

[Commenter 6]
Comments on Indexed
REC Contract

From: [Commenter 6]
Sent: Thursday, May 8, 2025 9:06 AM
To: Illinois-RFP <Illinois-RFP@nera.com>
Cc: [Commenter 6]
Subject: [Commenter 6] - IPA Indexed REC RFP comments

To the NERA team,

Please see attached [Commenter 6]'s comments to the Illinois Power Agency Indexed REC RFP.

Please let me know if you'd like to set up time with [Commenter 6] in the coming weeks to discuss our comments and questions.

[Commenter 6]'s contact information.

Thank you,

[Commenter 6]

[Commenter 6]'s contact information

[Commenter 6] comments to DRAFT Indexed Renewable Energy Credit Agreement2.7 One-Time Adjustment to Strike Price

- [Commenter 6] proposes that the adjustment be tied to construction start date, not Financial Closing Date. Companies that do not take out debt financing, such as [Commenter 6], would be prohibited from electing a Strike Price Adjustment.
- [Commenter 6] recommends an additional adjuster to the Strike Price to account for potential changes in the prevailing wage requirements. For every \$1.00/hour increase in the prevailing wage requirements, the strike price could increase by as much as \$0.75.
- [Commenter 6] recommends an additional price adjustment option to account for significant changes in tariffs that may impact projects' supply chains. Given procurement timelines, developers cannot foresee all potential tariffs given the ever-changing tariff landscape.

4.1 (g) Deliveries and Quantity

- If Seller has a shortfall in a given year, Seller should be allowed to fill the shortage using REC overages from prior years or the calendar year following the shortage in order to avoid an Event of Default.
- Reasoning: If there were to be a funding shortfall rendering the Buyer unable to pay for a given year, funds leftover from past years or allocated for future years can pay for current year (PA 103-1066); a similar mechanism for REC shortages is preferable here.

5.4 Cost Recovery through Pass-Through Tariffs

- "For the avoidance of doubt, payment obligations for contracts executed pursuant to 20 ILCS 3855/1-75(c)(1) and associated expenses within a given Delivery Year exceeding the actual balance of collections made to date under Section 16-108(k) within that Delivery Year would not provide a valid basis for non-payment by Buyer, **unless Buyer's compliance with such payment obligations would cause Buyer's cumulative payments for RECs associated with a given Delivery Year to exceed the amount of the Available Funds for that Delivery Year.**"
- PA 103-1066 intends for the utilities to make full payment for all contracted REC payments even in circumstances when the total cost of RECs exceeds the budget cap for the Renewable Portfolio Standard. The highlighted section does not appear to contemplate the effect of PA 103-1066. Can the IPA explain how the highlighted section of the contract aligns with the requirements set forth in Public Act 103-1066? Sellers' financing partners will bear reviewing this section of the contract, and as drafted, this does not give certainty that the contract will be fully funded. We recommend that the highlighted section above be deleted.

6.4 Minimum Equity Standard

- The IPA has stated that failure to comply with the Minimum Equity Standard (MES) is not an Event of Default and will not result in contract termination. [Commenter 6] recommends this section be fully removed from the contract. This removal will reduce uncertainty and allow for more Sellers to bid into the procurement that may not meet the MES. While [Commenter 6] is committed to complying with the MES, it may not be possible to fully meet all of the requirements.

- Section 6.4(a) describes MES waivers that the IPA may issue at its “sole discretion”, but there is no further description of the waiver process or description of the circumstances under which a waiver may be approved. For this reason, [Commenter 6] ██████████ recommend that the MES requirement be removed from the contract.

7.1 (a) Seller's Performance Assurance

- [Commenter 6] recommends an increase in the time for Seller to post “Seller's Performance Assurance” from “within eight (8) Business Days of notice from Buyer” to “within fifteen (15) Business Days of notice from Buyer”.

9.1 Events of Default in Respect of Buyer

- “The failure of Buyer to make, when due, any payment required pursuant hereto if such failure is not remedied within twenty (20) Business Days after written notice;”
 - PA 103-1066 intends for the utilities to make full payment for all contracted REC payments even in circumstances when the total cost of RECs exceeds the budget cap for the Renewable Portfolio Standard. The highlighted section does not appear to contemplate a circumstance when a Commission Order is under consideration, but the 20 Business Day period for payment runs its course. Can the IPA explain how this section of the contract would be enforced if the failure of payment occurred during a period prior to a Commission order as described in Public Act 103-1066? There may need to be suspensions or extensions in the 20 Business Day period in order to reduce the risk of default on the IPA's end. It should be in both parties' favor that this payment failure would not be a default in the 20 Business Day window if Buyer would be able to make payments in an otherwise reasonable period.

9.2 (d) Events of Default in Respect of Seller

- [Commenter 6] recommends an increase in the time to post Seller's Performance Assurance Amount increase from “within eight (8) Business Days of notice from Buyer” to “within fifteen (15) Business Days of notice from Buyer”.

9.3 Declaration of Early Termination Date

- Section 9.2 Events of Default in Respect of Seller acknowledges the ability for IPA to extend cure time periods at its discretion. Section 9.3 allows for early termination after 20 days of notice Event of Default. If the IPA is acknowledging that a cure to the default is possible, then Buyer should not be able to declare early termination until Buyer has had a sufficient time to cure.

11.1 Government Action

- This section puts the requirements to comply with any new requirements under a new IL REC program on the Seller, and if Seller does not or cannot meet those requirements, the contract will be terminated, and RECs already delivered will be disposed. If there is a change in law that eliminates the IL REC program, Seller would be without a long-term contract for the project, which is problematic for the Seller and its financing partners.

14.1 Limitation of Liability

- Payments should be capped at the sum of the Collateral Requirement and 100% of the total payments, not 110%.

EXHIBIT G Strike Price Adjustment Mechanism

- The opt-in/out election should not be required to be selected prior to final confirmation of the exact price adjuster.
- It is not adequate for the forecast factor to be announced one week prior to the binding contract submission. It is difficult to find financing partners who will agree to contract terms where the price can be reduced by as much as 15%. The adjustment mechanism should be limited to a price increase only for changes in the indices. Alternatively, IPA could move the time that this is elected to be after signing so that Seller can elect “no” if the price adjuster is a decrease.
- Prevailing wage adjustment: please see comments on Section 2.7.

[Commenter 6] comments on IPA-proposed Questions

Topic 1

Questions specific to the formulas:

- 1. Please provide feedback on any aspect of the formulas proposed (i.e. percentage of the strike price that would be adjusted or weights used across the various indices). Please include any suggested improvements to the formulas and provide backup data or documentation when available.

See comment to Section 2.7 above, [Commenter 6] proposes to include an additional adjuster to the Strike Price to account for potential changes in the prevailing wage requirements. For every \$1.00/hour increase in the prevailing wage requirements, the strike price could increase by as much as \$0.75.

- 4. It is proposed for the adjustment to not exceed the absolute value of 15%. The symmetrical adjustment cap is meant to recognize that there should be risk sharing with ratepayers and would also enable more accurate budget estimation for purposes of setting procurement targets.

Is a 15% symmetrical adjustment cap reasonable?

See comment to Exhibit G above. No, [Commenter 6] requests that the adjustment range be 0% to 15%, with no option to decrease the strike price.

Questions specific to the timing of the adjustment:

- 1. It is proposed that the adjustment would take place at the Financial Closing Date for the project.

- Is this the most appropriate milestone to use for the timing of the strike price adjustment?

No, per the Exhibit G comment above, [Commenter 6] proposes using construction start date as the milestone for the timing of the strike price adjustment.

Topic 2

- 4. Do you think the adjustment mechanism strikes a reasonable balance of risk between the developer and the ratepayer?

Yes, [Commenter 6] is pleased to see this mechanism added to increase flexibility on final anticipated REC volumes delivered if needed.

Topic 3

- 4. Has the passage of Public Act 103-1066 increased your confidence in the certainty of the RPS Budget? Does this increase the likelihood of your participation in future procurement events?
Yes, the passage increases our confidence in the RPS budget; however, see comment to Section 5.4 above; contract language from the IPA should reflect current statutory language set forth in PA 103-1066 that is intended to ensure executed contracts will be made whole. Additionally, we still seek additional written clarification on the exact mechanism in which Buyers would be repaid in the event of a budget shortfall.