

ILLINOIS MUNICIPAL ELECTRIC AGENCY

REPORT OF EXECUTIVE BOARD MEETING

WEDNESDAY, MARCH 29, 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 March 29, 2023. Chairman Dale Detmer called the meeting to order at 10:00 a.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. He introduced Mike Stanford, the City Administrator from Flora and Patrick McCarthy, the new Board Member from Chatham. Gaden announced that this meeting would be Mayor Richard Glazebrook's last meeting and thanked him for his years of service on the IMEA Board.

The Report of February 22, 2023 was moved for approval by Larry Taylor and seconded by Tim Birk. 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. At that time, Greg Hubert expressed his concerns with IMEA's transparency with regard to Prairie State and addressed his involvement in the Sierra Club lawsuit. Chairman Detmer asked if there was anyone else wishing to make a public comment, and hearing none, he proceeded with the meeting.

President & CEO Report – CEO Gaden reported that about 35 IMEA member representatives had visited Congressional offices for meetings during the APPA Legislative Rally. The key messages to legislators included transformer shortages, renewable tax credits, the cyber security reporting bill and climate policy. Gaden stated that there has not been a FERC nominee from the President yet and Commissioner Danly's term is up in June 2023.

CEO Gaden reported that the Sierra Club had filed a lawsuit against Prairie State last week and Prairie State plans to defend those charges. He announced that Patrick McCarthy is the new IMEA Board Member for Chatham and explained that Shane Hill is planning to retire at the end of 2023. Gaden welcomed Pat and thanked Shane for his many years of service to IMEA. Gaden explained that two of the agenda items in this meeting refer to potential contract defaults by vendors which are both Limited Liability Companies (LLCs). He discussed the definition of a Limited Liability Company as a structured company designed to protect the assets of the investors and noted that most of the vendors in the renewable space are LLCs.

Legislative Update – Staci Wilson reported on HB 3560 and SB 1932 which would allow for any resident of the State of Illinois to run as a candidate for a municipal system or an electric cooperative board. There is also a requirement that business documents would be required to be kept for five years as well as minutes and agendas being posted which is currently a requirement of the Open Meetings Act. She stated that those bills did not proceed and were not called for a vote in Committee this session. Wilson discussed multiple issues that could be considered for energy omnibus legislation at the end of session including low income rates, energy storage incentive, offshore wind concepts as well as clean capacity procurement. Wilson announced several changes at the Illinois Commerce Commission (ICC). These include Chair Carrie Zalewski leaving in June and being replaced by former Illinois EPA Director and former ICC Chairman Doug Scott; Commissioner Ethan Kimbrel is being replaced by lawyer, Conrad Reddick and the current vacancy will be filled by Stacey Paridis who is the former Executive Director of the Midwest Energy Efficiency Alliance.

OLD BUSINESS

Prairie State Carbon Capture Grant Proposal Due Diligence – Gary Stephenson reported that Prairie State is moving forward with the Department of Energy (DOE) demonstration grant application. He explained that there is \$350M available for a single coal plant, the cost share would be borne by the developer/operator (D/O) and no additional funds from Prairie State are required. The University of Illinois (U of I) would prepare and submit the application. The deadline for submittal of the application is May 23, 2023 with a decision expected by the DOE in August 2023. Stephenson stated that U of I would be the grant recipient if the application is successful and Prairie State would be the named “host site.” U of I would likely transfer the grant to the D/O. He reminded members that CEJA mandates that by January 1, 2035, Prairie State must reduce carbon emissions by 45% from existing levels.

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 LLCs are set up. He discussed that the security after the Commercial Operation Date (C.O.D.) is in the form of a “Parent Guaranty” that relies on the creditworthiness of the entity providing it and that financial security prior to the C.O.D. is provided to IMEA for each PPA in the form of a surety bond. The most recent PPAs require that surety bonds be provided to IMEA within 30 days of the execution of the PPA. SCS has refused to provide such security which is in violation of the terms of the fully executed agreements. Stephenson stated that SCS recently proposed an amendment to the executed PPAs that would raise the contract price by 30%. SCS offered to provide the surety bonds upon IMEA’s agreement to modify the contract price. He explained that SCS is claiming that its cost structure has changed significantly. Stephenson proposed several options going forward. These included negotiating with SCS to continue one or more of the three projects; suspend all work on this round of Behind the Meter (BTM) projects; engage another developer to carry on with the existing PPAs, or self-build. He stated that the concept of self-building would require that IMEA finance and own the facilities and would bid out to qualified constructors; however, the tax credit implications are unknown at this time because the Treasury Department has not yet promulgated the rules for direct pay credits. Stephenson explained IMEA Staff will evaluate each option and pursue the best alternative.

In the event that the best alternative involves either a PPA amendment, a PPA assignment to another vendor, a PPA termination, a new PPA execution or a self-build option, IMEA Staff will consult with the Board prior to taking any 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, has breached the Agreement and 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/or to take certain 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. IMEA Staff's recommendation is to authorize the President & CEO to resolve the matter through all appropriate means, including but not limited to the hiring of outside counsel and the filing of litigation. Brian Keys moved to authorize enforcement of the Agreements, including hiring outside counsel, termination and litigation, but that any amendment to the current Agreements would be brought before the full IMEA Board in an upcoming meeting for consideration and approval. John Tolan seconded the motion and the motion carried by unanimous roll call vote.

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 volume on an “as available” basis 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 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 also working to regain the full value of the contract lost due to non-delivery in some of the seasons and is also requesting that Prairie Wolf not lose production during critical hours to maximize capacity. IMEA Staff will continue to negotiate in good faith while exploring all the options.

General Counsel Troy Fodor reported that the counterparty, Prairie Wolf, has breached the Agreement and 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/or to take certain 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. IMEA Staff's recommendation is to authorize the President & CEO to resolve the matter through all appropriate means, including but not limited to the hiring of outside counsel and the filing of litigation. Larry Taylor moved to authorize the President & CEO to amend, terminate or litigate the current solar based Capacity Transaction with Prairie Wolf Solar as recommended by IMEA Staff. Dale Detmer seconded the motion and the motion carried by unanimous roll call vote.

U.S. Supreme Court Appeal of Build America Bonds Case – CEO Kevin Gaden gave an overview of 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 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 Writ of Certiorari and if the Writ is granted, the SCOTUS would hear the case in its next session. He explained that 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 is remanded back to the Court of Claims to determine damages if the public power utilities appeals are successful. Gaden stated that all other BABs parties of the case are seeking their Boards' approvals to proceed and would be selecting a SCOTUS law firm led by a national SCOTUS expert, David Frederick of the Kellogg Hanson Law Firm. John Tolan moved to approve the Agency joining with the other public power entities to continue litigation against the federal government, including filing a Writ of Certiorari to the SCOTUS and authorize the engagement of SCOTUS legal counsel regarding the sequestration of Build American Bonds payments and authorize the President & CEO to take all steps and execute all agreements or other documents reasonably necessary or appropriate to prosecute such litigation. Cory Sheehy seconded the motion and the motion carried by unanimous roll call vote.

NEW BUSINESS

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 just selected by Chatham as their 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, 3 of which as an Energy Services Representative. IMEA Staff intends to make recommendations for revisions of 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. Brian Keys moved to approve a limited waiver of the employee anti-nepotism policy to allow for the continued employment of IMEA's current Energy Services Representative despite his family member's appointment to the IMEA Board of Directors. Larry Taylor seconded the motion and the motion carried by unanimous roll call vote.

Chairman Dale Detmer asked for a motion to adjourn the meeting. The motion was made by Cory Sheehy, seconded by Tim Birk and carried unanimously. The meeting was adjourned at 11:34 a.m.

Respectfully submitted,

Secretary/Treasurer

**ILLINOIS MUNICIPAL ELECTRIC AGENCY
EXECUTIVE BOARD MEETING
WEDNESDAY, MARCH 29, 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)

Bethany	Shannon Risley
Carmi	David Coston (via webinar)
Chatham	Patrick McCarthy
Princeton	Jeff Mangrich (via webinar)
Rantoul	Jake McCoy (via webinar)
Red Bud	Josh Eckart (via webinar)
Rock Falls	Dick Simon
St. Charles	Peter Suhr (via webinar)
Sullivan	Mayor Richard Glazebrook
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
IMEA	Cindy Evans (via webinar)
IMEA	Shadi Ahanchi (via webinar)
IMEA	Sean McCarthy
IMEA	Tammy Hall
IMEA	Eric Weinant
IMEA	Daniel Chung
IMEA	Ed Cobau
Guest	Mike Stanford (Flora)
Guest	Shane Hill (Chatham) (via webinar)
Guest	Raheel Arshed (Naperville) (via webinar)
Guest	Jean Korte (Highland) (via webinar)
Guest	Sam Ditesheim (Sol Customer Solutions) (via webinar)
Guest	Greg Hubert (Naperville) (via webinar)
Guest	Arista Wang (via webinar)
Guest	William Koehl (via webinar)