

5.4 Cost Recovery ~~through Pass-Through Tariffs.~~

Nothing in this Agreement shall require Buyer to advance any payment or pay any amounts that exceed the actual amount of revenues anticipated to be collected by Buyer under paragraph (6) of subsection (c) of Section 1-75 of the IPA Act (20 ILCS 3855) and subsection (k) of Section 16-108 of the Public Utilities Act (220 ILCS 5) inclusive of eligible funds collected in prior years and alternative compliance payments for use by Buyer (the "Available Funds")[†]. Buyer's payments for RECs in a given Delivery Year therefore shall not cause the sum of the cumulative payments to Seller and all other sellers under contracts executed pursuant to 20 ILCS 3855/1-75(c)(1), as well as all other applicable fees, charges, and administrative costs related to the purchase of RECs under 20 ILCS 3855/1-75(c)(1), to exceed the Available Funds for such Delivery Year as calculated under 20 ILCS 3855/1-75(c)(1)(E). For the purposes of this Agreement, the Available Funds under Section 1-75(c)(1)(E)'s rate impact limitations shall be calculated inclusive of any utility-held alternative compliance payments authorized for procuring RECs by order of the Illinois Commerce Commission or any unspent revenues collected by the utility under paragraph (6) of subsection (c) of Section 1-75 of the IPA Act (20 ILCS 3855) and subsection (k) of Section 16-108 of the Public Utilities Act (220 ILCS 5) that the utility is permitted to carry over across Delivery Years. For the avoidance of doubt, payment obligations for contracts executed pursuant to 20 ILCS 3855/1-75(c)(1) and associated expenses within a given Delivery Year exceeding the actual balance of collections made to date under Section 16-108(k) within that Delivery Year would not provide a valid basis for non-payment by Buyer, unless Buyer's compliance with such payment obligations would cause Buyer's cumulative payments for RECs associated with a given Delivery Year to exceed the amount of the Available Funds for that Delivery Year.

Buyer is allowed to recover all costs and other amounts incurred under the Agreement from its customers pursuant to a pass-through tariff that is authorized by Section 16-111.5(l) of the Illinois Public Utilities Act (220 ILCS 5/16-111.5(l)) and approved by the ICC.

Notwithstanding anything to the contrary, as provided by Section 1-75(c)(1)(E-5) of the IPA Act, so long as at least one of: (i) the cost recovery mechanisms referenced in subsection (k) of Section 16-108 and subsection (l) of Section 16-111.5 of the Public Utilities Act remains in full force without limitation or (ii) Buyer is otherwise authorized and or entitled to full, prompt, and uninterrupted recovery of its costs through any other mechanism, then Seller shall be entitled to full, prompt, and uninterrupted payment under this Agreement.

If, for whatever reason, Buyer is not allowed to or cannot recover such costs ~~from its customers through its pass-through tariffs~~ for the payment of RECs Delivered for a Delivery Year, then, Buyer shall provide written notice to Seller of such occurrence and notwithstanding anything to the contrary in the Agreement, Buyer shall not be required to advance payment to Seller for RECs Delivered for the remainder of the Delivery Year and Buyer shall return to Seller within ninety (90) days of the conclusion of such Delivery Year any unpaid RECs that are associated with a Vintage within such Delivery Year. For avoidance of doubt, the foregoing does not excuse Seller's obligation to pay Buyer and to Deliver RECs to Buyer if payment is due to Buyer. Any payment for a Delivery Year due to Buyer shall be netted against unpaid RECs, if any, for such Delivery Year for which RECs have not been returned to Seller, starting with the unpaid RECs associated with the earliest Vintage first in such Delivery Year; and any such netted unpaid RECs (where a payment is due from Buyer to Seller) shall be considered paid and shall not be returned to Seller. All unpaid RECs shall be returned by Buyer to Seller and any RECs that are returned to Seller pursuant to the foregoing shall be the exclusive property of Seller, to be utilized in Seller's sole discretion.

[†]Section 1-75(c)(1)(L)(viii) of the IPA Act states that "Nothing in this Section [1-75(c)(1)(L)] shall require the utility to advance any payment or pay any amounts that exceed the actual amount of revenues anticipated to be collected by the utility under paragraph (6) of this subsection (c) and subsection (k) of Section 16-108 of the Public Utilities Act inclusive of eligible funds collected in prior years and alternative compliance payments for use by the utility, and contracts executed under this Section shall expressly incorporate this limitation."