

February 9, 2022

VIA E-MAIL

Illinois Power Agency
105 West Madison Street
Suite 1401
Chicago, Illinois 60602
IPA.Solar@illinois.gov

RE: Response to Draft Indexed REC Contract

Dear Director Star:

[Commenter 4]¹ submits the following comments on certain provisions of the Draft Master Renewable Energy Credit Purchase and Sale Agreement in response to an “Invitation to Comment on Draft Indexed REC Contract” issued by the Illinois Power Agency (IPA) on January 20, 2022 (IPA Invitation to Comment).

[Commenter 4] joins and supports the comments provided by [Entity] in response to the IPA Invitation to Comment. In particular, [Commenter 4] recommends that Sections 4.1, 9.2 and 5.4 be modified as proposed by [Entity] and set forth below.

Section 4.1(g) Deliveries and Quantities: Event of Default; Section 9.2(j) Event of Default in Respect of Seller

Pursuant to Section 4.1(g) and 9.2(j) of the Draft Master Renewable Energy Credit Purchase and Sale Agreement, an Event of Default is defined as either: (i) three (3) or more Shortfall Years – failure to deliver the Delivery Year Requirement for a Delivery Year under the terms of this Agreement – occurred and the cumulative sum of the Shortfall Amounts for all Shortfall Years equals or exceeds the Annual Quantity, or (ii) Seller breaches its representations with respect to RECs deliveries under Section 4.1(f).

¹[Commenter 4] is a wholly-owned indirect subsidiary of [Entity]. [REDACTED]

[Commenter 4]’s strategic focus is centered on the development, construction, and operation of long-term contracted assets throughout the U.S. and Canada, including renewable generation facilities, natural gas pipelines, and battery storage projects. With approximately [number] MW of total net generating capacity as of December 31, 2020, [Commenter 4] is one of the largest wholesale generators of electric power in the U.S., with approximately [number] MW of net generating capacity across [number] states, and [number] MW of net generating capacity in [number] Canadian [REDACTED] provinces.

In the alternative to an event of default, similar to REC Agreements utilized by the New York State Energy Research & Development Authority, in order to recognize the energy production variability in renewable energy, [Commenter 4] recommends that the Draft Indexed REC Contract be modified to allow the Seller to deliver between 80% – 120% of Annual Quantity through the term of the agreement. However, if the Seller fails to deliver 80% of the Annual Quantity to each of the Buyers for 3 consecutive years, [Commenter 4] recommends that the Seller be permitted to modify the Annual Quantity for the remainder of the term of the agreement (Section 3.2). Under this scenario, 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.

Section 5.4 – Cost Recovery through Pass-Through Tariffs

Section 5.4 states that Buyers will not be required to pay for RECs in a given Delivery Year if the total costs for RECs exceed the Available Funds for such Delivery Year. Although [Commenter 4] appreciates the need for Buyers to manage their financial exposure, it is not commercially viable for Sellers to assume the risk of non-payment without available mitigation. For instance, pursuant to Sections 7.1 and 7.2 of the Draft Master Renewable Energy Credit Purchase and Sale Agreement, Sellers must meet specific performance assurance requirements. In contrast, there are no similar requirements for the Buyer. To address this inequity, [Commenter 4] recommends that the IPA utilize the projected annual Indexed REC procurements that incorporate forward price curves at PJM-NIHUB or MISO-IL to accurately predict the long term viability of available funds. Separately, if future available funds cannot be demonstrated, [Commenter 4] recommends an immediate delay in incremental procurements until the Buyers and/or IPA demonstrate the viability of future payments for contracted projects.

Lastly, as the IPA is aware, the success of utility scale procurements can naturally lead to a reduction in real-time prices – resulting in a broader benefit to ratepayers. Given the inherent inverse relationship of real-time prices and REC costs imposed on Buyers, [Commenter 4] recommends that future rulemakings re-examine how funds are allocated to utility-scale Indexed REC procurements. Without greater payment certainty, [Commenter 4] is concerned that viable developers will not be able secure the necessary financing to bid RECs into IPA’s future RFPs.

[Commenter 4] appreciates the opportunity to provide recommendations on the Draft Indexed REC Contract. We look forward to continuing to work with the IPA to meet Illinois’ clean energy goals.

Sincerely,

[Commenter 4]’s representative