

**[Commenter 2]  
Comments on Second  
Draft Indexed REC  
Contract**

[REDACTED]

September 23, 2022

Mr. Brian Granahan  
Illinois Power Agency  
105 West Madison Street  
Suite 1401  
Chicago, IL 60602

Dear Mr. Granahan,

[Commenter 2] is writing in response to the IPA's September 9, 2022, Stakeholder Request for Feedback on its Fall 2022 Second Draft Indexed REC RFP ("Second Draft").

[REDACTED]

[REDACTED]

[REDACTED]

## Topic 2: Delivery Obligations under the Indexed REC Contract

The IPA implementing provisions allowing for the sale of wind and solar RECs to multiple buyers based on a percentage of actual production is a significant improvement. However, there are still provisions that create financing challenges that would limit our Company's ability to participate.

[REDACTED] Second, a

[REDACTED]

scenario where buyers are allowed to suspend performance if the IPA has not collected sufficient funds to cover the utilities REC obligation is most likely to occur during economic environments that are the least supportive to a merchant project.

### Buyer's Performance Assurance


Without performance assurance, in the case of an event of default by Buyer, Seller is left with an unsecured claim for damages and forced to resort to costly and time-consuming lawsuits to demand performance and compensation from Buyers who have failed to live up to their obligations in a contract. As bankruptcy is the most serious Buyer event of default, we suggest a posting requirement tied to the investment grade creditworthiness of each Buyer entity. At present, no party would be required to post security; however, if the Buyers' financial situation becomes more perilous, they should match seller's credit amounts via the same forms available to Seller. Section 7.1 outlines extensive seller performance assurance posting requirements and we encourage the IPA's inserting a buyer's performance assurance in the amount of the Collateral Requirement (i.e., \$10 times annual quantity for utility-solar) if the Buyer drops below a triple-B rating. This way, in the most serious event of default (via bankruptcy) wherein Seller's recourse to collect damages would be the most in jeopardy, Seller's position is not completely unsecured.

### Cost Recovery

Section 5.4 (Cost Recovery through Pass-Through Tariffs) continues to be a significant impediment to the IPA's securing of the most competitive bids for its processes. Section 5.4 ties the buyer's performance to the Available Funds cap, allowing utilities to suspend the contract if they cannot recover such costs from customers through the pass-through tariff. This contractual feature is extremely problematic: a scenario in which power prices drop for several years in a row (creating an outsize REC payment relative to high-priced environments), it is possible the IPA would not have collected enough money to support its utility scale REC contracts. **This is, coincidentally, the point in time wherein having a firm contract is most essential for a project.** Put another way, as currently contemplated, the projects' REC buyers have a unilaterally exercisable, no penalty suspension right *that is most likely to be used during market environments in which their exercise would be most catastrophic to Seller.* If this section is included in the final contract, why should sellers enter these contracts at all? Why should sellers give away the value during high-priced environments if their buyers are likely to suspend performance in low-price environments?

We do not believe Public Act 102-0662 adequately mitigates this non-payment risk because the current RPS collection is based on historical REC costs and projected indexed-REC prices. The existing pricing mechanism does not adequately account for the various market trends, statutory changes, and supply chain issues that could, and recently have driven up prices. Our strong recommendation is to ensure that Illinois' utilities pay for the RECs that they have committed to purchase at the price awarded by the IPA for the life of the contract. If the IPA feels they need a statutory change to allow this provision, then we would encourage their recommendation be provided to the legislature.

[Commenter 2] will continue to evaluate opportunities to bring clean and competitively priced energy to customers in the State of Illinois, particularly through commercial and industrial customers who have their own sustainability goals. We commend the IPA for integrating stakeholder feedback and we hope that improvements can be made to future IPA-led procurements and commit to



continue to work collaboratively with the IPA and its stakeholders to build a structure that effectively and efficiently unlocks Illinois' renewable energy potential.

Sincerely,

[Commenter 2 Contact Information]

