

[Commenter 4]

**Comments on Indexed
REC Contract**

From: [Commenter 4]

Sent: Friday, August 30, 2024 10:55 AM

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

Subject: Comments of [Commenter 4] on Fall 2024 Indexed REC Contract

Attached please find comments of [Commenter 4]. This responds to IPA's August 9th request for comments on the terms of its proposed Fall 2024 Indexed REC Contract.

If you have any questions, please contact me at the following:

[Commenter 4]'s contact information

Thank you.

[Commenter 4]

STATE OF ILLINOIS
BEFORE THE
ILLINOIS POWER AUTHORITY

TO:
Illinois Power Authority
Procurement Administrator
Illinois-RFP@nera.com

COMMENTS OF [REDACTED]
ON FALL 2024, INDEXED REC CONTRACT AND
PRELIMINARY PROPOSAL REQUIREMENTS

The Illinois Power Authority (“IPA”) 2024 Long-Term Plan provides for a procurement of Indexed Renewable Energy Credits (“Indexed RECs”) from new utility-scale wind projects, new utility-scale solar projects, new brownfield site photovoltaic projects, and certain new hydropower.

On August 9, 2024, the Procurement Administrator posted to the IPA’s procurement website the Preliminary Proposal Requirements and the Draft Indexed REC Contract for the Fall 2024 Indexed REC RFP and invited interested parties to submit comments.

Pursuant to IPA’s request for comments, [REDACTED] hereby states as follows:

[REDACTED]

1. Definition of “Shortfall Amount” Creates Unnecessary Risk for Commercial Lenders; the Definitions of Shortfall Amount or Event of Default Should be Changed to Better Reflect Commercial Realities

Article 4.1 (f) of the Indexed REC Contract provides:

...(f) In the event that Seller fails to Deliver the Delivery Year Requirement for a Delivery Year under the terms of this Agreement, such Delivery Year shall be deemed a “Shortfall Year” and such amount of RECs that Seller fails to Deliver to satisfy the Delivery Year Requirement for a Delivery Year shall be deemed the “Shortfall Amount” accordingly.

Commercial lenders view this requirement as overly stringent and believe that Shortfall Amounts defined in this manner will create an unacceptable probability of default. Instead, [REDACTED] proposes a minimal wording change to reflect a more lenient calculation of “Shortfall Amounts,” as follows (added language in bold, underline):

...(f) In the event that Seller fails to Deliver the Delivery Year Requirement for a Delivery Year under the terms of this Agreement, such Delivery Year shall be deemed a “Shortfall Year” and such amount of RECs that Seller fails to Deliver to satisfy **eighty-five percent (85%) of** the Delivery Year Requirement for a Delivery Year shall be deemed the “Shortfall Amount” accordingly.

This approach amends the definition of “Shortfall Amount” to alleviate commercial lender concerns regarding the existing Event of Default standard in the Indexed REC Contract. The existing contract measures actual RECs delivered minus the Delivery Year Requirement (“DYR”). [REDACTED] proposes changing the standard to Actual RECs delivered minus 85% of the DYR. This is a much more commercially viable option, and lenders have far greater market experience with this delivery requirement standard. In [REDACTED] discussions with lenders and its market experience, the company believes this 15 percent delivery cushion will give lenders comfort in a “P99” scenario (i.e., the standard against which lenders assess project viability).

██████ believes this is a relatively simple change to the Indexed REC Contract that does not impact other definitions in the agreements (except, indirectly, the event of default standard). Moreover, there is no need for collateral reductions, etc.

Alternatively, ██████ suggests clarifying the contract’s definition of “Event of Default” in Article 9.2(k) as follows (added language in bold, underline):

“...(k) the occurrence of three (3) or more Shortfall Years and the cumulative sum of the Shortfall Amounts for all Shortfall Years equals or exceeds **four (4) times** the Annual Quantity,...”

This approach amends the definition of “Event of Default” associated with Shortfall Amounts. Currently an Event of Default will be triggered if cumulative Shortfall Amounts are in excess of the Annual Quantity. ██████ proposes amending the threshold to four (4) times the Annual Quantity. This change is roughly equivalent to meeting the P99 standard which gives lenders comfort on project default probabilities.

2. Project Land Use Percentages Should be Clarified

Section 2.2 (e) of the Indexed REC Contract requires, for Utility Scale projects, that the Seller represent as of each Delivery Date that: “. . . at least 50% of the Project is located within the physical location identified in the Site Description in the Product Order . . .”

This requirement is unclear and can be interpreted in several ways. Thus, to remove this ambiguity, ██████ suggests that Section 2.2 (e) be revised as follows (changes shown in bold, underline and strikeout): “. . . at least 50% of the **of the real property first identified for the** Project **site in the Site Description in the Product Order is utilized by the Project** ~~located within the physical location identified in the Site Description in the Product Order . . .”~~ This clarification will provide utility scale

developers with the flexibility needed to ensure a project is available on budget and at its projected COD. Developers require the flexibility to utilize various real estate parcels, and such acreage may need to be changed before the project reaches COD. It is reasonable to require that 50% of the project's final real estate site was intended by the developer for such usage and was presented to IPA in the project's initial application.

Respectfully submitted

[Redacted signature block]

Date: August 30, 2024