[Commenter 2]
Comments on Indexed REC Contract

From: [Commenter 2]
Sent: Friday, September 4, 2026 3:13 PM
To: Illinois-RFP <Illinois-RFP@nera.com>
Cc: [Commenter 2]; [Commenter 2]
Subject: [Commenter 2] – Fall 2026 REC RFP Comments

Dear IPA Procurement Administrator,

Please find attached [Commenter 2]'s comments in response to the Illinois Power Agency's Fall 2026 Energy REC RFP Invitation to Comment.

Please do not hesitate to contact us with any questions.

Best,
[Commenter 2]
[Commenter 2]'s title

Docusign Envelope ID: [redacted]

[redacted]

September 4, 2026

Mr. Brian Granahan
Director
Illinois Power Agency
105 West Madison Street
Suite 1401
Chicago, IL 60602

Dear Director Granahan,

[redacted] is writing in response to the Illinois Power Agency's (IPA) Fall 2026 Indexed REC Procurement Invitation to Comment and Opportunity to Provide Feedback. We commend the IPA for continuing to work with the industry to identify contract risks and pursue changes to the procurement contract structure that maximizes participation. While many risks are remedied in the latest contract, the threat of RPS budget shortfall risks the long-term fidelity of IPA procurements. [redacted] looks forward to continuing to work with the IPA and the Legislature to identify a long-term solution.

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Topic 3: Feedback on Potential Improvements to the Indexed REC RFP

Set forth below is a list of key issues identified in the August 18, 2026 preliminary draft of the Indexed Renewable Energy Credit Agreement ("**REC Agreement**") form provided by Illinois Power Authority ("**IPA**") to be entered into by a to-be-identified [redacted] ("**Seller**") and one of Ameren Illinois Company d/b/a Ameren Illinois, Commonwealth Edison Company or MidAmerican Energy Company ("**Buyer**"). Note that the below list (i) identifies only certain issues in the REC Agreement, (ii) does not reflect Seller specialist or local counsel review or include all issues that would be reflected in a full redline of the REC Agreement, and (iii) reflects that all Exhibits are under Seller review and that Seller will provide comments to the Exhibits during the shortlisting phase. Capitalized terms used in this list have the meanings given to them in the REC Agreement.

Key Issues

1. **Cost Recovery**. The REC Agreement limits Buyer's obligation to pay based on "Available Funds" and exempts Buyer from paying for RECs Delivered if Buyer cannot recover costs from customers. Buyer's payment limitations and exemptions could pose financing issues by limiting cash flows to Seller in an amount sufficient to repay its lenders and allow its tax equity investors to achieve their target "hurdle" rate. (Section 5.4)
2. **Buyer Limitation of Liability**. The maximum aggregate liability of Buyer to Seller is capped at 110% of the total payments that Buyer made to Seller associated with RECs from the Project. This Buyer's limitation on liability poses financing issues by limiting Seller's recourse against Buyer to recover an amount sufficient to satisfy the repayment/hurdle rate thresholds described above. (Section 14.1)
3. **Applicable Program and Government Action**. Seller must ensure that the RECs comply with the Applicable Program and are Regulatorily Continuing, despite any potential regulatory changes/change in law (subject in certain cases to a compliance cap). Seller termination rights are limited to the occurrence of a Government Action in connection with illegality of Delivery or ineligibility of Product to comply with the Applicable Program. Allocation of Seller compliance costs beyond a to-be-determined $ threshold in connection with changes to the Applicable Program. (Sections 1.50, 1.101, 1.125(j), 4.1(h), 8.2(b)(iii), 11.1, 11.2)
4. **Change in Tariff**. The REC Agreement does not provide any relief in connection with a change in tariffs or duties, including the imposition of new or increased tariffs on equipment necessary for the development or operation of the Project. Given the long-term nature of the contracts and the current uncertainty around trade policy, this exposure creates meaningful risk. [redacted] requests that the IPA consider incorporating an explicit tariff adjustment mechanism, including price adjusters, and/or a Seller no-fault termination right, in connection with any material change in tariffs or duties affecting the Project.
5. **REC Monthly Price and Strike Price**. Parties to discuss calculation of the REC Monthly Price and the Strike Price, including clarifications to the pricing formulas and related provisions to (i) ensure that Seller is not exposed to payment reductions or compensation resulting from changes in law or other regulatory changes and (ii) excuse and protect Seller during certain outage and other customary excuse periods. (2.7, 5.2, Exhibit G)
6. **Termination Payments**. The termination payment amounts due from Seller to Buyer in connection with Seller Events of Default arising from breaches of Project requirements in

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Sections 2.2(a)-(i) and 2.5 are punitive and do not involve a customary mark-to-market calculation. Additionally, the calculation of the Settlement Amount due from Buyer to Seller in connection with a Buyer Event of Default does not expressly refer to any actual damages due to Seller for a Buyer Event of Default. Seller requests that these termination payment provisions be revised to incorporate a customary mark-to-market calculation of the value of the terminated transaction.(Sections 2.2, 2.5, 9.2, 9.4)

7. **Compliance Cost Cap**. The REC Agreement does not have a customary compliance cost cap on Seller's costs and expenses incurred due to a change in law or regulations to comply with the REC Agreement (other than as described above or in connection with a change in tax law). Seller proposes to include a customary compliance cost cap to address such requirements, including with respect to REC tracking systems, metering, changes in market design, reliability standards, reporting requirements. (Sections 2.3, 4.1, 6.1-6.2)
8. **Assignment/Change of Control**. The REC Agreement lacks carve-outs for changes of control of Seller to permitted transferees or if Seller's ultimate parent still directly or indirectly owns the equity interests in Seller, which includes ambiguous creditworthiness standards for transferees and limits Seller's ability to undergo internal reorganizations or to consummate upstream sales. (13.1)
9. **Seller Limitation of Liability**. The REC Agreement includes a cap on Seller's liability (i) prior to the Delivery of any RECs from the Project in an amount not to exceed the Collateral Requirement (or Increased Collateral Requirement, if applicable) and (ii) after the Delivery of RECs in an amount that not to exceed the sum of the Collateral Requirement (or Increased Collateral Requirement, if applicable) and 110% of the total payments Seller has received from Buyer associated with RECs from the Project. Parties to discuss amount and scope of Seller's limitation on liability. (Section 14.1)
10. **Indemnity**. The scope of Seller's indemnification obligations is very broad and not limited to third-party claims, which could unduly expose Seller to liability that instead should be addressed through the payment of direct contract damages to Buyer. (15.6)

11. **One-Time Delivery Obligation Adjustment**. Section 2.6(a) provides that no adjustment can be made if Seller's request is made on or after the start of the Project's construction. Seller requests that the last sentence of Section 2.6(a) be struck, as this restriction may create issues where circumstances requiring an adjustment arise after construction has begun. Additionally, Section 2.6(a) states that an adjustment "shall only result in a reduction of Seller's REC delivery obligation and shall not cause the Annual Quantity or the Maximum Contract Quantity to increase." Seller requests that Section 2.6(a) be revised to provide that if Seller receives a one-time adjustment to its REC delivery obligation, the Annual Quantity and the Maximum Contract Quantity will be correspondingly reduced. (Section 2.6)

12. **Return of Ineligible RECs**. Section 2.3(f)(ii) provides Buyer sixty (60) days to return RECs identified by Seller as ineligible for payment, which is excessive relative to typical timelines for returning or settling similar inventory. Seller requests that this return period be shortened to thirty (30) days. Additionally, Section 2.3(f)(ii) provides that if Buyer retires or fails to return such RECs, Seller is compensated only to the extent the REC Monthly Price for the applicable vintage is negative, a measure tied to the Agreement's indexed pricing mechanism rather than to the value of the RECs retired or withheld. Seller requests that compensation for RECs retired or not returned by Buyer under this section instead be based on the prevailing merchant or broker market price for such RECs at the time of retirement or failure to return, or alternatively, that such RECs be applied to reduce Seller's Annual Quantity or Maximum Contract Quantity. (Section 2.3(f)(ii))

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[redacted]

[redacted]

13. **Prevailing Wage Compliance During Labor Disputes**. Section 2.2(f) does not provide Seller with any extension of time to comply if Seller, or its contractors or subcontractors, is engaged in a labor dispute regarding wages or classifications. Seller requests that Section 2.2(f) be revised to provide Seller with an extension of time to comply where Seller is negotiating such a dispute in good faith. (Section 2.2(f))
14. **REC Invoicing Timeline**. Section 5.1 establishes an Invoice Due Date of the tenth day of the month immediately following each Delivery Month, based on an assumption that RECs are issued shortly after the applicable vintage month. This timeline may be achievable for RECs tracked through PJM-EIS GATS, but is not realistic for RECs tracked through M-RETS, where REC issuance may occur approximately three months after generation. For example, August generation may not result in issued RECs until November, meaning delivery, invoicing, and settlement would naturally occur several months after the applicable Vintage Month. Seller requests that Section 5.1 be redlined to reflect the M-RETS issuance timeline, so that the Invoice Due Date and related deadlines account for the approximately three-month lag between generation and REC issuance under M-RETS. (Section 5.1)
15. **Monthly Generation Report Data and Adjustments**. Section 6.1 allows Buyer and the IPA to verify Seller's generation data using alternative sources, but does not require those sources to match the revenue meter data used to issue RECs. This could result in RECs being priced using different data than the data used to issue them. Section 6.1 also does not address how REC quantities should be adjusted when a generation correction results in a revised REC Monthly Price. Under PJM-EIS GATS, corrections are typically netted into a later vintage rather than reissued under the original vintage, which could result in RECs being priced using a different vintage's REC Monthly Price than intended. Seller requests that Section 6.1 be revised to require that any alternative verification source be consistent with the revenue meter data used to issue RECs, and to clarify how REC quantities will be reconciled with REC Monthly Price adjustments when a correction affects a different vintage. (Section 6.1)
16. **Cure Period for Project Labor Agreement Non-Compliance**. Section 6.3 provides that Seller's failure to timely provide Project Labor Agreements and amendments, or Seller's material violation of the terms thereof, shall be deemed non-compliant with Section 2.2(g) and subject to the twenty (20) Business Day cure and termination provisions in Section 2.2. Twenty Business Days is an insufficient period for Seller to cure a material violation of a Project Labor Agreement before the Agreement is subject to termination. Seller requests that the cure period applicable to non-compliance under Section 2.2(g) be extended. (Sections 6.3, 2.2(g))

[redacted] 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. We appreciate that the IPA has previously integrated stakeholder feedback into their contracts, and we hope that further improvements can be made to future IPA-led procurements. 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,

[redacted]

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Docusign Envelope ID: [redacted]

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