

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

[REDACTED]

August 26, 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 August 12, 2022, Stakeholder Request for Feedback on its Fall 2022 Indexed REC RFP. [REDACTED]

[REDACTED]


[REDACTED]

[REDACTED]

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

[Commenter 2] would like to reiterate our position that the most problematic provision in the 2022 Master Renewable Energy Credit (REC) Purchase and Sale Agreement is Section 5.4 (Cost Recovery through Pass-Through Tariffs). [Commenter 2] has raised our concern with this provision in several rounds of stakeholder feedback and see that there is no change in the Fall 2022 Indexed REC RFP. This section allows utilities to stop paying for RECs if they cannot recover such costs from customers through the pass-through tariff. This contractual feature is extremely problematic because there is no guarantee that the IPA will collect enough money from Illinois utilities to pay for its utility-scale REC Contracts. If power prices drop for several years in a row, it is possible the IPA would not have collected enough money to supports its utility scale REC contracts.

[REDACTED]

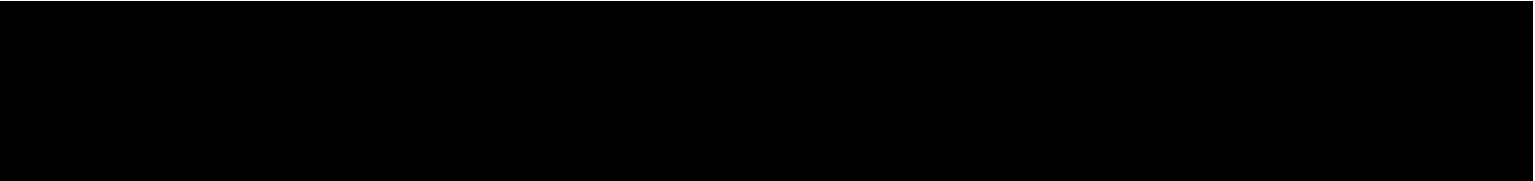


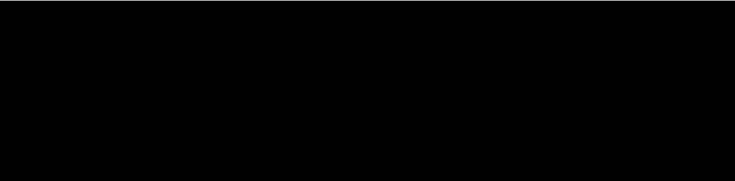
Unsurprisingly, an extended low-price environment is also a scenario in which being able to rely on buyers honoring an agreement is most critical for a project. While this may seem like a doomsday scenario, it directly impacts a project's ability to achieve completion since the financial entities that fund development and construction activities consider this possibility a **significant risk** to the investment. Therefore, the possibility of future nonpayment for RECs will make these projects very difficult, and unnecessarily expensive to finance. [Commenter 2]'s firsthand experience at [Project] confirmed that this threat of non-payment was considered significant to financiers. [Commenter 2] was able to overcome this risk with [Project] by selling only part of the project's RECs to Illinois utilities and leveraging financing through stronger energy and REC contracts for the remaining power. This structure has been made even more difficult in the new REC contracts, where multiple off-takers are, in effect, no longer allowed. With the otherwise improved indexed REC contracts, hedges for the brown power produced by a project are no longer possible.

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 remove this contract provision and 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 of the contract to be removed, then we would encourage their recommendation be provided to the legislature.

There are additional changes to the contract that could be made to partially ameliorate (but not eliminate) this concern. The adoption of a "buyer's fraction"-style contractual structure facilitating multiple off-takers would allow the Bidder to specify a fraction of a project's output that would be dedicated to the IPA's buyers, enabling a Bidder to limit a project's exposure to the non-payment risk. In a scenario where Section 5.4 takes effect, the Standing Order guarantees that the Seller deliver its REC obligation to the IPA regardless of the ability of the IPA or the utility to pay for the REC obligation. While multiple off-takers are, in effect, permitted, another off-taker will not agree to terms that place them secondary to the IPA. Thus, a de facto ban on multiple off-takers exists.

Moving to a "buyer's fraction"-style contract would also address our concern with the fixed annual quantity obligation (Section 1.5 – Annual Quantity). Fixed-quantity REC obligations are common commodity contract instruments that [Commenter 2] uses frequently as a portfolio-wide hedge; however, they are not appropriate or attractive for a single development asset. Given the variability of a renewable energy project's fuel, a bidder must choose to either (A) bid in an aggressively optimistic fixed quantity (and run an ever-increasing risk of default for continual under-delivery) or (B) bid in a good-faith estimate and face an ever-shifting annual date after which the contract ceases to settle and after which the project is thereafter exposed to the merchant market. Given the IPA's identified buyers are intended to be the primary (and – per the contract's terms – 'first position') off-taker for the project as discussed above, the annual and ever-shifting 'merchant tale' is also impossible to hedge with a third party. This arrangement means neither the buyer nor the seller can accurately plan for the true weighted average value of its generation, and thus the seller cannot confidently provide a fixed index price to the IPA to support its fifteen-year bid without a significant risk premium to compensate for this uncertainty. This premium makes projects more expensive, and summarily further exacerbates the risk related to budget-driven non-payment as described in our first issue.





Our ideal solution, an extremely common structure employed successfully by thousands of projects, is to convert the contract to an as-generated contract wherein the buyers take a “buyer’s fraction” between 1 – 100% of all electricity generated by the project during the delivery term. Every large load-serving entity is familiar with contracts that use this approach. There is no downside to the IPA, Illinois’ utilities, or most importantly, Illinois’ ratepayers, to this approach.

As a secondary, less preferred suggestion. We would urge the IPA to look to previously executed IPA contract structures used for the IPA’s December 2010 long-term bundled renewable resources procurement event, wherein fixed annual quantity obligations were augmented with the ability, at the Seller’s discretion, to either cease delivery or to continue against future years’ commitments. The Seller should not be obligated to continue delivering the Annual Contract Quantity Commitment if the Buyer stops paying for project RECs. If the Buyer is excused from making payments, the Seller must be able to market RECs elsewhere. This will likely be a prerequisite to secure funding for the creation of these projects.

[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 and are not limited by the IPA’s regulatory structure. [Commenter 2] currently does not consider the IPA’s 2022 RFP to be a viable pathway to further our growth in the State. We hope that improvements can be made to future IPA-led procurements, and we 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]:

