

# ILLINOIS MUNICIPAL ELECTRIC AGENCY

## REPORT OF EXECUTIVE BOARD MEETING

WEDNESDAY, APRIL 26, 2023

A regularly scheduled meeting of the Executive Board of the Illinois Municipal Electric Agency was held pursuant to proper notice in person and by webinar broadcast from the IMEA headquarters building, 3400 Conifer Drive, Springfield, Illinois on April 26, 2023. Chairman Dale Detmer called the meeting to order at 2:00 p.m. Roll call was taken which showed a quorum was present combining both in-person attendance and webinar participation as allowed under law during the Governor's continuing disaster declaration for the COVID-19 pandemic.

CEO Kevin Gaden announced the names of guests that were participating in the webinar and acknowledged the IMEA staff that was physically present in the Boardroom or on the webinar broadcast.

The Report of March 29, 2023 was moved for approval by Tim Birk and seconded by John Tolan. The motion carried by unanimous roll call vote.

Opportunity for Public Comment: Chairman Dale Detmer stated that pursuant to the Open Meetings Act, any person attending this webinar shall be permitted an opportunity to comment. Questions during the rest of the meeting are reserved for Board members. If questions arise during the meeting, they can be raised with an appropriate staff member after the meeting by calling IMEA's main number at 217-789-4632 and being directed by the operator at that time. He then asked if anyone from the public would like to make a comment and hearing none, he proceeded with the meeting.

### OLD BUSINESS

Update on Legal Matters – General Counsel Troy Fodor reported the following:

- Ameren Missouri Rush Island SSR Revenue Requirement/Rate Filing (Docket No. ER22-2721) – The participants reached a settlement in principle and are expected to file related materials soon. This settlement only covers the first year of the potential SSR period. So far, the financial impact on IMEA from the Rush Island SSR has been a net positive, but it was known that the potential adverse impact would not start until June of 2023. If the MISO auction price for PY 2023/2024 comes in lower than this year, the offsetting revenues for the first 9 months of the 1<sup>st</sup> SSR year will disappear and IMEA will become a net payer. Staff will consider the cost/benefit analysis of filing protests for SSR years 2 and 3.
- Big River Solar Reactive Revenue Filing (Docket ER22-1610) – This is the reactive case for the Ranger Power project that is under contract with IMEA. IMEA is entitled to ≈16.78% of the attributes starting on June 1, 2025. The settlement was filed for approval with FERC on April 5, 2023. In a separate document, FERC approved the MISO tariff change so the reactive payment will go to “zero” retroactively effective December 1, 2022 unless there is a successful appeal in that case, in which the settlement would only affect a few months' worth of the expected attributes.

- PJM 2024/25 Base Residual Auction Results Filings (FERC ER23-729 – Sec. 205 filing) and (EL23-19 – Sec. 206 filing) – This tariff change by PJM eliminates the potential effects of new planned resources in small locational deliverability areas not bidding into the auction – PJM 2024/25 auction results were delayed pending the outcome. FERC entered an Order on February 21, 2023 accepting PJM’s Section 205 proposal and dismissing their Section 206 filing.
- PJM Revisions to the Billing of Non-Performance Charges (Docket No. ER23-1038) – This tariff change by PJM pertains to deferred billing for non-performance charges stemming from Winter Storm Elliott (that occurred during the Christmas 2022 holiday weekend) for 9 months subject to interest. There is a similar rule for future events. FERC entered an Order on April 3, 2023 accepting the tariff changes with one small change. There have been bankruptcies due to these penalties and numerous complaints against PJM filed at FERC claiming detrimental reliance on PJM data or PJM wrongfully declaring the CP event among other things. Staff is monitoring these cases and will intervene if necessary.
- New Filing at FERC – On March 17, 2023, FERC issued a show cause Order instituting an investigation into whether MISO’s failure to update its valuations to fix certain errors prior to its first seasonal capacity auction was unlawful. MISO filed a waiver asking to delay its auction so it could fix the valuations. FERC issued an Order on March 28, 2023 granting the waiver. On April 17, 2023 FERC entered an Order terminating the show cause proceeding. Auction results will be posted on May 19, 2023 with the Planning Year beginning on June 1, 2023.
- Rantoul Customer – Possible Public Utility Regulatory Policies Act (PURPA) Contract – The draft Interconnection Agreement that IMEA Staff helped Rantoul prepare was sent to the applying customer on March 27, 2023. Staff will continue to work with the customer for an excess energy output contract if the project proceeds.
- Ameren Wholesale Connection Agreements/Umbrella Construction Agreements (WCA/UCA) – Engineering and IMEA’s new Staff Attorney have restarted meetings with Ameren and will continue to work internally on strategy to achieve the best negotiated solution with Ameren.
- Chatham SERC Registration – IMEA Staff is working with the Village consultant to prepare for Chatham’s registration with SERC as a Transmission Owner. Chatham hired Brian Evans-Mongeon of Utility Services on the registration and compliance issues. IMEA Staff is assembling all prior compliance documentation and working with the consultant on the drafting of required SERC compliance documents. Chatham, IMEA and CWLP are reviewing/discussing/editing the draft SERC compliance documents for both Critical Infrastructure Protection (CIP) standards and Operations and Planning (O&P) standards.
- Data Request for Joint FERC/NERC/Regional Entity Inquiry GO/GOP Data Request Response Required – IMEA received a request for information on Trimble County’s response to Winter Storm Elliot with responses due on March 28. IMEA responded to FERC that while IMEA is not a NERC registered Generation Owner (GO) or Generation Operator (GOP), IMEA holds a 12.12% interest in the TC units with LG&E being the GO and GOP. Nevertheless, IMEA Staff worked with LG&E to assemble and produce the information for FERC/NERC to review before the deadline.

Member Hosted Solar Site Agreements with Sol Customer Solutions – Gary Stephenson reported that in December of 2022, IMEA executed three Power Purchase Agreements (PPAs) with subsidiaries of Sol Customer Solutions (SCS) to purchase output from new solar projects to be built at Marshall, Oglesby and Princeton. IMEA currently has PPAs with SCS related affiliates for solar power at Altamont, Naperville and Rock Falls. He explained that these new contracts are structured to ensure on-going financial security to IMEA over the life of the PPAs. Stephenson then presented illustrations explaining the methodology of how limited liability companies are used by solar developers. He

discussed that the security for IMEA after the Commercial Operation Date (COD) will be in the form of a “Parent Guaranty” that relies on the creditworthiness of the entity providing it and that financial security prior to the COD is provided to IMEA for each PPA in the form of a surety bond. The most recent PPAs required that surety bonds be provided to IMEA within 30 days of the execution of the PPA. SCS initially refused to provide such security without an increase in the prices in the PPAs. Stephenson stated that SCS proposed an amendment to the executed PPAs that would raise the contract prices by 30%. He explained that on April 11<sup>th</sup>, SCS provided the surety bonds for Marshall and Oglesby after IMEA sent a demand letter. SCS did not send the surety bond for Princeton since IMEA did not have the contracted site secured as a condition precedent. Stephenson explained IMEA Staff will evaluate all the options and pursue the best alternative. In the event that the best alternative involves a self-build option, IMEA Staff will seek Board approval prior to taking such action. He explained that it is likely that the Commercial Operation Dates for the three projects will be delayed beyond the original target dates in the Fall of 2023.

General Counsel Troy Fodor reported that the counterparty, SCS, had breached the Agreement by failing to provide the surety bonds when due, but that breach had been cured for 2 of the 3 PPAs. The dispute continues, however, over the requested price increase. If IMEA Staff is able to negotiate a satisfactory outcome, it will require an amendment to the Agreement. If IMEA Staff is unable to negotiate a satisfactory outcome, it will be necessary to give certain notices under the Agreement and take other necessary actions to enforce the Agreement. He explained that those actions may include the hiring of outside counsel and the filing of litigation against the counterparty. Fodor stated that the Executive Board had previously authorized the President & CEO to resolve the matter through appropriate means, including, but not limited, to the hiring of outside counsel and the filing of litigation at the March Executive Board meeting. IMEA Staff will be recommending that the IMEA Board ratify the Executive Board decisions tomorrow. He stated that in order to update the Board on the status of the staff’s efforts thus far, staff will be seeking to hold a closed session to discuss both the BTM solar projects as well as the Prairie Wolf capacity issues together after the Prairie Wolf capacity overview in this meeting.

Prairie Wolf Solar, LLC Capacity Transaction – Rakesh Kothakapu reported that IMEA entered into a 5-year 50 MW capacity agreement with Prairie Wolf Solar in December of 2020 which runs from Planning Years 2022/23 through 2026/27. He explained that Prairie Wolf had delivered the full 50 MW of capacity for the first Planning Year 2022/23, however, Prairie Wolf then notified IMEA that it intended to deliver less than the 50 MW for certain seasons over the remainder of the agreement due to the implementation of the seasonal capacity construct by MISO. Prairie Wolf requested an amendment to the contract to change the contract quantity from 50 MW to “as available” for the future Planning Year at the same price that the contract was originally negotiated. Kothakapu stated that for Planning Year 2023/24, Prairie Wolf transferred to IMEA 54.9 MW of Summer capacity, 50 MW for Fall, 15.7 MW for Winter and 33.7 MW for Spring. He stated that IMEA Staff is currently in negotiations with Prairie Wolf to amend or modify the contract. IMEA Staff is working to regain the full value of the contract lost due to non-delivery during some of the seasons and is also requesting that Prairie Wolf not lose production during critical hours to maximize capacity along with a higher level of financial security. IMEA Staff will continue to negotiate in good faith while exploring all options due to Prairie Wolf’s failing to deliver 50 MW for all MISO seasons, but the exclusive remedy is to pay liquidated damages.

General Counsel Troy Fodor reported that the counterparty, Prairie Wolf, had breached the Agreement and if IMEA Staff is able to negotiate a satisfactory outcome, it will require an amendment to that Agreement. If IMEA Staff is unable to negotiate a satisfactory outcome, it will be necessary to give

certain notices under the Agreement and to take necessary actions to enforce the Agreement. He explained that those actions may include the hiring of outside counsel and the filing of litigation against the counterparty. Fodor stated that on March 29, 2023, the Executive Board unanimously authorized the President & CEO to resolve the matter through appropriate means, including, but not limited to, the hiring of outside counsel and the filing of litigation. In order to give more detail about the issues and the actions staff has taken, IMEA staff recommends combining these two matters and going into closed session.

At that time, General Counsel Troy Fodor asked for a motion to go into Executive Session for the discussion of the purchase, sale or delivery of electricity and the discussion of potential IMEA litigation. Brian Keys moved to go into closed session, seconded by John Tolan. Roll call vote showed all in favor. The meeting was closed to the public pursuant to Section 2(c)(23) of the Open Meetings Act for discussion of the purchase, sale or delivery of electricity and Section 2(c)(11) of the Open Meeting Act for potential IMEA litigation at 2:35 p.m. The meeting returned to Open Session at 3:40 p.m. by a motion from Larry Taylor. The motion was seconded by Bob Coble and the roll call vote was unanimous with the exception of the representative from Freeburg who had left the meeting prior to the conclusion of the closed session showing an abstention. There was no action taken by the Executive Board with regard to the topics discussed in closed session.

U.S. Supreme Court Appeal of Build America Bonds Case – CEO Kevin Gaden gave an overview and background information with regard to the definition of Build America Bonds (BABs), the federal government’s intent at the time of issuance and the effect of the Budget Control Act of 2011 which reduced that pledged credit. He explained that IMEA has had almost \$5.91 million in BABs payments sequestered by the IRS, that the IRS has announced plans to sequester funds through at least September 2030 and that it will likely continue to sequester a portion of the BABs payments through the end of the bonds. The total sequestration through 2035 for IMEA is expected to be approximately \$8.8 million. Gaden reviewed the legal history of this case by the six public power owners of Prairie State (IMEA, AMP, MJMEUC, IMPA, KMPA and NIMPA) which began by pursuing a joint effort to file a Complaint at the Federal Court of Claims. He discussed the process so far stating that since the D.C. Circuit Court of Appeals upheld the lower court decision on February 24, 2023, the only remedy left is to request that the case be heard by the U.S. Supreme Court (SCOTUS). In order to be considered by the SCOTUS, appellants must file a Petition for a Writ of Certiorari and if the Writ is granted, the SCOTUS would hear the case in its next session. He explained that legal costs have been proportionately shared between the six members based on the sequestration damages and reviewed expenditures so far along with anticipated costs going forward. He explained that there is still a potential that this case can be remanded back to the Court of Claims to determine damages if the parties prevail at the Supreme Court. Gaden stated that all other BABs parties of the case gained their Boards’ approvals to proceed and will be selecting a SCOTUS law firm led by a national SCOTUS expert, David Frederick of the Kellogg Hanson Law Firm. On March 29, 2023, the Executive Board unanimously approved the Agency joining with the other public power entities to continue litigation against the federal government, including filing a Petition for a Writ of Certiorari to the SCOTUS authorizing the engagement of SCOTUS legal counsel regarding the sequestration of Build American Bonds payments and authorizing the President & CEO to take all steps and execute all agreements or other documents reasonably necessary or appropriate to prosecute such litigation. IMEA Staff will be recommending that the IMEA Board ratify the Executive Board decisions tomorrow.

Limited Waiver of Anti-Nepotism Policy – CEO Kevin Gaden explained that IMEA has an employee anti-nepotism policy which prohibits employment of relatives of Board Members. Since Patrick McCarthy was recently selected by the Village of Chatham as its Board Member, this would affect his

son, Sean McCarthy's employment at IMEA. Sean has been employed by IMEA for a total of 13 years, the last 3 of which as an Energy Services Representative. IMEA Staff intends to make recommendations to revise this policy at a future IMEA Board of Directors meeting as this policy was not intended to displace a current and long-standing employee for a relative being appointed to the IMEA Board. On March 29, 2023, the Executive Board unanimously gave interim approval of a limited waiver of the employee anti-nepotism policy allowing for the continued employment of IMEA's current Energy Services Representative despite his family member's appointment to the IMEA Board of Directors. IMEA Staff will be recommending that the IMEA Board ratify the Executive Board decisions tomorrow.

## NEW BUSINESS

Resolution #23-04-882 – Approving a Six-Year Preventative Maintenance Agreement with Altorfer, Inc. for IMEA and IMEA Member-Owned Caterpillar 3516B & 3516C Diesel Engine Generators – Shadi Ahanchi stated that the current joint Preventative Maintenance Agreement with Altorfer will expire at the end of this year and that Altamont, IMEA-Flora, Flora, Marshall and Rock Falls showed continued interest in participating in the joint agreement. She explained that Altorfer had provided a quote for an additional six years (2024-2029) and depending on the location, some service costs would increase about 22%. Ahanchi reported that the overall cost for the proposed agreement will be 19.5% more than the 2018-2023 agreement due to higher costs for parts, fuel and labor. She stated that the total annual cost will include optional annual fuel testing and that Altorfer will continue to bill IMEA annually for all services performed at each location with the members reimbursing IMEA. Ahanchi reported that the Letter Agreement for Caterpillar diesel generator maintenance between the cities and IMEA has been prepared along with the Agreement between IMEA and Altorfer. IMEA staff recommends the Board authorize the President & CEO to execute these agreements with Altorfer and the member cities. Cory Sheehy moved to approve Resolution #23-04-882 as presented. The motion was seconded by Bob Coble and the roll call vote was unanimous with the exception of the representative from Freeburg showing as abstaining because he had left the meeting.

Resolution #23-04-883 – Authorizing the President & CEO to Enter into Contracts for Power Supply for RTO Planning Through Planning Year 2023/2035 – CEO Gaden explained that the MISO and PJM Capacity and Energy Markets continue to be volatile. These markets are impacted by supply and demand as well as natural gas and other fuel supply costs. He presented a chart showing the capacity clearing prices in Illinois for the past 7 years explaining how past auction performance created huge uncertainty to both buyers and sellers. Gaden discussed the uncertainty about the timing of planned retirements of existing thermal units along with delays and cost increases in nationwide renewable projects causing additional stress to monthly/annual supply and auctions. He reported that IMEA has pseudo-tied its Prairie State generation units to PJM and staff continues to evaluate the risk/benefit/cost of either partially or outright removal of those pseudo-ties only if staff could create more resource and cost certainty by electronically moving Prairie State back to MISO Zone 4. Gaden discussed that as staff continues to seek to add large utility scale solar to IMEA's portfolio, staff is required to augment current planned unit outages as well as stabilize cost risks to supply loads since the Vistra contract was terminated. He explained that previous authorization had been provided by Resolution #19-10-838 addressing periods through May 2029 and the current authorization would authorize hedging until May of 2035. Larry Taylor moved to approve Resolution #23-04-883 as presented. The motion was seconded by Dale Detmer and the roll call vote was unanimous with the exception of the representative from Freeburg showing an abstention because he was no longer at the meeting.

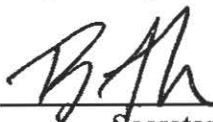
Resolution #23-04-884 – Approval of Updated IMEA Risk Management Policy – General Counsel Troy Fodor explained that FERC requires the RTO’s, including MISO and PJM, to have minimum participation criteria for market participants to be eligible to participate in the markets and PJM and MISO rules require market participants to have Risk Management Policies. He summarized the information contained in IMEA’s Risk Management Policy to include the President & CEO’s authority; the commitment to maintain capitalization relative to the level of service to be transacted in the RTO markets; credit and liquidity management (investment grade credit rating, long-term contracts, debt service coverage, rate policy and cash reserves); market risk management (asset ownership, bilateral contracting, BTMG, market purchases, daily scheduling and balancing, credit limits and collateral with RTOs); daily market purchase limits for employees by position; Renewable Energy Credits (REC) purchase and sale guidelines and limits; Financial Transmission Rights (FTR) guidelines and limits for hedging congestion risk along with staffing and training. Bob Coble moved to approve Resolution #23-04-884 as presented. The motion was seconded by Tim Birk and the roll call vote was unanimous with the exception of the representative from Freeburg showing an abstention due his having left the meeting.

Board Meeting Procedures – CEO Gaden stated that the Governor has ended the COVID-19 declaration effective May 11, 2023 and, as a result, the IMEA remote/hybrid Board meetings with Members participating and voting remotely will no longer be authorized by the Open Meetings Act after that date. All meetings beginning with the June Board meetings and beyond will require Board Members to be in attendance in person to be able to vote and members of the public to be in person to be allowed to have an opportunity to make a public comment. Staff recognizes that there are times when Board Members cannot attend in person, but would like to view the meetings to stay informed as well as members of the public who would also like to view the meetings without making the trip to Springfield. Gaden explained that in order to accommodate both the Board Members and the public, IMEA will provide a “Microsoft Teams” webinar to Board members and members of the public for viewing purposes only. This means that the microphones from the IMEA offices will remain open, but all remote webinar microphones will be muted. IMEA staff recommends that the Board approve this plan to comply with in-person meeting requirements, yet allow for limited remote access to public meetings moving forward. Cory Sheehy moved to approve the plan as presented. The motion was seconded by Larry Taylor and the roll call vote was unanimous with the Freeburg showing an abstention due his having left the meeting.

Resolution #23-04-885 – Establishing the Schedule of Meetings for the 2023-2024 Fiscal Year - CEO Kevin Gaden reviewed the IMEA Executive Board/Board of Director’s meeting schedule for the upcoming fiscal year. Tim Birk moved to approve this Resolution, seconded by Cory Sheehy. The roll call vote showed unanimous approval with Freeburg showing an abstention due to his having left the meeting.

Chairman Dale Detmer asked for a motion to adjourn the meeting. The motion was made by Tim Birk, seconded by Cory Sheehy and carried unanimously by voice vote. The meeting was adjourned at 4:15 p.m.

Respectfully submitted,



Secretary/Treasurer

**ILLINOIS MUNICIPAL ELECTRIC AGENCY  
EXECUTIVE BOARD MEETING  
WEDNESDAY, APRIL 26, 2023**

**MEMBERS PRESENT (or listening via webinar)**

Altamont	Larry Taylor
Breese	Dale Detmer
Flora	Bob Coble
Freeburg	John Tolan
Marshall	Cory Sheehy
Waterloo	Tim Birk
Winnetka	Brian Keys (via webinar)

**MEMBERS ABSENT**

**OTHERS PRESENT (or listening via webinar)**

Carmi	David Coston (via webinar)
Chatham	Patrick McCarthy & Shane Hill
Highland	Dan Cook
Naperville	Brian Groth (via webinar)
Princeton	Jeff Mangrich (via webinar)
Red Bud	Josh Eckart (via webinar)
Rock Falls	Dick Simon
IMEA	Kevin Gaden
IMEA	Troy Fodor
IMEA	Gary Stephenson
IMEA	Chris Wise
IMEA	Mike Genin
IMEA	Alice Schum
IMEA	Glenn Cunningham
IMEA	Adam Baker
IMEA	Staci Wilson
IMEA	Rakesh Kothakapu
IMEA	Rodd Whelpley (via webinar)
IMEA	Cindy Evans (via webinar)
IMEA	Shadi Ahanchi
IMEA	MaryAnn Todd
IMEA	Sean McCarthy
IMEA	Tammy Hall
IMEA	Eric Weinant
IMEA	Daniel Chung
IMEA	Ed Cobau
Guest	Greg Hubert (Naperville) (via webinar)