

**[Commenter 2]**  
**Comments on**  
**Indexed REC**  
**Contract**

**From:** [Commenter 2]

**Sent:** Monday, October 6, 2025 10:20 AM

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

**Cc:** [Commenter 2]

**Subject:** [Commenter 2] - Fall 2025 Procurement Events (Indexed REC RFP) Invitation to Comment

Hi,

Please find attached [Commenter 2]'s comments in response to the Illinois Power Agency's Fall 2025 Indexed REC RFP Invitation to Comment.

Let me know if you have any questions or need additional information.

Best regards,

[Commenter 2]

[Commenter 2]'s contact information

[REDACTED]

October 3, 2025

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) Summer 2025 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.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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

Set forth below is a list of key issues identified in the September 22, 2025 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] project company (“**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. Parties to discuss Buyer’s payment limitations and exemptions, which 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. Parties to discuss Buyer’s limitation on liability, which could pose 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. Parties to discuss scope and 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. Parties to discuss relief in connection with a change in tariffs or duties, including schedule relief, price adjusters and a Seller no-fault termination right.
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 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. Parties to discuss calculation of termination payments. (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

[REDACTED]

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. Additionally, the REC Agreement does not expressly require Buyer to provide consents to collateral assignments or estoppels, which could limit Seller's ability to consummate financings and tax equity investments. (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)

[REDACTED]

[REDACTED]. 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]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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