



## **Memorandum**

To: Michael DiSanto,  
City Attorney, City of Naperville

From: Troy Fodor,  
Vice President & General Counsel, IMEA

Date: October 29, 2025

Re: Naperville Proposed Addendum to IMEA New Power Sales Contract

### **IMEA Staff Analysis of/Response to Naperville Proposal**

We are in receipt of your e-mail, dated September 5, 2025, and your Draft Addendum, as supplemented by your e-mail, dated September 17, 2025, and are following up on our October 16, 2025, Teams meeting. We understand that the Naperville City Council has requested that the IMEA Board consider certain changes and/or additions to the new Power Sales Contract that was offered by IMEA for the period starting June 1, 2035. The following analysis/response shows the language of each substantive concept from your Draft Addendum. For each concept, this memorandum shows IMEA Staff's analysis and response on each point, which is still subject to final review and approval by the IMEA Board of Directors. The numbering in this memorandum follows the section numbering in your Draft Addendum which was slightly rearranged from the original list of concepts from the Naperville City Council.

### **3. Contract length**

**Naperville Proposal: Contract Length Modification – Early Termination.** Section 1.(a) of the Power Sales Contract (Initial Term and Termination) is hereby modified to include the following provision applicable to Member: In addition to all rights in the Power Sales Contract, Member shall have the ability to unilaterally terminate the Power Sales Contract in its sole discretion, upon seven (7) years' prior written notice to the Agency, effective no sooner than May 31, 2045. If Member chooses to terminate early as provided herein, the Agency may require, and Member shall pay all costs caused by or reasonably associated with Member's early termination ("Buy-Out Costs"). Upon Member's request for its Buy-Out Costs, the Agency shall provide the dollar amount and all supporting documentation within one hundred eighty (180) days, and such value shall be held firm for thirty (30) days.

**IMEA Staff Analysis:** Shortening the term of the Power Sales Contract with a buy-out option at 10 years would have a significant adverse effect on IMEA's ability to contract for generating

resources to serve the long-term power supply needs of the entire membership. It would impact IMEA's ability to secure financing and to negotiate beneficial terms with PPA counterparties due to the possibility of Members being able to exit the contract before those power purchase commitments are fulfilled. IMEA will have to offer the same buy-out option to all Members. Even if Naperville were the only Member to ask for the option, having the option there would prevent IMEA from making cost-effective deals when opportunities arise to hedge against market risk because a large portion of our load will be at risk. Developers require 20- to 25-year contracts to build new resources, so 7 years' notice does not solve the problem. As a result, IMEA would only be able to do short-term transactions and daily purchases. Agreeing to this provision would force IMEA to take on substantial market risk for all the Members and, based on current expectations, including recent purchasing experience from the State's Illinois Power Agency procurement program, that would increase the costs to all IMEA Members. Giving Naperville and all other Members an option to terminate any time during the last 10 years of the new contract would create the same problem that IMEA had before of not having enough contract length with Members to assure full payment for supply contracts (runway issue) all over again.

Additionally, even if some limited buy-out option could reasonably be considered, the open-ended nature of the option being requested (being to terminate service any time after June 1, 2045, on 7 years notice) is problematic. The requested buy-out option is not tied to any triggering mechanism or to the planning/delivery years used by the RTOs. The requested buy-out option is not based on a default or failure to perform any contract obligation by IMEA. It is proposed to be available any time starting June 1, 2045, in Naperville's sole discretion. The requested buy-out option would allow Naperville to give notice and terminate early, but it does not give IMEA the same right. IMEA would continue to be responsible to plan for serving Naperville, even though Naperville could walk away in the middle of the planning period. Also, the requirement to identify and calculate buy-out costs at the time the notice is given for a future time period that will not start for 7 years and extends for up to 10 years thereafter is also problematic. The best that could be done would be estimates of the impact on the other Members. Projecting the future energy costs for a long period gets more challenging in turbulent periods.

**IMEA Staff Response:** IMEA Staff cannot recommend that the Board accept an amendment to the new Power Sales Contract that gives any Member a unilateral right to terminate 10 years early or any time during the last 10 years of the contract while at the same time binding IMEA to plan to serve the Member for the full stated term. Based on feedback solicited from IMEA Board members individually, IMEA cannot agree to this concept, and we do not see any way to edit the words of the proposal to make it workable.

#### 4. Member Directed Resource (MDR)

**Naperville Proposal: Member-Directed Resource Expansion.** Section 2.(b-1) of the Power Sales Contract (Member-Directed Resources Option) and any related provisions are hereby modified to include the following provision applicable to Member: The maximum amount of

Member's Member-Directed Resource ("MDR"), as a matter of right, not subject to Agency or Board of Directors approval, shall be twenty percent (20%) fifteen percent (15%) of Member's rolling 5-year average annual peak demand based on the nameplate capability of, or the contracted share of the nameplate of the resource. Additionally, if after the date that this Addendum is entered into by the Parties, the City adds a new Naperville electricity customers with over a 10MW in peak demand and an 85% load factor ("New Large Electric Load Customer"), the City shall, as a matter of right, not subject to Agency or Board of Directors approval, have the option to increase the maximum amount of its MDR above the aforementioned twenty percent (20%) in an amount equal to the peak demand of the New Large Electric Load Customer. The Board of Directors may approve a greater MDR percentage or amount in the future. Power Purchase Agreements for non-carbon output from existing conventional nuclear generating resources Nuclear Power Purchase Agreements ("NPPAs") shall be eligible to be included in MDR. Additionally, immediately upon execution of the Power Sales Contract, Member shall have the option to subscribe to up to twenty percent (20%) fifteen percent (15%) of its peak load as MDR, including NPPAs. The Board of Directors shall not unreasonably withhold approval of such MDR contracts that are equal to or greater than ten (10) five (5) years in length, provided the counterparty demonstrates sufficient financial and operational resources to perform through the contract term and Member provides at least four (4) years' prior written notice to the Agency of any intent to terminate an MDR resource. If Member invests in a renewable energy project, it shall retain the right to retire or sell the associated renewable energy credits (RECs). [Note: redlines here are partial edits by IMEA Staff and do not reflect approval of the unedited language. See IMEA Staff analysis below.]

IMEA Staff Analysis: This request breaks down into a number of items to analyze. First, should the IMEA Board of Directors allow existing conventional nuclear resources to qualify as MDR resources? Existing conventional nuclear resources were not included in the definition of MDR in the new Power Sales Contracts for a reason. Conventional nuclear resources have a much higher capacity factor than most other non-carbon resources that are considered renewable. A contract by Naperville for 35 MW of attributes from a conventional nuclear unit will produce a lot of energy during nighttime and other off-peak hours when IMEA already has excess energy from existing resources that is being sold back to the RTO at potentially low market prices (known as Locational Marginal Prices (LMPs)). Neither IMEA nor Naperville has a need for more excess nighttime and other off-peak hour energy. The excess nighttime or other off-peak energy would be sold to the RTO at a loss to Naperville. If the IMEA Board of Directors were to consider allowing existing conventional nuclear units to be eligible for MDR, it would likely seek to put a cap on the amount or percentage. For example, IMEA could allow MDR up to a maximum of X% of the Member's peak from existing conventional nuclear resources AND up to the remaining percentage from renewables for a total of X% of the Member's peak load. This could help minimize the potential negative impact. If this change in policy were acceptable to the Board, IMEA Staff would recommend capping conventional nuclear at 10% of the Member's peak load. There is a provision in the standard new Power Sales Contract (last sentence of the definition of Member-Directed Resource) that gives the IMEA Board of Directors the power to add additional resource types to the definition, so this change in policy can be made by an IMEA Board Resolution without changing the words in the new Power Sales Contract. If approved,

however, IMEA will be offering the same additional resource in the MDR option for all Participating Members, which could potentially increase risk and any negative impacts.

Naperville is requesting the option to buy existing conventional nuclear resources in increments as short as 5 years, meaning that the City could be in and out of the MDR option more often than was expected when the MDR option was designed. Typical new construction of renewable resources was expected to require 10- to 20-year PPAs. Under Naperville's Proposal, the City could enter into a nuclear PPA for 5 years and then if it proves to be too expensive, Naperville could discontinue for a year or two and then later decide to start over again. While this should not impact other Members due to the way the MDR will be settled, it affects IMEA's ability to plan and negotiate power supply resources for all the Members. Staff believes that any underlying nuclear PPA should be for at least 10 years to allow for proper planning.

Second, should IMEA increase the MDR percentage to 20%? The MDR is currently limited to 10% of the Member's peak load on a nameplate basis. There is a provision in the new Power Sales Contract that gives the Board the power to increase the MDR percentage. The thinking behind drafting the MDR option this way in the new Power Sales Contract was to allow IMEA and individual Members to grow into the idea, not to jump all the way to 20% the first day before the bugs are worked out. Based on feedback solicited from IMEA Board members individually, IMEA Staff would recommend that the Board could consider countering with an increase to 15% of the Member's peak load, rather than 20%. This change in policy could be made by IMEA Board Resolution without changing the words in the new Power Sales Contract. If approved, however, IMEA will be offering the same additional percentage of MDR to all Participating Members, which could potentially increase the administrative burdens sooner than expected.

Third, Naperville wants its MDR vendor choice and contract terms not to be subject to approval by the Board. Your proposed language would require IMEA to accept whatever terms Naperville negotiates with whatever vendor. IMEA needs to be able to review MDR proposals to make sure they are workable and in compliance with the rules of engagement required by the RTOs. There are lots of moving parts. If the concern is that the Board can say no, the current language of the new Power Sales Contract uses the phrase "reasonable" approval by the Board. The Board's approval was intended to be a ministerial, but still important approval, after Staff review of the MDR for fatal flaws. The words could be clarified in an IMEA Board Resolution to say that, "approval of individual MDR proposals will not be unreasonably delayed, withheld, or denied," but IMEA Staff interprets the words as already meaning that.

Fourth, the combination of the first 2 points above (conventional nuclear and 20% MDR threshold) doubles the impact. As noted above, if the resource is conventional nuclear, it will cause excess energy at night and during other off-peak periods that will have to be sold to the RTO market by IMEA, likely at a loss to Naperville. Doubling the MDR option from 10% to 20% would exacerbate that issue. IMEA may be blamed in the court of public opinion for the increased costs to Naperville even though Naperville would have made the decision to do MDR, selected the vendor and negotiated the contract. Any Member electing to do MDR should be

required to acknowledge that there is a risk of cost increases to its customers alone from the decision to do MDR and that the Member bears full responsibility for that decision.

Fifth, Naperville wants to put language into an amendment to the new Power Sales Contract that will force the MDR option (as amended by your requests above) to be offered as soon as June 1, 2026, under the existing Power Sales Contract. The plan has always been to amend the existing Power Sales Contract to bring in the MDR provisions of the new Power Sales Contract if the Member wants to utilize this tool early. The question is whether an amendment to the new Power Sales Contract is necessary. The answer is no. The language for an appropriate amendment to the existing Power Sales Contract can be developed to address this issue as part of any final package when all else is done. In addition, when we do the amendment to the existing Power Sales Contract, we should pull the "cost causer" provisions from the new contract forward to the existing contract and include the acknowledgement that there is a risk of cost increases to the Member's customers from the decision to do MDR and that the Member bears full responsibility for that decision. Finally, IMEA has outstanding tax-exempt Bonds. Any MDR that seeks to self-direct a substantial portion of the IMEA total requirements obligation during the remaining term of the IMEA Bonds would need to be subject to IMEA Bond counsel review and approval as well.

Sixth, Naperville also wants MDR rights over and above 20% of the Naperville peak load if you bring in large new load customers. The initial problem is that IMEA would be responsible for serving that large new load from the market with no hedge if the proposed Naperville contracted MDR resource fails to deliver during high-cost periods. That would in all likelihood cause the costs to all Members to increase. This large new load MDR request has all the issues discussed above and further exacerbates the problems. The only potential way to meet this request without that risk would be to carve out large new load customers so they are not part of the full requirements service provided by IMEA and have Naperville serve them with its own resources from a third-party supplier. Even if we agreed to that kind of treatment, if it went badly for Naperville, IMEA would likely be blamed in the court of public opinion. Endorsing such a plan would very likely bring concerns from current and future resource counterparties, IMEA Bond Counsel, IMEA Bond holders, rating agencies and others about the enforceability of the IMEA total requirements contracts. IMEA Staff does not believe we should deviate from the full requirements model and therefore cannot support this part of the MDR request.

Seventh, Naperville is asking to eliminate the right of first refusal (ROFR) to renewable or non-carbon credits (RECs) from MDR resources that is in the new Power Sales Contract. The ROFR as drafted already gives Naperville control. Naperville can retire the RECs itself and claim the renewable aspects or it can go out and find a buyer at whatever price it can negotiate. IMEA only asks for the right to match the price that a third-party is willing to pay Naperville for the RECs and buy them if they are going to be sold. If it is a price more than IMEA wants to pay, Naperville can sell the RECs to their chosen buyer. It should be remembered that IMEA's desire to procure RECs is tied to IMEA long-term sustainability goals. IMEA is purchasing/generating RECs for the benefit of our members' goals. IMEA Staff anticipates that Naperville would seek to retire the RECs rather than selling them, so this should not be a concern for Naperville.

Eighth, as noted above, IMEA will have to offer the same additional MDR rights to all Members. Doing so may adversely affect IMEA's planning of resources to serve the membership as a whole.

**IMEA Staff Response:** IMEA Staff can recommend accepting the use of existing conventional nuclear resources as MDR but only up to a maximum of 10% of Member's peak, and Staff can recommend increasing MDR from 10% to 15% of Member's peak (subject to the maximum of 10% of peak from nuclear resources). Contracts with nuclear resources would need to be for a minimum of 10 years. These changes would not be made in an amendment to the new Power Sales Contract. The IMEA Board of Directors would exercise its authority under the new Power Sales Contracts by IMEA Board Resolution which would make the changes available to all Members that have signed the new Power Sales Contract. That same MDR Policy Statement Resolution could specifically approve the process of amending the existing Power Sales Contracts to allow the MDR option to be exercised under the existing Power Sales Contracts and require that the "cost-causer" provisions also be included in such amendment. The Resolution would also include the disclaimer that the risk of loss (or gain) resides exclusively with the Member that enters into an MDR contract with a separate party, and any amendment to the existing contract would require the member to acknowledge that there is a risk of cost increases to its customers from the decision to do MDR and that the Member bears full responsibility for that decision. The MDR Policy Statement Resolution could also say that: "approval of Member MDR requests will not be unreasonably delayed, withheld, or denied, including but not limited to consideration of the financial and operational resources and demonstrated abilities of the Member's MDR counterparty."

Staff can support development of and consideration by the IMEA Board of a Policy Statement on large new loads that would cover multiple considerations in an IMEA Board Resolution, but cannot support the proposed provision to allow the MDR percentage to automatically increase to an amount high enough to serve the entire load of large new load customers on top of the Board approved percentage. We have heard that there could be a concern with regard to making these changes via Board policy rather than by contract. However, effecting these changes through Board policy would give ALL members greater flexibility in the future with regards to MDR. Therefore, it would be highly unlikely that municipalities would later want to rescind a policy that strips such flexibility from their own community. This concept puts all municipalities on an even playing field and likely builds harmony amongst all members to support these concepts well into the future.

## 5. Peak Shaving

**Naperville Proposal:** Energy **Storage Resources. Peak Shaving with Member-Directed Resources.** Section 2.(b-1) of the Power Sales Contract (Member-Directed Resources Option) and any related provisions are hereby modified to provide the following: If Member elects to install energy storage **peak shaving** resources, it shall have the option to include them in **the an**

Agency's capacity purchase program as appropriate or otherwise collaborate with Agency staff and the Board of Directors to establish fair compensation metrics ~~based on prevailing market capacity costs~~ for such energy storage resource products, ensuring no financial harm to other Participating Members. Authorization for such resources shall not be unreasonably withheld, provided both the Agency and Member benefit. [Note: redlines here are by IMEA Staff.]

IMEA Staff Analysis: This request says it is about peak shaving with MDR, but the written proposal appears to be limited to energy storage and talks about using energy storage in an IMEA program to benefit all of IMEA and not harm the other Participating Members. That would not be peak shaving by Naperville. It would be load management by IMEA. The phrase "peak shaving" is misleading and should be stricken. Also, an energy storage resource used in an IMEA program would not count against the MDR percentage. Finally, the language "based on prevailing market capacity costs" may or may not be at odds with the specific language of Section 2(b-1) of the new Power Sales Contract. To eliminate the ambiguity, staff would strike that language. The new Power Sales Contract already addresses each of these points. Section 2(b-1) provides in part:

"Resources put in place by Member under one or more offerings, policies or programs of IMEA, other than this Member-Directed Resource Option, and IMEA-sponsored projects located within Member's service area will not count against the above percentage:

and

"Member shall not use a Member Directed Resource to peak shave. Member shall still be required to purchase its full requirements from IMEA. The Member Directed Resource shall become part of the IMEA resource portfolio for serving Member. Member shall pay all costs associated with the Member Directed Resource and shall be credited or paid back for the actual RTO clearing price for capacity and day-ahead price for energy and any actual ancillary services revenues received by IMEA for the attributes used by IMEA from the Member Directed Resource to serve the Participating Member." [Underlining by IMEA Staff]

If Naperville wants the Board to expand the existing capacity purchase program for behind-the-meter generators (BTMG) to include energy storage resources or develop a similar program for such resources, the fair compensation would be determined by the Board of Directors. Like the current program for BTMG, the compensation may be higher or lower than auction clearing prices in any given year but is none-the-less "fair compensation." The same is true with the IMEA's Demand Response (DR) program. An energy storage resource could be committed to the IMEA DR program. The Board sets the compensation for the DR program annually which may end up being higher or lower than the auction clearing price. Finally, if Naperville wants to use the energy storage resource as an MDR, Section 2(b-1) provides for compensation at the actual RTO clearing price for capacity, at the day-ahead price for energy and equal to any actual ancillary services revenues received by IMEA.

IMEA Staff Response: IMEA Staff can recommend development of and consideration by the Board of a Policy Statement or Program applicable to all Members in an IMEA Board

Resolution regarding energy storage resources. Energy storage resources could be included under an existing IMEA program or Staff could develop and the IMEA Board consider a new program. The compensation should be set by the IMEA Board from time to time for member-owned resources dedicated to IMEA under the IMEA programs. The Board must maintain control over the compensation under its programs to ensure equitable treatment for all Members.

## 6. Retirement Costs

**Naperville Proposal: Retirement Costs for Prairie State Generating Campus and Trimble County.** Section 3 of the Power Sales Contract (Rates and Charges) and any related provisions are hereby modified to require the following: The Agency shall set rates and charges sufficient to collect ~~continue collecting~~ its share of the ~~retirement and decommissioning~~ costs for the Prairie State ~~Energy Generating~~ Campus (PSEG) and Trimble County Units 1 & 2 such that the estimated full costs ~~assuming estimated interest gained and/or accumulated~~, as outlined in each facility's decommissioning plan or estimate, as such cost estimates may be amended from time to time, are collected and/or to be accumulated by the ~~ir~~ respective state-mandated retirement dates, if any, of the last unit required to retire at each plant, taking into account interest gained and/or to be gained and accumulated. [Note: redlines here are by IMEA Staff.]

**IMEA Staff Analysis:** This request seeks to put something that the Board has already approved and that IMEA is already doing (collecting the estimated retirement costs of Prairie State and Trimble County) into the new Power Sales Contract as a binding obligation. There are two issues. First, making the collection of the retirement costs a binding requirement in the contract with a deadline means that if something unexpected happens and the full retirement costs are not collected by the deadline, Naperville could declare a default and try to terminate its new Power Sales Contract early. Naperville could also claim after the units are decommissioned that it is not liable for future unforeseen environmental costs. This would run afoul of Section 14(m) of the existing Power Sales Contract and the new Power Sales Contract. As noted above, an opening for an early termination by Members would adversely affect resource planning. To be clear, all IMEA members have an interest in ensuring that there are adequate funds set aside to fund such planned decommissioning of the projects. As it currently stands, IMEA is collecting the retirement costs over time. If something unexpected occurs, the IMEA Board has the flexibility to make adjustments along the way. That is the way it should be; again, good management and good agency governance allows for such prudent changes over time. The second issue with putting a binding obligation about something that will happen in the future in the contract as a binding obligation is anticipating what could happen and getting the words exactly right. IMEA Staff has redlined the proposed language above to try to better reflect things that may happen in the future. The Board has already approved and IMEA is already collecting the estimated retirement costs of Prairie State and Trimble County. See IMEA Resolution 24-12-934 approving regulatory credit related to funds for decommissioning IMEA-owned generation and IMEA Ordinance 24-10-931 approving revised Rate Schedule B.

**IMEA Staff Response:** IMEA Staff could support a policy statement in either an amendment to IMEA Resolution 24-12-934, the IMEA Board Resolution approving the new Naperville Power

Sales Contract or a separate Resolution by the IMEA Board including Naperville's proposed language as amended by IMEA Staff above.

## **7. Transparency**

**Naperville Proposal: Transparency Requirements.** Section 14.(b) of the Power Sales Contract (Access and Information) and any related provisions are hereby modified to require the following: Annually, the Agency shall complete and publish an independent financial audit. Following the audit, the Agency shall provide Member with its annual pro rata share of fuel, debt service, and operations and maintenance (O&M) costs for IMEA's overall system, as well as the source and quantity of all energy procured for the Agency; provided however, the Agency shall not be required to provide information that reveals or can be used to calculate the offer curves of the Agency's resource bids in the RTO energy markets. It is understood that energy procured directly from the RTO may not be able to be broken out by source and may be listed as "Market Energy." **[Note: redlines here are by IMEA Staff.]**

**IMEA Staff Analysis:** This request seeks to put something that IMEA is already doing (annual financial audit) into the new Power Sales Contract as a binding obligation. Further, it is IMEA Staff's opinion that IMEA is required by State law and by its Bond Indenture to perform an annual financial audit. The Proposal also specifies items of information that IMEA will be required to provide to Naperville each year going forward after the audit is done. The audit does not break this information out by Member. IMEA has system debt, not individual resource debt obligations. Therefore, it is not possible to break the debt down by resource. IMEA Staff has no problem performing the audit or providing the requested information where reasonably possible. The issue is with making something like the annual audit a binding requirement in the contract. It opens a door to possible future litigation for breach of contract if something unexpected happens. Naperville could declare a default and try to terminate its new contract early. As noted above, an opening for an early termination would adversely affect resource planning, which in turn would likely affect the rates to Members. As it currently stands, IMEA is performing the annual financial audit, and it is providing the information requested by all Members when it can do so without running afoul of RTO and vendor confidentiality. Furthermore, Members get billing information monthly that has these costs for the previous month and the Members' demand and energy for the previous month. Monthly financial statement and the audit also include this data in total. IMEA Staff believes that sufficient information is provided so the calculations could be done by the Member.

**IMEA Staff Response:** IMEA Staff could support a policy statement in an IMEA Board Resolution applicable to all Members that includes Naperville's proposed language as amended by IMEA Staff above.

## 8. Carbon Free Milestones

Naperville Proposal: Carbon-Free Milestones. The Power Sales Contract is hereby supplemented to require a Sustainability Plan that sets include the following enforceable milestone targets as goals. The Agency shall endeavor to achieve the goal of net zero CO<sub>2</sub> emissions fifty percent (50%) carbon-free energy from its owned and long-term contracted generating and energy storage resources, excluding purchases from the RTO markets and excluding behind the meter generating units less than 25 MW controlled by IMEA, (IMEA Resources) by the end of 2038, eighty five seventy percent (85%) carbon free by the end of 2045, and net zero emissions by the end of 2050 by resources owned and/or controlled by the Agency. If the Agency fails to meet the lesser of the carbon-free energy percentage imposed on the Illinois Power Agency or its successor for the State of Illinois, and the carbon-free energy percentage achieved by the Illinois Power Agency or its successor for the State of Illinois any milestone and does not remedy the shortfall within two (2) years, Member may, at its sole discretion, increase its MDR percentage by an additional amount equivalent to its proportionate share of the shortfall on a peak load/nameplate basis; provided the additional amount shall not exceed five (5) percent. allocation by a percentage equal to the shortfall. [Note: redlines here are by IMEA Staff.]

IMEA Staff Analysis: This request seeks to put something that the Board has already approved and that IMEA is already doing (transitioning towards carbon-free generating resources) into the new Power Sales Contract as a binding obligation with mandatory deadlines and carbon-free percentages. There are a number of issues with this portion of the proposal. First and foremost, the State of Illinois does not impose mandatory renewable/carbon-free portfolio standards (RPS) on itself or the other utilities in the State. The State of Illinois has RPS goals, and the State is not meeting its goals. IMEA should not agree to mandatory standards that the State is not meeting for itself. If the RPS goals were achievable, the State would be meeting them. The fact that the State cannot meet its own goals shows the problem with hard-coding specific percentages and timelines into the contract as binding obligations. In addition, the percentages and timeline in the Naperville Proposal in some respects exceed the State's goals for itself. The State's goals are 40% by 2030 and 50% by 2040, with an ultimate goal of net-zero by 2050. IMEA should not agree to stated goals that exceed what the State imposes on itself or what the State has achieved itself.

There are any number of things that could delay the transition to net-zero carbon emissions from generating resources by any given date. The RTOs or the federal government could require Prairie State and/or Trimble County to continue to operate beyond their expected retirement dates in order to support the grid. This has happened recently and in the past and is a requirement outside of IMEA's control. This possibility was even considered and included in the final language in the 2021 CEJA bill. There could be circumstances where we retire the coal-fired units on schedule, but where there are not renewable/non-carbon generating resources available to own or contract at all or at least not at a reasonable price. If this occurs, IMEA may be forced to buy from the market. The market includes resources from other states that are not requiring their fossil fuel plants to retire. The markets are run by PJM and MISO, and generating

units are dispatched based on cost and operating parameters, so IMEA would have no control over the resources used by the market to serve Naperville or any other Participating Member. If such market purchases are required or are the best economical decision for a period of time, the market mix of resources would prevent IMEA from meeting the proposed mandatory RPS percentages and dates. The RPS percentages and target dates should be in our Sustainability Plan that the Board can change, if need be, not as binding obligations in the contract.

The percentages are also dependent on the amount of load that IMEA will be serving and depend on the load growth or loss rates between now and those years. Therefore, any agreement to track a percentage of load that is served by non-carbon resources will need to recognize there is some concerns over the volatility of either upward load growth or reductions in the load served by the Agency. For example, if there is a large data center located in any IMEA member community, depending on the timing of such load growth, this requirement would leave IMEA little or no time to find an adequate, cost-effective renewable resource to augment the IMEA resources to comply. In short, the evolution of power supply resources and new load requirements don't always tie together nicely. Output from the generating resources owned by IMEA is solely a function of the RTO dispatch, meaning the MWh that come from our resources is either a function of weather, or the economic dispatch criteria of IMEA resources in PJM and MISO.

Making the transition to carbon-free resources a binding requirement in the contract with mandated percentages and deadlines means that if, despite good planning, things happen in the future that prevent IMEA from meeting the mandated standard, Naperville could unilaterally increase its MDR percentage. It is also conceivable that Naperville could declare a default if IMEA missed the targets and try to terminate its new contract early. An opening for an early termination would adversely affect resource planning. As it currently stands, IMEA has set forth its goals in its Sustainability Plan which the Board has approved and which IMEA Staff is implementing. If something unexpected occurs, the IMEA Board has the flexibility to make adjustments along the way. That is the way it should be; the essence of good management and good governance is being able to make adjustments as more information becomes available.

The final issue with putting something that will happen in the future in the contract as a binding obligation is anticipating what could happen and getting the words exactly right. IMEA Staff has redlined the proposed language above to try to better reflect things that may happen in the future.

**IMEA Staff Response:** IMEA Staff could recommend including Naperville's basic concept (but with the language as edited by Staff as shown above) in an MDR Policy Statement for all Members in an IMEA Board Resolution, including up to 5% additional MDR if IMEA carbon free energy percentage does not meet or exceed the lesser of what the State imposes as an obligation on itself and what the State actually achieves for a given year.

## 9. Local Generation Rights

**Naperville Proposal:** Local **Generation Rights**. The Power Sales Contract is hereby supplemented to affirm the following: In accordance with applicable law, including the Public

Utility Regulatory Policies Act (and such limits as applicable under the PURPA law or any amendments), retail customers of the utility (including residents, businesses, schools, churches, and medical facilities) retain the right to self-supply energy up to any applicable limits. [Note: redlines here are by IMEA Staff.]

IMEA Staff Analysis and Response: The statement in the Proposal (as amended by IMEA Staff above) is a correct statement of the law. While it is not necessary to state the law in the contract and recognizing that the law may change in the future, IMEA Staff could support including this item, as amended by IMEA Staff above to show that there are limits under the law, in a policy Resolution to be considered by the Board of Directors.

## 10. Voting Rights

Naperville Proposal: Voting Rights Modification. The Power Sales Contract and any related governance provisions are hereby modified to require the following: For all matters related to resource planning and procurement, the Agency shall take appropriate action to cause the weighted voting system as defined in the Agency's bylaws to be utilized.

IMEA Staff Analysis and Response: IMEA Staff cannot recommend that any provision regarding voting rights modifications be included in the new Power Sales Contract. Voting rights are exclusively a matter for the Board of Directors. The Bylaws, as currently written, provide that:

“All questions concerning the interpretation and implementation of Power Sales Contracts and Capacity Purchase Agreements between the Agency and its Members which have terms of at least 15 years (hereinafter referred to in this Paragraph as “Contracts”), including the establishment of capital and operating budgets, rates, charges and capacity credits, power supply planning, and any associated financing, shall be considered Weighted Vote Items.”

In IMEA Staff’s opinion this language includes “resource planning and procurement.” No clarification is required. If the Board wants to include the phrase “resource procurement” in the definition of Weighted Vote Items, it should do so at a regularly scheduled meeting. It should not put it as a requirement in the new Power Sales Contract. To be clear, in the 14+ years that Naperville has been a purchasing member of IMEA, this concern has never been a problem. Staff does not expect it to be in the future either.

### .... Premium; Limitation on No Adverse Distinction; Cost Causer

IMEA Issue: Naperville’s proposal does not include the premium to be paid by it over and above the postage stamp rate or the removal or limitation on the “no adverse distinction” clause. IMEA Board of Directors Resolution 25-06-953 requires these things for any new Power Sales Contract accepted by the Member after August 19, 2025. This Resolution was approved by the IMEA Board in June 2025 after considerable discussion.

IMEA Staff Draft Language:

1. Section 3 of the Power Sales Contract is hereby amended by adding the following text as a new paragraph between the third and fourth paragraphs thereof:

Notwithstanding any other provision of this Section 3 and in addition to all other rates and charges, Member shall pay a premium over and above the uniform postage stamp rates and charges as set by the Board of Directors from time to time for the Participating Members to provide a marginal benefit to the other Participating Members from adding Member as a Participating Member under the 2035 Power Sales Contract after expiration of the offer deadline, as extended. Member acknowledges that IMEA was able to secure certain resources at a favorable price due to the timing of the commitments made by the Participating Members who signed up by the deadline.

For the period commencing with the first day of October of 2035 through \_\_\_\_\_, the amount of the premium shall be \$\_\_\_\_ per kWh.

2. Section 15 of the 2035 Power Sales Contract is hereby amended by adding the following text as a new sentence immediately after the first sentence thereof:

Further, for Member, it shall not be considered an adverse distinction or undue discrimination for purposes of this Contract for IMEA to charge Member the premium set forth in the Addendum dated \_\_\_\_\_.