

Draft Master Renewable Energy Credit Purchase and Sale Agreement

Response to Illinois Power Agency Request for Public Comment

March 8, 2022

Company:

[Commenter 1] is a leading privately held developer and operator of sustainable energy solutions headquartered in [City].



[Commenter 1] submits the following responses and respectfully request that the Agency consider the feedback provided below.

§ 5.4 RPS Budget Shortfall

The Agency has issued a draft contract which renewable energy projects must enter into if selected in a competitive REC procurement. In Section 5.4, the draft contract includes the following language:

“Nothing in this agreement shall require Buyer to advance any payment or pay any amounts that exceed the actual amount of revenues anticipated to be collected by Buyer under paragraph (6) of subsection (c) of Section 1-75 of the IPA Act (20 ILCS 3855) and subsection (k) of Section 16-108 of the Public Utilities Act (220 ILCS 5) inclusive of eligible funds collected in prior years and alternative compliance payments for use by Buyer (the “Available Funds”). Buyer’s payments for RECs in a given Delivery Year therefore shall not cause the sum of the cumulative payments to Seller and all other sellers under contracts executed pursuant to 20 ILCS 3855/1-75(c)(1), as well as all other applicable fees, charges, and administrative costs related to the purchase of RECs under 220 ILCS 3855/1-75(c)(1), to exceed the Available Funds for such Delivery Year as calculated under 20 ILCS 3855/1-75(c)(1)(E).”

This language allows the Buyer to avoid payment for RECs if the IPA does not accurately budget for the purchase of those RECs. This language will severely undercut market confidence.

The REC procurement process is administered by the Agency, and while developers have appreciated the opportunity to comment, developers have little influence or leverage in determining how REC budgets are planned. Because the Agency and the Agency alone is responsible for ensuring proper funding for REC procurements, this contract provision unjustly shifts the consequences of planning errors to developers. Through no fault of their own, developers risk taking on substantial losses if the Agency does not plan appropriately.

Financial institutions are already gunshy about investment in Illinois due to previous IPA budgeting issues caused by municipal aggregation and then delayed project CODs and the sunsetting of a rollover provision. A contract like this which again calls into question the viability of the RPS budget will increase the perceived risk of projects, making those projects unnecessarily expensive to finance and hurting ratepayers in the process.

Rather than distancing itself from budget shortfalls that may or may not come to pass, it is vital that the Agency engage in a thorough budget analysis with stakeholders to ensure that it is not procuring more RECs than it has the budget to pay for.

[Commenter 1] urges the Agency to remove this clause from the contract. Or to build in clearer language that indicates how the IPA will make developers whole if there are budget shortfalls.

Alternatively, the IPA should include a Buyer Performance Assurance Agreement which would cover the instance in which the RPS Budget runs out of money for that Delivery Year. If the RPS Budget Shortfall affects more than one Delivery Year or is significant enough to warrant a material change to the contract (such as a reduction in the Agreement's RFP Awarded Annual Quantity), the Seller should be allowed to terminate.

Thank you.

[Commenter 1]'s representative