

[Commenter 17]

**Comments on Draft
ISC Contract**

From: [Commenter 17]

Sent: Mon 6/15/2026 7:46 PM

To: Illinois-RFP <Illinois-RFP@nera.com>

Subject: IPA Summer 2026 Energy Storage RFP - Invitation to Comment Round 2

Dear Procurement Administrator,

On behalf of [Commenter 17], I am writing to confirm our intent to participate in the Illinois Power Agency's Summer 2026 Energy Storage RFP. We appreciate the opportunity to engage in this important process and commend the Agency's efforts to facilitate the development of energy storage in Illinois.

[Commenter 17's info]

We very much welcome the opportunity to comment and help shape the procurement that is being presented by the IPA, as [Commenter 17] truly believes that procuring long-term offtake agreements is a proven method to attract energy project development in support of grid reliability and affordability.

Our second-round comments are focused on equitably sharing risks between Sellers and Buyers within the RFP structure. Many of the risks in the latest Final Draft ISC Contract persist from the previous revision and present potentially fatal issues for Sellers to responsibly deploy capital to fund the next wave of energy storage that Illinois requires. If these risks are not allocated to the party in the best position to manage them, we are concerned they will lead to higher offer prices, bidder exceptions, or even projects deciding not to participate in the procurement process.

We look forward to continuing to participate in the IPA's active workshops and to working collaboratively with the IPA to ensure a successful and competitive procurement. Please do not hesitate to contact us if further clarification or discussion is needed regarding our projects or our submitted comments. Our point of contact for this RFP is listed below.

Sincerely,

[Commenter 17]

**Ameren Illinois / Commonwealth Edison Company
Index Storage Credit Agreement
Second Round Comments/Material Issues List**

In response to the Invitation to Comment issued on June 1, 2026, please find below **Commenter 17**'s material issues based on a review of Buyer's drafts of the Index Storage Credit Agreement ("ISCA") posted on April 22, 2026 and June 1, 2026. Capitalized terms used in this issues list have the meanings ascribed to such terms as set forth in the ISCA.

#	Subject	Sections	Issue	Notes/Proposed Changes
1.	Performance requirements	1.37, 1.75, 2.6(a)(iv) & 2.6(b)	<p>Minimum availability threshold (4,320 hours) with no cure period:</p> <ul style="list-style-type: none"> •Draft agreement imposes a hard minimum availability threshold of 4,320 hours per Delivery Year, with no explicit cure period prior to default exposure. •This may limit operational flexibility for major maintenance, augmentation activities, defects, OEM directed outages, or economic curtailment. 	<p>A market participant who has financed (through debt or equity) the construction of a generation facility would expect a cure period before a contract termination.</p> <p>The Agreement should be revised to (i) extend cure period applicability to Section 2.6(a)(iv) (minimum Availability), with a remediation period from Buyer's written notice before an Event of Default is deemed to have occurred, (ii) provide that hours during which the Project is technically capable of charging/discharging but is not dispatched by RTO for economic reasons (including negative pricing or market-based congestion management) shall be deemed hours in which the Project is Available, and (iii) add a new defined term "Excusable OEM Defect" providing limited excusable event treatment for major non-negligent OEM defects impacting Availability for up to 180 days.</p>
2.	ISC Reference Energy Arbitrage Price	1.57	<p>Fixed 85% RTE assumption vs degrading actual RTE:</p> <ul style="list-style-type: none"> •Index energy reference uses a fixed efficiency assumption while contract minimums allow RTE to degrade after Year 1 (to minimum of 70%), creating growing basis risk as the asset ages and charging costs increase. 	<p>RTE as used in the ISC Reference Energy Arbitrage Price formula should be updated annually to match reported/accepted RTE, or a predefined stepdown schedule should be adopted.</p>
3.	ISC Generation	4.1(a)	<p>Asymmetric ISC generation:</p> <ul style="list-style-type: none"> •On days when Seller owes Buyer, ISC quantities based on full Contract Capacity reduced only for planned outages; forced outages do not reduce obligation. •When Buyer owes Seller, settlement quantities are based on actual available capacity (downtime reduces Seller upside). 	<p>Section 4.1(a) should be revised to add "Forced Outages" alongside Planned Outages in the ISC generation formula for days when the ISC Daily Value is negative.</p> <p>A new defined term "Forced Outage" should be added, which provides that on days with a Forced Outage and a negative ISC Daily Value, ISCs shall be prorated based</p>

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			<ul style="list-style-type: none"> Operational underperformance reduces Seller upside but does not proportionally reduce Seller downside obligations. Seller's ultimate bid prices may increase to account for larger risk-bearing structure. 	<p>on the MW of Contract Capacity and hours not affected by the Forced Outage, in the same manner as Planned Outages.</p> <p>This creates symmetry in the treatment of outages in both settlement directions.</p>
4.	Cost Recovery through Tariffs	5.4	This section shifts risk to Seller if Buyer is unable to recover costs (through taxes or tariffs) to fund payments. In that scenario, Buyer isn't required to pay Seller, shifting Buyer's risk to Seller after Seller has fully invested in constructing the project with Seller having no meaningful ability to mitigate or insure against that risk.	Provision should be revised to: (i) define "Cost Recovery Failure" and establish a structured settlement process, including accrual of Buyer Settlement Obligations at the Default Rate and annual netting of obligations into a CRF Settlement Amount; (ii) grant Seller the right to terminate the Agreement upon 30 days' notice if a Cost Recovery Failure continues for six consecutive months, with a termination payment equal to the aggregate amount that would have been payable to Seller for the remainder of the Term; and (iii) require Buyer to demonstrate that either cost recovery Condition (i) or Condition (ii) has been met as of the Effective Date as a condition precedent to Seller's obligations.
5.	Suspension of Performance	9.6	<p>Non-defaulting party has the right to suspend performance if an Event of Default occurs and is continuing, with no time limit or requirement to terminate.</p> <p>Further, the Buyer's suspension right is not tied to their refusal to accept Product. Buyer should not be able to accept Product and then suspend under the Agreement.</p>	Section 9.6 should be revised to provide that: (a) if Buyer elects to continue accepting delivery of the Product, Buyer's payment obligations shall not be suspended; and (b) any suspension shall not continue for longer than ten (10) Business Days unless an Early Termination Date has been declared (consistent with the EEI Master Agreement form).
6.	Government Action	11.1	Seller is obligated to comply with subsequent "Government Action" and Buyer is permitted to suspend payment obligations until Seller's Product complies with such Government Action. While the clause permits termination if the Government Action makes generation of ISCs illegal or makes the Product ineligible to comply with the Applicable Program, it also provides that Seller shall refund to Buyer any amounts paid for non-conforming Products.	Section 11.1 should be revised to (i) provide that Seller's obligation to incur Compliance Costs shall not exceed the Commercially Reasonable Threshold; (ii) provide that if Compliance Costs exceed the Commercially Reasonable Threshold, Buyer shall have ten (10) days to elect to reimburse Seller for excess costs, and if Buyer does not elect to reimburse, Seller may terminate the Agreement with no Settlement Amount due; (iii) make clear that Seller should only be liable for the difference between the value received by Buyer and the value of conforming product, not a complete refund, and (iv)

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				delete the provision allowing the ICC to impose non-price contract amendments.
7.	Limitation of Liability	14.1	Buyer's liability is limited to 100% of total payments Seller has received from Buyer associated with ISCs from the Project. This leaves Seller with no remedy for Buyer defaults prior to payment by Buyer even though Seller may have expended the full capital cost of the project.	Section 14.1 should be revised to increase Buyer's liability cap to the greater of (i) \$800 per MWh and (ii) 100% of the total payments Seller has received from Buyer, plus any amounts due and owing from Buyer to Seller for Product delivered but not yet paid for as of the date of termination or expiration.
8.	Confidentiality	15.4	<ul style="list-style-type: none"> • "Confidential information" is not clearly defined and the first sentence implies that any information provided by one Party to the other is confidential information. This is too broad. • The list of representatives that can access confidential information does not include Affiliates. • Disclosures to employees must be made to as few employees as possible. This standard is limiting, off-market and may lead to disputes. • As drafted, the confidentiality requirements appear to survive indefinitely. 	<ul style="list-style-type: none"> • Confidential Information should be defined. • Affiliates should be added to the list of permitted recipients of confidential information as it is possible that an Affiliate of Seller will perform certain obligations under this Agreement. • The limitation on disclosures to "as few employees as possible" should be replaced with a "need to know" standard, which is the market-standard formulation and avoids disputes over what constitutes the minimum number of employees. • The confidentiality obligations should be limited to a two (2) year survival (other than for trade secrets) to be consistent with standard energy contract practice.
9.	RTO / ISC Delivery Point / ISC Resource Zone	Exhibit A	<p>ISC delivery point/Pnode basis risk:</p> <ul style="list-style-type: none"> •Settlement is at COMED_RESID_AGG (vs project injection node), creating potential basis between dispatch economics and contract index. 	To be revised to allow project node settlement or an explicit basis adjustment methodology.