Comments on Master Renewable Energy Credit Purchase and Sale Agreement (DRAFT)

1) Section 5.4 – Cost Recovery through Pass-Through Tariffs & Article 7: Credit and Collateral Requirements; Performance Assurance
   a. **This section does not include a Performance Assurance on the part of the Buyer. Although Public Act 102-0662 significantly increased the RPS budget, we anticipate the project finance community will view these Indexed REC contracts as carrying significant risk of non-payment, due to previous year shortfalls. The first paragraph of Section 5.4 appears to be new language not included in previous REC Agreements. The inclusion of this language, which appears to *expressly* authorize a Buyer to withhold payments in the event of cumulative payments for RECs exceeding Available Funds for a Delivery Year, will present a major hurdle for lenders.**

      We believe the Master Agreement should be amended to a) require the Buyer to post collateral similar to that of the Seller that can be drawn in the event of a funding shortfall, and/or b) allow the Seller to stop delivery of RECs and terminate the Agreement in the event the Buyer has insufficient money.

2) Section 6.3 – Project Labor Agreement Requirements
   a. **As described above, we do not believe it is reasonable to require evidence of a Project Labor Agreement at any point near the execution of the REC Agreement. We believe the reference to "(b) thirty (30) days of the Execution of this Agreement" in Section 6.3 should be removed from the Agreement entirely. Realistically, a PLA will be executed several months prior to the commencement of construction, so providing evidence of the PLA within 30 days of the execution of such PLA is more appropriate.**

3) Section 9.2(j) – Event of Default in Respect of Seller

   a. **[Commenter 1] interprets this section to mean that a Seller may only**

      have 3 Shortfall Years *in total* during the contract. It is not uncommon for a Power Purchase Agreement to include an obligation or requirement for availability, but that is typically triggered only if a project drops below its obligation for *consecutive* years. Instead, we would support granting flexibility to the Seller to modify the Annual Quantity for the remainder of the Term in the event of prolonged generation shortfalls.

      This section could be particularly impactful when taken alongside the definition of "Delivery Term", a date which, as defined in the Draft Contract, *could* be triggered upon delivery of Test Energy (which includes RECs tracked by PJM-GATS or M-RETS). If so, this may result in the very first Delivery Year being a Shortfall Year.