[Commenter 4]

Comments on Indexed REC Contract

From: [Commenter 4]
Sent: Friday, September 4, 2026 3:39 PM
To: Illinois-RFP <Illinois-RFP@nera.com>
Subject: [Commenter 4] Stakeholder Comments on IL Draft Indexed-REC Contract

Attached please find the comments of [Commenter 4] on the IL Fall 2026 Draft Indexed REC Contract and the REC redistribution and rollover methodology.

Please do not hesitate to reach out with any questions or follow up.

Best,

[Commenter 4]
[Commenter 4]'s title

Tariff risk continues to threaten project development and should be addressed through the IREC contract.

The federal policy landscape for renewable energy development continues to be volatile and unpredictable. For example, recent tariffs imposed under 19 U.S.C. 1862, Section 232 on polysilicon, which establish minimum import prices for polysilicon and polysilicon derivatives,[1] and restrictions imposed on acquisition or operation of foreign power equipment via executive order[2] continue to demonstrate this uncertainty. In some cases, tariffs may threaten the economic viability of projects. Similarly, federal permit freezes or other barriers presented by unforeseeable government action may threaten the viability of projects due to a change in tax credit eligibility, inability to meet project COD, or other reasons. Therefore, [Commenter 4] requests that the protections offered under section 11 of the contract be expanded to encompass additional events, such as new tariffs, federal permitting stoppages, or other material governmental actions outside the seller's control. We suggest specific language, below.

NYSERDA has offered similar protections under its contract, which categorizes tariffs and other federal governmental risks as material adverse events that trigger force majeure under that contract.[3]

[Commenter 4] accordingly suggests the following contract changes to Section 11 of the Draft Fall 2026 Indexed-REC Contract:

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[1] See *Adjusting Imports of Polysilicon and its Derivatives into the United States,* Presidential Proclamation issued August 6, 2026, https://www.whitehouse.gov/presidential-actions/2026/08/adjusting-imports-of-polysilicon-and-its-derivatives-into-the-united-states/.

[2] See *Declaring a National Emergency to Secure the United States Bulk-Power System*, Executive Order No. 14420, issued August 26, 2026, https://www.whitehouse.gov/presidential-actions/2026/08/declaring-a-national-emergency-to-secure-the-united-states-bulk-power-system/

[3] [**from NYSERDA standard form agreement**] Section 18.17. Material Adverse Change. (a) For purposes of this Agreement, any material change prior to Commercial Operation in (i) a federal permitting authority's requirements or response timelines, including a freeze in the review, processing, or issuance of such federal permits, (ii) the federal tax incentives for renewable energy systems or (iii) federal tariffs shall be considered a "Material Adverse Change" and treated with the same force and effect as a Force Majeure Event to the extent that Seller provides (x) notice of the change's occurrence within the later of fifteen (15) days after the Effective Date or fifteen (15) days of Seller becoming aware of the change's occurrence and (y) within the later of sixty (60) days after the Effective Date or sixty (60) days after Seller becomes aware of the change's implications and impacts on the Bid Facility, reasonable evidence which NYSERDA does not refute based on reasonable justification within a reasonable period of time following receipt of such evidence, that such change (A) was not within the control of the Seller, (B) could not have been prevented, mitigated or avoided by Seller through the exercise of reasonable diligence, mitigation actions or commercially reasonable efforts, (C) results in either a material increase in cost or a material delay in the schedule of the Bid Facility, in each case compared to reasonable expectations as of the Bid Price Submission Date and (D) exists for ninety (90) days (or a shorter period if agreed by the Parties). Available online at: https://portal.nyserda.ny.gov/servlet/servlet.FileDownload?file=00Pcr00000wLxyKEAS

ARTICLE 11: GOVERNMENT ACTION

11.1 Government Action.

The Parties acknowledge that the Applicable Program, which among other things establishes the conditions for a market for certain Products, may be the subject of Government Action (including court challenge) that could adversely affect the eligibility of a Product to meet the requirements of an Applicable Program or otherwise alter the requirements of the Applicable Program, make a Product unavailable or dramatically diminished or increased in value, or adversely affects the development of the Project. With respect to the Transaction, Seller represents that the Product complies with the Applicable Program and such representation is made and effective as of each Delivery Date, and regardless of any Government Action occurring after the Trade Date, Seller must Deliver Product that complies with the Applicable Program as of each Delivery Date. In the event that non-compliant RECs are Delivered to Buyer, such RECs shall be disposed pursuant to Section 2.3(f). Except as provided under Sections 11.3 and 11.4, Government Action that changes in any respect the value of a Product (without rendering the Product out of compliance with the Applicable Program), will have no effect on the obligation of the Parties to purchase and sell such Product at the price and on the terms set forth in this Agreement. For avoidance of doubt, all Delivery and payment obligations shall be suspended, and any Shortfall Amounts incurred in a Delivery Year as a result of such Government Action shall be excused from the date of Government Action through the date the Product again complies with the Applicable Program; such period shall be deemed a Suspension Period provided, that such Suspension Period shall not exceed three hundred sixty-five (365) days. Each thirty (30) day period within the Suspension Period shall extend the Acceptable Vintage Period by a Vintage month such that a Suspension Period between one (1) and thirty (30) days shall extend the Acceptable Vintage Period by one (1) Vintage month and each subsequent thirty (30) day period in the Suspension Period shall extend the Acceptable Vintage Period by a corresponding Vintage month. As such, Shortfall Amounts incurred during the period from the date that is three hundred sixty-six (366) days from the date of the Government Action through the date the Product again complied with the Applicable Program shall not be excused, unless such Suspension Period is extended by the IPA.[4] Such extension may be granted by the IPA on a case by case basis upon a demonstration of good cause by Seller to the satisfaction of the IPA at its reasonable discretion if the approval of such extension is communicated in writing by the IPA to Buyer and Seller.

To the extent that Government Action after the Trade Date (i) renders Delivery illegal under applicable law or (ii) renders the Product ineligible to comply with the Applicable Program in such a manner that no commercially reasonable modification to the Product or action taken by Seller would allow the Product to comply with the Applicable Program, (a) such Transaction will be terminated, (b) Seller's Performance Assurance shall be returned, (c) that portion of whatever has been paid for non-conforming Products will be refunded by the applicable Party, to the extent it is lawful to do so, and (d) neither Seller nor Buyer will have any liability to the other after such termination. For purposes of the foregoing, Seller shall be deemed to have used "commercially reasonable" efforts if Seller provides to Buyer evidence of expenditures or estimated expenditures in an amount that exceeds the Commercially Reasonable Threshold; provided such evidence of expenditures or estimated expenditures shall be submitted to the IPA and Buyer within three hundred sixty-five (365) days of the Government Action and such evidence be acceptable to Buyer, in its reasonable discretion. Notwithstanding the foregoing, no Transaction will be affected, cancelled, or otherwise impaired by Government Action that is specific to a Party under applicable law taken by a Governmental Authority alleging that Party's violation thereof.

Notwithstanding the preceding, in the event of a Government Action that fundamentally impacts the Project, Seller's REC delivery obligation under this Agreement, or other contractual obligation, either the Buyer or Seller may petition the ICC to consider non-price-related contract amendments that would bring the Product

[4] To the extent that Government Action occurs prior to the Delivery of one (1) REC from the Project, Seller may request an extension to the Initial REC Delivery Deadline, which shall be subject to the provisions in Section 2.4.

into compliance. If the ICC determines that the proposed modification is in the public interest, the IPA shall draft an amendment that faithfully implements the ICC's direction and both Buyer and Seller shall execute such amendment within ten (10) Business Days of written notice by the IPA.

11.2 Risk Allocation.

The Product is Regulatorily Continuing.

11.3 Investment Tax Credit (ITC), Production Tax Credit (PTC) or Clean Electricity Investment Credit Contingency

(a) In the event that the federal investment tax credit, production tax credit, or clean electricity investment credit applicable to the Project, as available under Section 48 or Section 45 of the Internal Revenue Code (or any successor provision), is eliminated, materially reduced, or otherwise rendered unavailable for the Project prior to Date of First Operation (or the Hydropower Refurbishment Completion Date if the Project is a Hydropower Project that is newly Modernized or Retooled as set forth in Section 6.5, Seller may request for the Agreement to be terminated and its Performance Assurance to be returned.[5] Such request must be made in writing to Buyer and the IPA as soon as practicable, but no later than six months of the enactment of Government Action that eliminates, materially reduces or renders unavailable such credit; further, such written request must be substantiated by reasonable documentation evidencing that Date of First Operation (or the Hydropower Refurbishment Completion Date if the Project is a Hydropower Project that is newly Modernized or Retooled as set forth in Section 6.5) has not occurred and the impact of such Government Action on the Project. Such request will be subject to the approval of the IPA in its reasonable discretion. If approved by the IPA, Buyer shall return Seller's Performance Assurance and terminate this Agreement with written notice to Seller. No Settlement Amount shall be due from or to either Party as a result of any such termination pursuant to this Section 11.3(a).

(b) Further, notwithstanding anything to the contrary, if (i) the Project is not "placed in service" (as such term is understood under the OBBBA) by the end of the fourth (4^{th}) calendar year after the calendar year during which construction of the Project began due to delays in finalizing interconnection agreements or delays in obtaining other necessary governmental permits and approvals, (ii) as a result of such delay the federal investment tax credit, production tax credit, or clean electricity investment credit applicable to the Project, as available under Section 48 or Section 45 of the Internal Revenue Code (or any successor provision) is eliminated, materially reduced, or otherwise rendered unavailable for the Project, and (iii) such delay is not primarily attributable to Seller such as Seller's failure to make in a timely manner permitting requests or a formal request for interconnection to such transmission or distribution provider or to provide in a timely manner the information or payment required by such transmission or distribution provider, then Seller may request for the Agreement to be terminated and its Performance Assurance to be returned. Such request must be made in writing to Buyer and the IPA by January 31, 2031; further, such written request must be substantiated by reasonable documentation evidencing that the Project would have been able to access such federal investment tax credit, production tax credit, or clean electricity investment credit but for such delay. Such request will be subject to the approval of the IPA in its reasonable discretion. If approved by the IPA, Buyer shall return Seller's Performance Assurance and terminate this Agreement with written notice to Seller. No Settlement Amount

[5] This Section 11.3(a) is intended to protect Seller from potential future changes to the availability of investment tax credits, production tax credits or other such clean electricity investment credits used to develop the Project. Relief under Section 11.3(a) is intended to address bona fide and material changes in such ITC or PTC eligibility arising from government actions occurring after contract execution. For example, the enactment of H.R.1, 119th Congress, Public Law 119-21 ("OBBBA") on July 4, 2025 predates the Effective Date of this Agreement. Therefore, enactment of OBBBA does not constitute "Government Action" triggering Section 11.3(a) termination provisions. However, any forthcoming federal guidance after the Effective Date of this Agreement — such as clarifications that may render the ITC or PTC unavailable for the Project may be considered Government Action materially affecting ITC or PTC eligibility and impacting the opportunity for Sellers to access such credits consistent with Section 11.3(a) if Seller reasonably relied on such ITC or PTC qualification that would have been achieved but for the Government Action.

shall be due from or to either Party as a result of any such termination pursuant to this Section 11.3(b).

11.4 Tariffs

In the event that a change in federal tariffs before the project COD result in cost increases that make the project uneconomic, Seller may request for the Agreement to be terminated and its Performance Assurance to be returned. Seller must provide notice and documentation by Seller of the price increase, evidence showing that the change was not within the control of the Seller and could not have been prevented, mitigated, or avoided by Seller through the exercise of reasonable diligence, mitigation, or commercially reasonable efforts. Such request will be subject to the approval of the IPA in its reasonable discretion. If approved by the IPA, Buyer shall return Seller's Performance Assurance and terminate this Agreement with written notice to seller. No Settlement Amount shall be due from or to either Party as a result of any such termination pursuant to this Section 11.4.