<sup>37</sup> 20 ILCS 3855/1-75(d-5)(1)(B)(i).

<sup>38</sup> 20 ILCS 3855/1-75(d-5)(6).

<sup>39</sup> 20 ILCS 3855/1-75(d-5)(1)(E).

<sup>40</sup> 20 ILCS 3855/1-75(d-5)(1)(F).

<sup>41</sup> 220 ILCS 5/16-107.5(k)(1)(1).

<sup>42</sup> 220 ILCS 5/16-107.6(c)(2)(A).

<sup>43</sup> 220 ILCS 5/16-107.6(c)(1).

- Subscribers can net energy and will receive: (i) \$250/kW of nameplate capacity rebate until five percent cap is reached or (ii) rebate in an amount to be determined by ICC after five percent cap is reached.
- Developers required to provide kWhs for all subscribers to the utility will pass info to supplier and bill customers.

## DEFINITIONS

- 1) *“Alternative Compliance Payment”* means payments, in amounts determined in accordance with the Act, that can be used by retail suppliers as an alternative means of complying with the RPS requirements. Previously, these payments were deposited in to the Renewable Energy Resources Fund and used to purchase RECs. Beginning on June 1, 2017, payments will be made directly to the applicable utility, and used by the IPA to purchase RECs.
- 2) *“community renewable generation project”* means an electric generation facility that is powered by wind, solar thermal energy, photovoltaic cells or panels, biodiesel, crops and untreated and unadulterated organic waste biomass, tree waste, and hydropower that does not involve new construction or significant expansion of hydropower dams; that is interconnected at the distribution system level of an electric utility, a public utility, or an electric cooperative (each as defined in the Public Utilities Act); that credits the value of electricity generated by the facility to subscribers of the facility; and is limited in nameplate capacity to less than or equal to 2,000 kW.
- 3) *“cost-effective”* pricing will be determined by the IPA and authorized by the Illinois Commerce Commission (the “ICC”); *provided*, that REC prices must not exceed market prices for like products in the region, and, further, that the RECs must be priced in such a way that the resulting average net increase in electric service costs for all retail customers will be no more than 2.015 percent of amount paid per kWh by such customers in year ending May 31, 2007 or the incremental amount per kWh paid for these resources in 2011.
- 4) *“delivery year”* means the consecutive 12-month period beginning June 1 of a given year and ending May 31 of the following year.
- 5) *“eligible retail customer”* means those retail customers that purchase power and energy from the electric utility under fixed-price bundled service tariffs.
- 6) *“new wind project”* means a wind facility that is energized after June 1, 2017 for delivery year commencing June 1, 2017, or within three

years after the date the Commission approves contracts for subsequent delivery years.

- 7) "*new solar project*" means a solar photovoltaic facility that is energized after June 1, 2017.
- 8) "*subscriber*" means a person who (i) takes delivery service from an electric utility, and (ii) has a subscription of no less than 200 watts to a community renewable generation project that is located in the electric utility's service area. No subscriber's subscription may total more than 40 percent of the nameplate capacity of an individual community renewable generation project.
- 9) "*REC*" a tradable credit that represents the environmental attributes associated with one megawatt hour of energy produced from a renewable energy resource.
- 10) "*subscription*" means an interest in a community renewable generation project expressed in kW's, which is sized primarily to offset part or all of subscriber's electricity usage.
- 11) "*utility-scale solar project*" means a solar project with a nameplate capacity that is greater than 2MW.
- 12) "*utility-scale wind project*" means a wind project with a nameplate capacity that is greater than 2MW.
- 13) "*zero emissions credits*" or "*ZECs*" means a tradable credit that represents the environmental attributes of one megawatt hour of energy produced from a facility that is fueled by nuclear power and interconnected with PJM or MISO.