

[Commenter 5]
Comments on
Draft ISC Contract

From: [Commenter 5]

Sent: Wed 5/13/2026 2:41 PM

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

Subject: [Commenter 5] – Summer 2026 Energy Storage RFP Comments

Dear IPA Procurement Administrator,

Please find attached [Commenter 5]'s comments in response to the Illinois Power Agency's Summer 2026 Energy Storage RFP Invitation to Comment.

Please do not hesitate to contact us with any questions.

Best,

[Commenter 5]

[REDACTED]

May 13th, 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) Summer 2026 Storage 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. [REDACTED] looks forward to continuing to work with the IPA and the Legislature to refine this program and maximize its success.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Topic 3: Feedback on Potential Improvements to the IPA Storage Procurement

Set forth below is a list of key issues identified in the April 22, 2026 draft of the Indexed Storage Credit Agreement ("ISC Contract") released for comment by the Illinois Power Agency ("IPA"), to be entered into by a to-be-identified [REDACTED] project company ("Seller") and either Ameren Illinois Company d/b/a Ameren Illinois or Commonwealth Edison Company ("Buyer"). Note that the below list (i) identifies only certain issues in the ISC Contract, (ii) does not reflect full Seller specialist or local counsel review or include all issues that would be reflected in a complete redline of the ISC Contract, and (iii) reflects that all Exhibits remain 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 ISC Contract.

Key Issues

1. **Termination Payments (Sections 9.2, 9.3, 9.4).**

For certain Seller Events of Default, termination payments are fixed at the level of posted Performance Assurance rather than tied to demonstrated damages. In addition, Seller remedies for Buyer default are limited and do not provide for forward damages. This structure may not reflect actual economic losses and could materially affect project finance ability and bid pricing. [REDACTED] requests reconsideration of this approach to better align termination payments with real economic outcomes.

2. **Buyer Limitation of Liability (Section 14.1).**

Buyer liability is capped at 100% of payments already made to Seller, while Seller liability includes the Collateral Requirement plus prior Buyer payments. This results in minimal Buyer liability prior to COD and limited recourse for Seller in the event of Buyer default. [REDACTED] believes this allocation of risk is unbalanced and may render financing difficult or impossible. [REDACTED] requests consideration of a more balanced limitation of liability framework.

3. **Cost Recovery (Section 5.4).**

The Agreement permits suspension of Seller payments during periods when the Buyer is not authorized to recover costs from customers and allows termination after extended suspension periods. While recent legislation is intended to support continued utility cost recovery, the inclusion of payment suspension rights in the contract creates ongoing cash flow uncertainty for storage projects. [REDACTED] requests clarification on the continued need for this provision and consideration of removing or narrowing payment suspension language in light of the updated statutory framework.

4. **Availability and Curtailment (Sections 2.6, 4.3).**

Excused outages for Availability purposes are limited to Force Majeure and RTO-directed Technical Curtailment, with all other outages counting against the guaranteed Availability requirement of 4,320 hours per Delivery Year. Given the long-term nature of storage contracts, this narrow definition increases operational and performance risk. [REDACTED] requests consideration of broader excused outage definitions or an adjustment to the Availability requirement.



5. **ISC Generation (Section 4.1).**

The treatment of excused ISC generation differs depending on payment direction. When Seller owes Buyer, ISC generation is excused only for Planned Outages, while when Buyer owes Seller, generation is excused whenever the Project is not Available. [REDACTED] requests clarification on this asymmetry and consideration of aligning excused generation treatment in both circumstances.

6. **Performance Assurance (Section 7.1).**

The Agreement requires the Seller to post Performance Assurance with short cure periods for replacement credit support. [REDACTED] requests a longer cure period of at least fifteen (15) Business Days to replace credit support. In addition, [REDACTED] requests that the Agreement require a minimum of three (3) Business Days' prior notice before any Buyer draw on a Letter of Credit.

7. **Seller Representation (Section 8.1(o)).**

The Seller representation that all information furnished in connection with the Agreement is true, accurate, complete, and not misleading is broader than typical PPA representations. [REDACTED] requests consideration of standard materiality and knowledge qualifiers consistent with market practice.

8. **Force Majeure (Section 10).**

The Force Majeure definition requires that an event not be reasonably anticipated and does not expressly include certain risks that may reasonably arise over the development and operating life of a storage project, including labor disruptions (such as strikes), changes in law, or interconnection delays. [REDACTED] requests clarification of the Force Majeure definition and consideration of expanding the list of qualifying events to better reflect these risks.

9. **Regulatory Risk Allocation (Section 11.2).**

The requirement that the Product remain "Regulatorily Continuing" places ongoing regulatory and program change risk on the Seller after contract execution. [REDACTED] requests consideration of clearer relief mechanisms or additional flexibility where regulatory changes materially affect project economics beyond Seller control.

10. **ITC Contingency (Section 11.3).**



If the Investment Tax Credit is eliminated or materially reduced prior to COD, the Seller may request termination subject to IPA approval. [REDACTED] notes that developers typically expect a firm termination right tied directly to tax law changes and requests greater certainty around this provision.

11. **Assignment and Change of Control (Section 13.1).**

The Agreement prohibits assignment without Buyer consent, except for certain tax equity-related financing assignments. [REDACTED]'s primary concern is the continuing requirement for Buyer consent for other assignments, the application of creditworthiness thresholds in change-of-control transactions, and the absence of express requirements for Buyer-provided estoppel certificates or lender acknowledgments. [REDACTED] requests clarification and additional flexibility to support customary financing, ownership changes, and lender requirements

12. **Cybersecurity Requirements (Section 2.8).**

Section 2.8 should be limited to requiring the Project to comply with applicable cybersecurity requirements as required under FERC and NERC Reliability Standards. As drafted, the provision appears broader than typical requirements for utility-scale storage projects and could impose project-specific compliance obligations that would require additional investment in IT systems,



[REDACTED]

personnel, hardware, and software, as well as specialized operational processes and associated costs.

13. **ELCC Risk Allocation (Section 1 – Definition of ISC Reference Capacity Price).** An ELCC floor would undermine the contract's value, reduce financeability, and increase costs to ratepayers. The purpose of the indexed storage contract mechanism is to provide a predictable revenue stream that can be used to finance battery storage projects to achieve the state's deployment goals. The contract is financeable because if the seller operates the storage facility in the market in a manner that matches the reference prices, it can earn its expected revenue and recoup its investment. However, if the MISO or PJM ELCC for storage drops below a floor set in the contract, there's nothing the seller can do to recover those lost earnings. This is a risk that must be priced into the financing cost of the contract, ultimately increasing bid prices and potentially reducing the number of bids. To provide the lowest-cost projects for Illinois ratepayers, the contract must provide investors assurance that if they perform in the market, their costs will be recouped. [REDACTED] requests that the contract not impose any floor on ELCC and that ELCC continue to float with RTO determinations

[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' energy storage potential.

Sincerely,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]