

**[Committer 2] Comments on
Draft Indexed REC Contract**



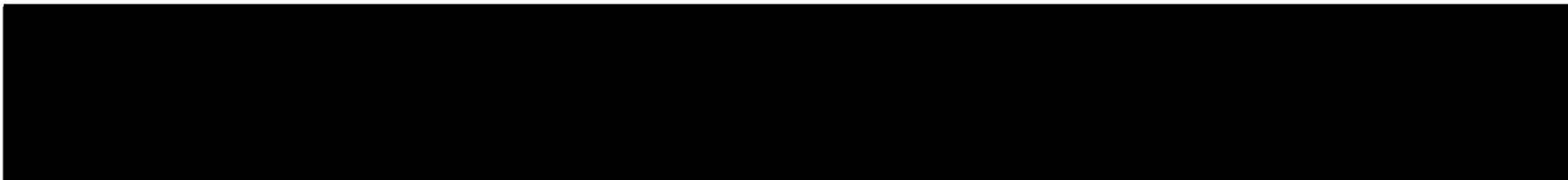
**[Commenter 2] Comments on
Indexed REC Master REC Purchase & Sale Agreement**

[Commenter 2] submit the following comments in response to the IPAs request for feedback on the Draft Indexed REC Contract. [Commenter 2] comments address 15 topics. The Master REC Purchase and Sale Agreement places an inordinate amount of risk on the Seller, and the Standing Order and *a priori* delivery requirement impedes the efficiency of utility-scale renewable projects and makes it nearly impossible for a project to enter into secondary contracts that allow the seller to optimize its revenue opportunities. [Commenter 2]'s comments recommend contract amendments that are intended to yield lower bid prices by reducing seller risk, improving certainty, and providing seller's flexibility in selling RECs.



[Redacted] [Commenter 2] is a collaborative organization dedicated to renewable energy's fair access to the wholesale electricity market throughout the [Region].

[Commenter 2]'s Board of Directors and members are comprised of: more than thirty owners and operators of wind, solar and battery storage facilities; environmental organizations; wind, battery storage and solar energy experts; contractors that build wind, solar and battery storage facilities; clean energy advocates; and businesses providing goods and services to the renewables energy industry in Illinois and across the country. Members of [Commenter 2]



operate plants in Illinois and have projects in the PJM and MISO generation interconnection queue.

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COMMENTS

- (1) **Annual Quantity Should Account for Solar Module Degradation** (Master REC PSA¹ page 4, section 1.5)

Either here or in other provisions as appropriate, there should be an option to reduce the Annual Quantity due to solar module degradation.

¹ Master Renewable Energy Credit Purchase and Sale Agreement (DRAFT) dated January 20, 2022.

(2) **Collateral Requirement for Utility-Scale Solar Projects Should be Reduced**
(Master REC PSA page 5, section 1.13)

The Collateral Requirement for solar is too high, it should be equal to wind – \$4 x Annual Quantity.

(3) **Credit Rating** (Master REC PSA page 6, section 1.16)

[Commenter 2] has three recommendations on this topic: [1] remove the term “U.S. utility operating company” from definition, [2] remove the discount applied to the S&P rating for non-U.S. utility operating companies, and [3] accept credit ratings from *DBRS Morningstar*.

The definition of “Credit Rating” uses the undefined term “U.S. utility operating company.” Because it is undefined it may inadvertently discriminate against qualified bidders.

[Commenter 2] recommends removing the term in the two instances in which it is used in the definition and replacing it with “company,” as reflected in the block quote below:

1.1 “Credit Rating” means, with respect to the Seller or Seller’s Guarantor, as applicable, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (excluding, however, any debt obligations that are supported by specific third party credit enhancement that would not apply to payment obligations under this Agreement) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer default rating by Fitch, or the issuer rating by Moody’s, or the corporate issuer rating or corporate credit rating by S&P if such entity is a ~~U.S. utility operating~~ company with an investment grade rating, or the corporate issuer rating or corporate credit rating, discounted one notch, by S&P if such entity is not a ~~U.S. utility operating~~ company with an investment grade rating; provided, however, that in the event Seller (or Seller’s Guarantor, if applicable) is rated by only one rating agency, that rating will be used. If Seller, or its Guarantor, is rated by only two rating agencies, and the ratings are split, the lower rating will be used. If Seller, or its Guarantor, is rated by three rating agencies, and the ratings are split, the lower of the two highest ratings will be used; provided that in the event that the two highest ratings are common, such common rating will be used.

[Commenter 2] recommends removing the discount applied to the S&P rating for non-US utility operating companies. The Administrator should use the corporate issuer rating or corporate credit rating

by S&P.

[Commenter 2] also recommends including *DBRS Morningstar* as an accepted credit rating agency in this definition. DBRS is a large credits ratings agency operating in Canada, Europe and the U.S. It is useful because it rates worldwide entities.

(4) **REC Monthly Price** (Master REC PSA page 10, section 1.70)

The “REC Monthly Price” is calculated using the MWh of actual generation from the Project. The term “actual generation” is used in the definition but is not clearly defined, particularly relative to solar projects that are co-located with storage. In the workshop the IPA convened on Monday, February 8, a representative of the IPA stated that the index price and MWh’s generated are correlated to the time/hour in which the electricity associated with the REC is generated. That is consistent with [Commenter 2] recommendation for utility-scale projects that are co-located with battery storage; that the Seller provide hourly MWh generation data from the meter attached to the solar project, and not when the storage project discharges power.

(5) **To Avoid Termination of an Effective Contract the IPA Should Determine Whether a Bidder Complies with the Public Interest Criteria in the Part 1 Review** (Master REC PSA page 13, section 2.2(c) Project Information)

Section 2.2(c) of the Master REC PSA allows for an Event of Default after the Effective Date of the REC Agreement if the IPA determines that the Project does not meet the public interest criteria. [Commenter 2] recommends that the IPA determine whether a Bidder meets the public interest criteria as part of the Part 1 Proposal qualification review. Such information is readily available at that time to make such a determination.

(6) **Standing Order should be an Option for the Seller to Opt Into** (Master REC PSA page 14, section 2.3 - REC Tracking Systems Section 2.3(b))

Section 2.3 of the Master REC PSA describes the parameters of an irrevocable Standing Order

for the delivery of RECs from PJM-GATS or M-RETS (as applicable) to the Buyer's accounts. [Commenter 2] recommends that the Seller have the option to either deliver the RECs themselves or to work with the Buyer's to establish a Standing Order. The Master REC PSA requires the first RECs from a project to be delivered to the Buyers, with no compensation for over-production of RECs. Moreover, the IPA has the ability to select a Bid Amount lower than what was bid, likely leaving a project with excess energy and RECs to sell to a secondary or tertiary off-taker with subordinate REC priority. To manage projects that have multiple REC agreements it is easier for the Seller to control the delivery of RECs to Buyers. Another issue with the Standing Order, as currently framed, is that it requires all parties to agree to a change. This will cause RECs in excess of the Annual Quantity to automatically be delivered to the Buyers, and potentially delay or hamper delivery of RECs to Buyers under other contracts. The Standing Order also increases risk and potential bid prices. Adopting [Commenter 2]'s recommendation should lower the risk of participating in the RFP.

- (7) **Flexibility to Set a Standing Order Delivery Quantity** (Master REC PSA page 14, section 2.3 - REC Tracking Systems Section 2.3(b))

For the same reasons stated in section (6) (above), when a Standing Order is established, the Seller should have the flexibility to adjust the monthly quantity of RECs to be delivered to a Seller under a Standing Order. In addition to the reasons set forth in (6), the Seller needs the flexibility to adjust the amount of the Standing Order on a monthly basis because wind and solar energy generation varies from month to month. Giving the Seller control over monthly delivery amounts, while still having to meet the Annual Quantity, gives the Seller the flexibility to manage multiple REC contracts for a project.

- (8) **Instead of Event of Default, the Annual Quantity Should be Modified in the Event of Annual Quantity Shortfalls over Three Consecutive Years** (Master REC PSA page 17 – section 4.1(g) Deliveries and Quantities: Event of Default, and page 26 – section 9.2(j) Event of Default in Respect of Seller)

The Draft Master REC PSA identifies an Event of Default if either (i) three (3) or more Shortfall Years occur and the cumulative sum of the Shortfall Amounts for all Shortfall Years

equals or exceeds the Annual Quantity, or (ii) Seller breaches its representation under Section 4.1(f). This shortfall limit in (i) is problematic and the potential event of default impacts the ability to obtain project lending.

Instead of triggering an Event of Default, [Commenter 2] recommends that the Annual Quantity for the remainder of the Term of the Agreement (section 3.2) be adjusted if the Seller fails to deliver 80% of the Annual Quantity to each of the Buyers for three (3) consecutive years. The Annual Quantity of the contract would be reduced to an amount equal to the highest Actual Annual Amount delivered during any Delivery Year over that three-year period. This approach is used by NYSERDA.²

(9) **RECs in Excess of Annual Quantity Should be Used to Optimize REC Production**
(Master REC PSA page 17 – section 4.1(g) Deliveries and Quantity)

[Commenter 2] has two recommendations on how to best utilize excess RECs [a] allow a Seller to either sell excess RECs to the Buyer and allow those RECs to count against REC shortfalls in other years, or allow the Seller to sell the excess RECs to other Seller's who have won an IPA competitive procurement held after 2021 so those RECs could be used to cure that Seller's REC shortfall, and [b] allow for a secondary market for RECs.

- a. [Commenter 2] recommends that Excess RECs be purchased by the Buyer up to 120% of the Annual Quantity. These RECs should be allowed to satisfy any future year shortfalls the specific Seller may experience. This reduces the likelihood of a Seller experiencing a Shortfall and reduces lenders concerns around an event of default. Another options is to allow excess RECs to be sold to other Seller's that have been awarded an RFP after 2021 so they can use the RECs to satisfy a Shortfall they may have, as described further in (b) below.
- b. In addition to the option discussed in (a) above, [Commenter 2] recommends that Sellers who have a shortfall, be allowed to deliver replacement RECs to reduce that shortfall. The Seller would have 6 months to provide replacement RECs to each Buyer. The replacement

² NYSERDA 2021 REC RFP, §5.02(b); available at: [servlet.FileDownload \(ny.gov\)](#) and at: [Solicitations for Large-scale Renewables - NYSERDA](#).

RECs would have to come from Projects that have contracts with the IPA and be of the same vintage as the shortfall RECs. This secondary market approach optimizes the use of RECs from Sellers/Projects in Illinois.

- (10) **Use a Buyer's Fraction of a Project's Total Annual Generation Production Instead of an Annual Quantity** (Master REC PSA page 21 – section 4.1(i) Deliveries and Quantity)

The Standing Order for delivery of RECs and section 4.1 of the Master REC PSA give the Buyer first priority claim on RECs up until the Annual Quantity is reached. Inherently, each year the Buyer is going to pay an amount different than the 'true weighted average cost' because the REC quantities will be met sometime prior to the end of the Delivery Year, and not reflect the average index price from the entire Delivery Year. This would be disastrous, not only for the Seller but for the RPS Budget forecasting, because the forward cost curves would not coincide with a 'weighted average REC price' for the entire year.

If some of the recommendation in section (6) through (9) are not accepted, then an option to correct this biasing effect of the Standing Order is to allocate a 'buyer's fraction' of the total output from a project, instead of a capped annual quantity. A buyer's fraction would ensure that RECs are delivered year-round, and not inadvertently truncated due to a strong wind or solar production year. A buyer's fraction would also prevent one or two of the Buyer utilities from experiencing a shortfall if there is a shortfall in monthly or annual production by a utility-scale wind or solar project.

- (11) **Available Funds for a Delivery Year** (Master REC PSA page 19 – section 5.4 Cost Recovery through Pass-Through Tariffs)

Section 5.4 of the Master REC PSA indicates that Buyer's will not be required to pay for RECs if the total costs for RECs exceed the Available Funds for such Delivery Year. [Commenter 2] has two recommendations on this topic: [a] allow Seller to stop Delivery if there is insufficient funds, and [b] the Buyer's should provide Performance Assurance as discussed below in section (14).

The statutory framework that imposes a cap on the amount of money Illinois will spend on renewable resources continues to trouble lenders, despite the recent increase in the RPS funding. Illinois has long-term goals of decarbonizing the state and adding vast amounts of clean energy. This statutory cap on RPS funds will continue to curb participation in the market because the cap is fixed for the long term, but the wholesale energy markets prices are not fixed and will continue to change over the 20 year life of a renewable resource contract. While the forecasted RPS Budget, presented in the recent Draft Long Term Renewable Resources Procurement Plan, appears to amply cover RPS costs into the 2030s, additional measures will likely be needed to quell lenders perceived cost risks over the long-term transition to a decarbonized portfolio. One such option is to have a rider that allows utilities to access additional funding on a short-term, or narrowly defined basis.

- a. When the Buyer has insufficient funds to pay for RECs, the Master REC PSA should allow a Seller to stop delivery of RECs. This allows a Seller to keep possession of the RECs so they can be sold elsewhere, and avoids the IPA having to propose a Deferred Payment structure, like it had to propose in 2021.

(12) **Sellers Should be Allowed to Correct Errors in Monthly Generation Report**
(Master REC PSA page 20 – section 6.1 Monthly Generation Report)

The Seller is required to provide hourly generation data within 5 business days following each month. Once provided there is no method to correct for errors. [Commenter 2] recommends that Sellers be allowed to correct errors in the data submission within 12 months of the month in question.

(13) **Project Labor Agreements** (Master REC PSA page 21 – section 6.3 Project Labor Agreements (PLA))

The Master REC PSA directs the Seller to file its PLA(s) no later than (a) 30 days of signing the PLA, or (b) 30 days after execution of the REC Agreement. A wind or solar developer will have multiple PLAs for a project. Each PLA will be entered into separately, and they will often not be entered into on the same date. The vast majority of utility-scale renewable resource projects, if not all of them, will start the process of finding and selecting contractors after securing a contract. PLAs will likely be signed within months of starting construction. Therefore, option

(b) is not feasible.

(14) **Buyer's Should have a Performance Assurance Requirement** (Master REC PSA page 21 – section 7.1 Performance Assurance)

The statutory cap on funds available to purchase RECs poses a significant potential risk of non-payment or deferred payment at some point in the life of a REC contract. This was a possibility in delivery year 2021-2022, until the General Assembly increased the cap last Fall in P.A. 102-0662. A review of the Draft LTRRPP shows sufficient funds until delivery year 2030-2031, but at that point in time the forecasted annual RPS expenditures appear to be greater than annual revenue into the RPS fund. Because lenders will perceive a risk that the Buyer may be unable to pay for utility-scale competitive RECs at some time over the life of the contract, the Buyer should have to provide collateral to cover the risk of that non-payment. To assure symmetry of collateral/assurance postings, the Buyer's performance assurance should be equal to that of the Seller's.

(15) **Force Majeure** (Master REC PSA page 28 – section 10.1 Force Majeure)

[Commenter 2] has two recommendations for the Force Majeure provision: [a] change the criteria for reliability curtailments called by the RTO, and [b] add COVID to the list of force majeure events.

a. The draft Master REC PSA allows RTO curtailment of a Project's operations to be a Force Majeure under the following conditions:

- (a) the curtailment is for reliability purposes and not for economic purposes,
- (b) occurs after the first five (5) Delivery Years of the Delivery Term, and
- (c) the amount of such curtailment prevents the Delivery of more than five percent (5%) of the Annual Quantity in a Delivery Year.

[Commenter 2] recommends that Force Majeure for reliability curtailment of a wind or solar project's operations be allowed at all times, **not** just after the first five Delivery Years. There is no reason to distinguish the first five years from subsequent years. In addition, the 5% of Annual Quantity requirement is far too large an amount. It is extremely unlikely that a one-time curtailment will

ever reach the 5% of Annual Quantity amount. To attain such a quantity the curtailment would need to occur over a number of days, whereas typically, a curtailment is for minutes or hours. If the force majeure event is allowed to occur over multiple events, then the Master REC PSA needs to clarify that.

- b. COVID has had a significant impact on labor, supply chain, and logistics of building utility-scale wind and solar resources. These events are beyond the reasonable control of the renewable resource developer, are natural and are considered a disaster. Thus it warrants being identified as a force majeure event.

Prepared and submitted on behalf of [Commenter 2] by

[Commenter 2]'s representative's contact information

February 9, 2022