

## Notice 2022-51: Request for Comments on Prevailing Wage, Apprenticeship, Domestic Content, and Energy Communities Requirements Under the Act Commonly Known as the Inflation Reduction Act of 2022

### I. Introduction to Provisions Related to Prevailing Wage, Job Training, and Energy Communities in Illinois Clean Energy Law

In 2021, Illinois enacted Public Act 102-0662, colloquially known as the Climate and Equitable Jobs Act (“CEJA”), that incorporated new labor requirements into the state’s main incentive program for distributed solar generation and community solar.<sup>1</sup> CEJA also expanded the percentage of the Illinois Renewable Portfolio Standard that should be met by projects that qualify as brownfield site photovoltaic projects.<sup>2</sup> Due to the potential overlap between these elements of Illinois renewable energy policy and the increased federal tax credit offered by the Inflation Reduction Act for projects featuring similar characteristics, the Illinois Power Agency (IPA) has a significant interest in the Treasury Department’s design of these tax credits. The IPA submits the below comments in the hope that they might inform the final implementing regulations.

### II. Implementation of Prevailing Wage and Apprenticeship Requirements

Illinois requires most projects receiving state incentives to pay prevailing wage, but the applicable prevailing wage is the one set by the Illinois Department of Labor.<sup>3</sup> The Treasury Department should allow compliance with state prevailing wage rates to be held as meeting the requirements of 45(b)(7)(A) or should provide guidance regarding the correspondence between the Davis-Beacon prevailing wage rate and state-determined rates.

Regarding potential rules for correcting a failure to pay prevailing wage or consequences for such a failure, Illinois recommends requiring that the taxpayer provide back wages to the affected workers. In instances of a failure to comply with prevailing wage requirements, the Illinois Department of Labor may require the contractor to pay affected employees the difference between the wage received and the prevailing wage rate, so there is precedent for this type of requirement. Additionally, the IPA may enforce further disciplinary action such as suspension from participating in the state incentive programs for solar energy projects. The Treasury Department may consider disallowing an entity that has repeated violations from claiming the tax credit on future projects, if that would be feasible and permissible by law.

The Treasury Department requested feedback on the type of documentation that could demonstrate compliance with the prevailing wage standard. In Illinois, entities subject to the Prevailing Wage Act must submit a Certified Transcript of Payroll, a standardized form that lists the hours worked, wage received, and other relevant information for each week during project construction. The Department of Labor posts the submitted Certified Transcripts of Payroll, or CTPs, on a [public database](#). The IPA recommends that the Treasury Department accept these (and similar documentation from other states, where applicable) as

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<sup>1</sup> E.g., 20 ILCS 3855/1-75(c)(1)(Q).

<sup>2</sup> 20 ILCS 3855/1-75(c)(1)(C)(i).

<sup>3</sup> See, e.g., IPA 2022 Long-Term Renewable Resources Procurement Plan, p. 185., <https://ipa.illinois.gov/content/dam/soi/en/web/ipa/documents/2022-long-term-plan-23-august.pdf>.

eligible documentation that demonstrates compliance with the prevailing wage criteria for enhanced tax credits.

The Treasury Department also requested comments on existing methods to facilitate reporting on the employment of apprentices for the enhanced tax credit. One example would be the Illinois Solar for All program (which creates incentives for low-income solar projects). It includes a requirement that program vendors employ a “job trainee” on a certain portion of projects and for a minimum number of project work hours. The IPA recommends that the Treasury Department accept ILSFA documentation demonstrating employment of an apprentice as evidence that the project meets the apprenticeship requirement. ILSFA does allow vendors to meet the “job trainee” requirement with employees that are enrolled in other qualifying programs, which may not qualify that individual as an “apprentice” under federal requirements. Therefore, while we recommend that ILSFA documentation be an acceptable form of demonstrating compliance, the IPA notes that it may not automatically signify that the trainee in question is an “apprentice,” and there should still be a review of the applicant’s qualifications.

### III. Classification of ‘Energy Communities’

Section 45(b)(11)(A) provides an increased credit amount for a qualified facility located in an energy community, which is defined as “(1) A brownfield site (as defined in 42 U.S.C. 9601(39)(A), (B), and (D)(ii)(III)), (2) A metropolitan statistical area or non-metropolitan statistical area that has (or had, at any time after December 31, 2009) 0.17 percent or greater direct employment or 25 percent or greater local tax revenues related to the extraction, processing, transport, or storage of coal, oil, or natural gas (as determined by the Secretary), and has an unemployment rate at or above the national average unemployment rate for the previous year (as determined by the Secretary), or (3) A census tract (i) in which a coal mine has closed after December 31, 1999; or (ii) in which a coal-fired electric generating unit has been retired after December 31, 2009; or (iii) that is directly adjoining to any census tract described in § 45(b)(11)(B)(iii)(I).”<sup>4</sup>

Illinois law charges the IPA with procuring renewable energy credits (RECs) from solar projects sited at brownfield sites and at the sites of former coal-powered generation facilities, through two separate competitive procurements. For the procurement of RECs from solar projects located at brownfield sites, the IPA requires that the project be “entirely contained within the brownfield site.”<sup>5</sup> The Illinois Power Agency Act defines “brownfield site photovoltaic project” as a photovoltaic project that is either:

[interconnected to an electric utility, municipal utility, or electric cooperative and] located at a site that is regulated by any of the following entities under the following programs:

- (A) the United States Environmental Protection Agency under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended;
- (B) the United States Environmental Protection Agency under the Corrective Action Program of the federal Resource Conservation and Recovery Act, as amended;
- (C) the Illinois Environmental Protection Agency under the Illinois Site Remediation Program; or
- (D) the Illinois Environmental Protection Agency under the Illinois Solid Waste Program;

Or, (2) located at the site of a coal mine that has permanently ceased coal production, permanently halted any re-mining operations, and is no longer accepting any coal combustion residues; has both

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<sup>4</sup> Notice 2022-51, p. 10.

<sup>5</sup> IPA Indexed Renewable Energy Credit Request for Proposals Process and Rules (“Indexed REC RFP Process and Rules”) (Oct. 7, 2022), p. 43., [https://www.ipa-energyrfp.com/wordpress/wp-content/uploads/2022/10/Indexed-REC-RFP\\_Process-and-Rules\\_07-OCT-2022\\_posted.pdf](https://www.ipa-energyrfp.com/wordpress/wp-content/uploads/2022/10/Indexed-REC-RFP_Process-and-Rules_07-OCT-2022_posted.pdf).

completed all clean-up and remediation obligations under the federal Surface Mining and Reclamation Act of 1977 and all applicable Illinois rules and any other clean-up, remediation, or ongoing monitoring to safeguard the health and well-being of the people of the State of Illinois, as well as demonstrated compliance with all applicable federal and State environmental rules and regulations, including, but not limited, to 35 Ill. Adm. Code Part 845 and any rules for historic fill of coal combustion residuals, including any rules finalized in Subdocket A of Illinois Pollution Control Board docket R2020-019.<sup>6</sup>

The IPA also requires that the bidder notify the Agency if the project is co-located with another facility that is not on the brownfield site, and that the entity verify at each delivery of RECs that the project remains entirely located within the brownfield site.<sup>7</sup>

The IPA Act also directs the IPA to procure RECs generated by new utility-scale solar energy projects “installed at or adjacent to the sites of electric generating facilities that, as of January 1, 2016, burned coal as their primary fuel source ... [and] has, or had prior to retirement, an electric generating capacity of at least 150 megawatts.”<sup>8</sup> The solar generation facility may be constructed, “if necessary for sufficient space[,] on property adjacent to the existing property.”<sup>9</sup> Six projects have received REC delivery contracts through this “Coal to Solar” procurement,<sup>10</sup> but some of them are still operating facilities, as the IPA Act does not require that the generating units be retired.

In response to the RFI question about possible future changes to the definition and scope of the three categories of energy communities, the IPA would encourage the Treasury Department to consider including sites that are regulated by state environmental agencies.

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<sup>6</sup> 20 ILCS 3855/1-10.

<sup>7</sup> Indexed REC RFP Process and Rules at 44.

<sup>8</sup> 20 ILCS 3855/1-75(c-5)(1), (2)(A).

<sup>9</sup> 20 ILCS 3855/1-75(c-5)(2)(C).

<sup>10</sup> “Coal to Solar and Energy Storage Initiative Procurement,” (April 29, 2022), <https://www.ipa-energyrfp.com/wordpress/wp-content/uploads/2022/04/Spring-2022-Coal-to-Solar-Results-29-April-2022-posted.pdf>.