

[Commenter 3]
Comments on First Draft
Indexed REC Contract

[REDACTED]

March 17, 2023

[REDACTED]

[REDACTED]

[REDACTED] [Commenter 3] is writing in response to the IPA's March 3, 2023, Summer 2023 Indexed REC Procurement Request for Stakeholder Feedback.

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[REDACTED]

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Unquantifiable Risks Associated with the Non-Negotiable Contract

There are two main provisions in the proposed REC contract that create financing challenges

First, the “cost recovery” section of the contract allows buyers to suspend payments if the IPA has not collected sufficient funds to cover the utilities REC obligation. This creates too much risk in these contracts. This scenario is most likely to occur during economic environments that are the least supportive to a merchant project – when brown power prices are low, and the indexed REC prices would be higher to appropriately compensate renewable projects for their costs.

1. Cost Recovery

Section 5.4 (Cost Recovery through Pass-Through Tariffs) continues to be a significant impediment to the IPA’s securing of the most competitive bids for its procurements. Section 5.4 ties the buyer’s performance to the Available Funds cap, allowing utilities to suspend the contract when the IPA has not collected sufficient funds. This contractual feature is extremely problematic with an indexed REC. If power prices drop for several years in a row, it results in a higher IREC payment relative to high-priced power environments. Under this scenario, it is possible the IPA would not have collected enough money to support its utility scale IREC contracts. **This is, coincidentally, the point in time wherein having a firm contract for IRECs is most essential for a project.** Put another way, as currently contemplated, the projects’ IREC buyers have a unilaterally exercisable, no penalty suspension right *that is most likely to be used during market environments in which their exercise would be most catastrophic to Seller.*

We do not believe Public Act 102-0662 adequately mitigates this non-payment risk because the current RPS collection is based on historical REC costs and projected indexed-REC prices. The existing pricing mechanism does not adequately account for the various market trends, statutory changes, and supply chain issues that could, and recently have driven up prices. Our strong recommendation is to ensure that Illinois’ utilities pay for the RECs that they have committed to purchase at the price awarded by the IPA for the life of the contract. If the IPA feels they need a statutory change to allow this provision, then we would encourage their recommendation be provided to the legislature.

2. Buyer’s Performance Assurance

Without performance assurance, in the case of an event of default by Buyer, Seller is left with an unsecured claim for damages and forced to resort to costly and time-consuming lawsuits to demand performance and compensation from Buyers who have failed to live up to their obligations in a contract. As bankruptcy is the most serious Buyer event of default, we suggest a posting requirement tied to the investment grade creditworthiness of each Buyer entity. At present, no party would be required to post security; however, if the Buyers’ financial situation becomes more perilous, they should match seller’s credit amounts via the same forms available to Seller. Section 7.1 outlines extensive seller performance assurance posting requirements and we encourage the IPA’s inserting a buyer’s performance assurance in the amount of the Collateral Requirement (i.e., \$10 times annual quantity for utility-solar) if the Buyer drops below a triple-B rating. This way, in the most serious event of default (via bankruptcy) wherein Seller’s recourse to collect damages would be the most in jeopardy, Seller’s position is not completely unsecured.

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Sincerely,

[Commenter 3]

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