

**[Commenter 3] Comments
on First Draft Indexed
REC Contract**

Indexed REC Contract Comments

Response to Illinois Power Agency Request for Stakeholder Feedback

August 26, 2022

Company:



Through our growth journey, the state of Illinois and the Illinois Power Agency (“Agency”) have been crucial partners. [Commenter 3] commends the efforts of the state to expedite the decarbonization of our energy grid and the thoughtful expansion of renewable energy deployment. [Commenter 3] submits the following responses and respectfully request that the Agency consider the feedback provided below.

TOPIC 2: Delivery Obligations under the Indexed REC Contract

The Procurement Administrator and the IPA are interested in exploring additional flexibility for REC delivery obligations that would be consistent with the above considerations as discussed in the stakeholder workshop. Proposed items include but are not limited to: (1) provisions to address quantity shortfalls, (2) excess RECs, (3) Replacement of RECs.

If the current delivery obligations are too stringent, what additional flexibility (related or not to items 1-3 listed above) would be appropriate? Please provide specific examples and explanations on how the suggested edits satisfy the key considerations listed above.

RESPONSE:

[Commenter 3] appreciates the opportunity to contribute the development perspective to delivery obligations. In contract evaluation, the provisions most heavily scrutinized are those of certainty and flexibility.

When evaluating payment certainty, [Commenter 3] appreciates that CEJA’s budget rollover provision prevents the type of shortfall which occurred due to COVID energization extensions from

occurring again. But this provision does not prevent all unforeseen budget shortfalls, especially a global environment in which much risk and uncertainty colors business decisions.

[Commenter 3] evaluates the Agency's contract and the payment certainty with the same standards as any other contract. Our financial partners expect a certain level of payment assurance to verify that the Buyer has the standing and ability to fulfill obligations.

Article 7 of the draft contract outlines a Performance Assurance for the Seller but not for the Buyer. [Commenter 3] follows the industry standard in expecting reciprocal assurances and remedies for Buyer and Seller. It seems lopsided that the Seller should have a stringent Performance Assurance requirement and collateral but the Buyer, who is procuring the service, should not have similar obligations to the Seller. **[Commenter 3] would ask the Agency to include a reciprocal Performance Assurance for the Buyer. [Commenter 3] would also ask that the remedies in the event of a default in sections 9.1 and 9.2 be reciprocal between Buyer and Seller.**

Contract flexibility is important with environmental attributes simply because a renewable energy project cannot sell RECs if the sun does not shine or the wind does not blow. [Commenter 3] looks for a baseline standard of flexibility with at least one of the following provisions: **(1) ability to adjust standing order within a certain threshold on a monthly or annual basis, (2) adjust the definition of an Annual Quantity Shortfall to 80% of the annual quantity, or (3) allow the Seller to purchase RECs from the market to correct any shortfall.** Any contract without these basic provisions functionally punishes intermittency.

1. Standing Order adjustments are necessary if the Standing Order does not have an "as produced" profile. Projects should be held liable for their performance given environmental conditions rather than the environmental conditions themselves.
2. The annual quantity of RECs produced will likely deviate from the average and it is standard that environmental attribute contracts acknowledge and plan for this deviation. By adjusting the Annual Quantity Shortfall by a modest margin, you ensure that any underperformance below that margin is very likely due to plant operation rather than macro-scale environmental conditions.
3. In the event of underperformance due to forced outage or environmental conditions, Sellers of RECs expect to be able to procure Replacement RECs. In the designation of appropriate replacement RECs, [Commenter 3] encourages the Agency to closely evaluate how fungible RECs from neighboring regions and states may be to ensure commensurate trade.

[Commenter 3] believes these amendments will bring the draft proposed contract far closer to industry standard contracts.

ADDITIONAL FEEDBACK: Project Maturity Requirements

The draft Proposal Requirements list Project Maturity Requirements which [Commenter 3] believes are duplicative, unduly burdensome, and place responsibility of an RTO's study timeline upon the Seller.

For both MISO and PJM Project Maturity Requirements, the Agency requires that if the Seller is in cycle X, they must also have Y completed. This requirement is not appropriate because the Seller does not control the pace at which each cycle moves through the interconnection process and has come to expect queue study delays.

For example, the Agency requires that "if the project is in a study cycle prior to DPP-2020-Cycle 1, the project has a fully executed interconnection agreement." But given MISO's most recent DPP schedule update, **none such cycles in Illinois will have a fully executed interconnection agreement at the time of the procurement due to MISO study delays.**

The Agency provides flexibility for such a scenario where Sellers can instead provide evidence of site control. However, **the site control documents that the Agency requests are far beyond what a developer typically provides in a preliminary bid and duplicate documentation already provided to RTOs.** This requirement would place heavy administrative burden upon applicants, as each utility scale project has dozens of individual agreements and easements.

Instead, [Commenter 3] would **recommend that the Agency simply require confirmation of a valid queue position** in whichever RTO queue cycles or utility execution agreement. RTOs and utilities have dedicated teams and processes to confirming validity of interconnection requests. It would be duplicative and an unnecessary burden on both the developer and the Agency to demonstrate site control when site control must be demonstrated to RTOs and utilities for valid agreements.