

[Commenter 7]
Comments on
Indexed REC
Contract and
Preliminary Proposal
Requirements

From: [Commenter 7]

Sent: Thursday, May 8, 2025 11:10 AM

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

Cc: [Commenter 7]

Subject: Comments and Feedback on the draft Indexed REC Contract and Preliminary Proposal Requirements

Good morning,

Attached please find comments and feedback on behalf of [Commenter 7] regarding the draft Indexed REC Contract and Preliminary Proposal Requirements. Please feel free to contact me at my phone number and email address below if you require any clarification regarding our comments.

Kind regards,

[Commenter 7]

[Commenter 7]'s contact information

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[REDACTED] appreciates the opportunity to provide comment on the Summer 2025 standard Indexed REC Contract. [REDACTED]
[REDACTED]

First, [REDACTED] applauds the improvements the IPA has made to the form of the Indexed REC Contract over the years. Specifically, the revisions to Section 5.4 will be helpful to assuage financing parties' concerns relating to potential budget shortfalls. [REDACTED] believes that inefficiencies remain in the Indexed REC Contract that add unnecessary risk, translating to premiums on bids, otherwise good projects failing to develop or deliver RECs in support of the Illinois RPS, and other completely avoidable negative outcomes. The recommendations below are offered in the spirit of a cost-free way to reduce inefficiencies and enhance the competitiveness of this and future procurement events. [REDACTED] provides the following comments (at least within an issue) in the order of their importance from [REDACTED] perspective.

Issue	Document and Section	Discussion Item/Text with Redline Changes	Comments
Discussion Items relating to the two proposed improvements to the Indexed REC Contract	n/a	General feedback on improvements.	[REDACTED] supportive of expanding the pool of project eligible for contract renegotiation to include those projects with existing REC delivery contracts. We believe this flexibility being awarded to future contracts should be extended those projects that were first-to-market securing financing for these novel Indexed REC contracts in an effort to reduce their attrition rate
(1) Appropriate Circumstances to Request One-Time Delivery Obligation Adjustment	Draft Indexed REC Contract, Section 2.6	2.6(a) Prior to the start of the Project's construction, Seller may request for a one-time adjustment of its REC delivery obligation under this Agreement by providing written notice of such request to Buyer and the IPA; such request must be accompanied by the evidence of significant reduction to the anticipated nameplate capacity or Project's generation output. Approval of such request 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 in its sole discretion. Buyer and Seller agree that	This improvement to the Indexed REC Contract achieves the goal of reducing potential project attrition and encouraging participation and competition in the procurement events. [REDACTED] is supportive of this improvement with a few proposed revisions. The proposed revisions for this Issue (1) are to provide additional latitude to the IPA to

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		<p>the IPA has authority to make such a determination on good cause and to approve such a request to adjust Seller’s REC delivery obligation under this Agreement. For the purposes of this Section 2.6, the circumstances in which the Seller may request a one-time adjustment of its REC delivery obligation include <u>are</u>: (a) changes to the land area being considered for the Project, (b) interconnection costs increase, (c) transmission upgrade or reconfiguration costs increase, or (d) changes in availability of Project’s construction materials, which must result in a significant reduction to the anticipated nameplate capacity or Project’s generation output, <u>(e) changes in third-party generation reports, which result in a significant reduction to the Project’s anticipated generation output, or (f) changes outside of Seller’s control that are deemed to be good cause by the IPA.</u> For the avoidance of doubt, any adjustment pursuant to this section shall only result in a reduction of Seller’s REC delivery obligation and shall not cause the Annual Quantity or the Maximum Contract Quantity to increase. Further, for avoidance of doubt, there shall be no adjustment made pursuant to this section if Seller’s request is made on or after the start of the Project’s construction.</p> <p>2.6(b) The approval of any requests made pursuant to Section 0 shall be at the IPA’s sole discretion. IPA expects <u>shall</u> provide a written notice to Buyer and Seller indicating its approval or rejection of the request within twenty (20) Business Days of IPA’s receipt of such Seller’s request. The Standing Order shall not be established prior to Buyer’s and Seller’s receipt of IPA’s written notice indicating its approval or rejection of Seller’s request. If approved by the IPA, relevant information shall be memorialized in an updated Product Order between Buyer and Seller within ten (10) Business Days of such notice;</p>	<p>determine the circumstances in which the Seller may request a one-time adjustment of its REC delivery obligation.</p> <p>This provision provides necessary flexibility to adjust the REC delivery obligation, so it is important that (i) it is not too prescriptive, (ii) it covers all appropriate circumstances, and (iii) it provides the IPA with sufficient discretion to determine whether a novel circumstance merits good cause. [REDACTED] proposes adding a specific reference to changes in third-party generation reports which can occur due to factors outside of Seller’s control and have a significant impact on the Project’s generation output. Since other novel circumstances could arise in the future, [REDACTED] also proposes inclusion of (f).</p> <p>It would be helpful to have definitive timing on when Seller will receive a determination from the IPA on the adjustment as this can impact project development and financing. In addition, it could be helpful to understand how the IPA intends to evaluate the circumstances.</p> <p>Finally, [REDACTED] proposes adding that Buyer shall honor Seller’s request for the return of Seller’s Performance Assurance in excess of the Performance Assurance Amount, which mirrors the language in Section 7.1(c) regarding the return of Seller’s Performance Assurance upon the completion of final Delivery.</p>

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		<p>information relevant may include the RFP Awarded Annual Quantity, Annual Quantity, Degradation Rate, as well as any resulting information such as the REC Contract Value, Maximum Contract Quantity, and with respect of each applicable Delivery Year, Delivery Year Degradation Factor, Delivery Year Allocation Factor and Delivery Year Requirement. After the full execution of the Product Order, Seller may request the return of Seller’s Performance Assurance in excess of the <u>reduced</u> Performance Assurance Amount. <u>Any such request shall be honored by Buyer as soon as practicable.</u></p>	
(1)(a) Discussion Items relating to Annual Quantity Adjustment Mechanism	n/a	Should there be a restriction on the maximum allowable delivery obligation reduction?	[REDACTED] does not think there should be a limit on the maximum allowable delivery obligation reduction.
(2) Timing of the One-Time Adjustment to Strike Price	Draft Indexed REC Contract, Section 2.7	<p>2.7(a) Strike Price may be adjusted in accordance with Exhibit G after the Commission Bid Approval Date solely to the extent (i) if Seller elected for such adjustment during the RFP, and (ii) the Financial Closing Date is after the date that is the last day of the sixth (6th) full calendar month after the Commission Bid Approval Date. For avoidance of doubt, no adjustment to the Strike Price shall be made if the Financial Closing Date occurs on or prior to the date that is the last day of the sixth (6th) full calendar month after the Commission Bid Approval Date regardless of whether Seller elected for such adjustment or not.</p> <p>2.7(b) <u>Prior to the start of the Project’s construction</u> Within ten (10) Business Days after the Financial Closing Date, Seller shall provide written</p>	<p>[REDACTED] believes that the intent of this second improvement is to reduce premiums/costs in bids related to uncertainty due to inflation, reduce potential project attrition, and encourage participation and competition in the procurement events. Unfortunately, [REDACTED] does not believe that this second improvement achieves any of these goals as drafted. Instead, it adds more uncertainty into the economics of the project.</p> <p>Any changes to price should occur <i>prior</i> to the Financial Closing Date. If there is any uncertainty or risk that the Strike Price may be reduced, financing parties will model the worst-case scenario. This would result in</p>

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		<p>notice to Buyer and the IPA <u>requesting a one-time adjustment to the Strike Price to be calculated by the IPA in accordance with Exhibit G.</u> to inform of such occurrence and the Financial Closing Date, along with supporting documentation for the IPA's review and verification of the Financial Closing Date. If the Financial Closing Date indicated by Seller cannot be verified by the IPA, the IPA shall select a date to be the Financial Closing Date in its reasonable discretion, which may be a different date from the Financial Closing Date indicated by Seller, which shall not be later than the start date of the Project's construction (or the Hydropower Refurbishment Start Date, as applicable) for purposes of calculating the Strike Price adjustment. Buyer and Seller agree that the IPA has authority to make a determination on the Financial Closing Date for purposes of calculating the Strike Price adjustment. If the Financial Closing Date occurred after the last day of the sixth (6th) full calendar month after the Commission Bid Approval Date as recognized by the IPA, then a one time adjustment to the Strike Price shall be carried out as set forth in Exhibit G. The adjusted Strike Price shall be calculated by the IPA in accordance with Exhibit G. For avoidance of doubt, if the Financial Closing Date occurs after the date that is after the last day of the forty eighth (48th) full calendar month after the Commission Bid Approval Date, then data used for calculating the final set of data for purposes of the Strike Price adjustment calculation shall be based on data from the forty third (43rd) full calendar month through the forty eighth (48th) full calendar month after the Commission Bid Approval Date as set forth in Exhibit G. The IPA endeavors on a commercially reasonable basis to issue to Buyer and Seller a written notice indicating such adjusted Strike Price <u>within []</u></p>	<p>lenders decreasing the amount of money they are willing to lend to the developer for the project and requiring the developer to have more equity in the project. Financing parties require certainty as to the financial terms of the agreement prior to closing financing. This provision as drafted is not aligned with what financing parties require. As a result, it could increase project attrition and discourage participation and competition.</p> <p>[REDACTED] proposed changes for this Issue (2) are primarily related to the timing of the one-time adjustment to the Strike Price.</p> <p>[REDACTED] proposes allowing Seller to elect the one-time adjustment at any point prior to the commencement of construction. Seller is in the best position to make the decision of when to de-risk the price and maintain the necessary development schedule. This would increase certainty for Seller and reduce premiums/costs in bids related to uncertainty due to inflation. It would also increase participation and reduce potential project attrition.</p> <p>Corresponding changes would also need to be made in Exhibit G.</p>

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		<p><u>Business Days</u>; such adjusted Strike Price and a resulting REC Contract Value shall be memorialized in an updated Product Order between Buyer and Seller within ten (10) Business Days of such notice <u>from the IPA</u>.</p>	
(3) Timing and mechanics of the Strike Price Adjustment Mechanism	Exhibit G	<p>The Strike Price will be increased<u>adjusted</u> using the below formulas. For avoidance of doubt, no Strike Price increase<u>adjustment</u> shall exceed the absolute value of 15% of the bid price as offered by Seller through the RFP and as indicated in the initial Product Order. Further, if the Financial Closing Date occurs after the date that is after the last day of the forty eighth (48th) full calendar month after the Commission Bid Approval Date, then data used for calculating the final set of data for purposes of the Strike Price adjustment calculation shall be based on data from the forty third (43rd) full calendar month through the forty eighth (48th) full calendar month after the Commission Bid Approval Date.</p> <p>***</p> <p>Bid_{adj} is the Strike Price after adjustment; provided that Strike Price increase or decrease shall be limited to a maximum of 15% of Bid;</p> <p>***</p> <p>For each component, the values of $Index_f$ will be calculated as the simple average of the monthly values for the six full calendar months prior to <u>the date the Seller requested a one-time adjustment to the Strike Price from the IPA.</u> the Financial Closing Date. For avoidance of</p>	<p>As stated above, this proposed improvement does not achieve the IPA's goals. This concept adds more uncertainty for the Project, whereas what developers desire is more certainty in order to make sound business decisions. Furthermore, Exhibit G is very complicated and will be difficult for financing parties to understand. As a result, [REDACTED] does not intend to elect the Strike Price Adjustment Mechanism as currently contemplated. [REDACTED] believes that other developers will behave similarly, and this improvement will not encourage participation and competition in procurement events.</p> <p>[REDACTED] proposed edits for this Issue (3) would adjust this mechanism to allow Seller to determine the timing of the Strike Price Adjustment Mechanism and to only adjust the Strike Price upwards. If these changes were made [REDACTED] would consider electing the Strike Price Adjustment Mechanism.</p> <p>Corresponding changes would also need to be made in Section 2.7.</p>

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		doubt, the final set of data used for purposes of calculating the adjusted Strike Price may include preliminary values published by the data source, and the final set of data as well as the adjusted Strike Price disclosed to Seller and Buyer by the IPA shall be final and not subject to updates regardless of further revisions by any data sources.	
(3)(a) Discussion Items relating to Strike Price Adjustment Mechanism	n/a	How should the IPA evaluate projects that elect the Strike Price Adjustment Mechanism?	Since Section 2.7 and Exhibit G change the fundamental economics for the projects, [REDACTED] believes that the IPA should have separate procurement events for projects that elect the Strike Price Adjustment Mechanism and those projects that do not. The evaluation of these projects needs to be separate to ensure a level playing field.
(3)(b) Discussion Items relating to Strike Price Adjustment Mechanism	n/a	General feedback on indices selected.	[REDACTED] suggests that the IPA utilize Illinois-specific data points (instead of national indices) for the components of the Bid Adjustment Formula in Exhibit G.
(4)(a) Downside risk based on severe underperformance	Draft Indexed REC Contract, Sections 4.1(f), 4.1(g) and 9.2(k)	4.1(f) In the event that Seller fails to <u>make the Utility-Scale Solar Project or Utility-Scale Wind Project that is the subject of this Agreement have an Actual Availability Percentage that meets or exceeds []% for 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.</u> Notwithstanding the foregoing, Seller's failure to <u>make the Utility-Scale Solar Project or Utility-Scale Wind Project that is the subject of</u>	The edits for this Issue (4)(a) are to adjust the mechanism for an event of default due to failure to deliver the Annual Quantity to be an event of default for failure to make the facility available to deliver RECs for a specified amount of time. [REDACTED] is providing along with these comments, as a confidential attachment, an example of contract terms utilizing such an availability-based mechanism that [REDACTED] has included in the majority of its non-public contracts.

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		<p><u>this Agreement have an Actual Availability Percentage that meets or exceeds []% in</u> the first two (2) full Delivery Years shall be excused and the failure to meet any Delivery Year Requirement through the first two (2) full Delivery Years shall not constitute a Shortfall AmountYear. Further, in no event shall RECs eligible for payment exceed the Maximum Contract Quantity. If in the last Delivery Year, the Delivery Year Requirement is greater than the quantity of RECs to meet the Maximum Contract Quantity, then the Delivery Year Requirement for the last Delivery Year shall be reduced to be the greatest quantity of RECs that would not cause the Maximum Contract Quantity to be exceeded. In the event that RECs are Delivered to Buyer in excess of the Maximum Contract Quantity, such RECs shall be disposed pursuant to Section Error! Reference source not found.</p> <p>***</p> <p>4.1(g) As specified in Section 0, an Event of Default shall be deemed to occur if five (5) or more Shortfall Years occurred and the cumulative sum of the Shortfall Amounts for all Shortfall Years, as such sum may be adjusted pursuant to Section 4.1(k) or Section 9.2(k), equals or exceeds two (2) times the Annual Quantity. Upon the occurrence of such Event of Default, Buyer shall terminate this Agreement twenty (20) Business Days after written notice by Buyer to Seller unless Seller demonstrates, within such twenty (20) Business Day period and to the satisfaction of Buyer in its reasonable discretion that such event has not occurred, has been cured, or the IPA has provided written notice to Buyer and Seller granting a waiver excusing such Shortfall YearsAmounts or a portion of such Shortfall Amounts. Sell may request such waiver pursuant to Section 9.2(k). For such Event of Default,</p>	<p>Although this provision has been greatly improved as compared to previous versions of the Indexed REC Contract, [REDACTED] believes that an Availability Guaranty would be more beneficial to all parties and more aligned with standard industry terms.</p> <p>These proposed changes address the risk on developers of multiple shortfall years due to weather or other factors outside of their control (but not considered force majeure), while still placing the responsibility on the developer to diligently develop and operate the facility consistent with industry practice.</p> <p>This issue (and the respective resultant proposals) arises from how prospective lenders to such projects model performance in underwriting debt associated with the projects. The forecast of a wind or solar project’s annual production is in the form of a probability distribution. Most PPAs assume “P50” production, which is the average expected annual production (50% of expected years would have more production, 50% would have less). Lenders will generally assume a more conservative production estimate for their underwriting. In the current financing environment, banks have become even more conservative, relying on “P99” estimates, a production amount that in any given year (i) there is a 99% confidence that it will be exceeded, and (ii) 1% chance that production will be less than this amount. It is highly</p>

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		<p>Buyer shall be entitled to payment by Seller in the amount of the Collateral Requirement. The Parties acknowledge that (A) Buyer shall be damaged by the failure of Seller to comply with the provisions set forth in this Section 0, (B) it would be impracticable or extremely difficult to determine the actual damages resulting therefrom, (C) the remedies specified herein are fair and reasonable and do not constitute a penalty and, (D) the remedy specified in this Section 0 shall be Buyer’s sole and exclusive remedy in such Event of Default and, for the avoidance doubt, neither Buyer nor Seller shall be entitled to any Settlement Amount calculated pursuant to Section Error! Reference source not found. under such circumstance.</p> <p>***</p> <p>9.2(k) <u>Upon</u> the occurrence of five (5) or more Shortfall Years, and the cumulative sum of the Shortfall Amounts for all Shortfall Years, as such sum may be adjusted pursuant to Section 4.1(k) or Section 9.2(k), equals or exceeds two (2) times the Annual Quantity, in which case, Buyer shall terminate the Agreement twenty (20) Business Days after written notice by Buyer to Seller unless (i) Seller demonstrates, within such twenty (20) Business Day period and to the satisfaction of Buyer in its reasonable discretion, that such Event of Default has not occurred or has been cured or (ii) the IPA has provided written notice to Buyer and Seller granting a waiver excusing such Shortfall Amounts or a portion of such Shortfall Amounts<u>Years</u>. Upon Seller’s receipt of such Buyer’s written notice, Seller may provide a written request along with supporting documentation to the IPA requesting that a portion of or all of the Shortfall Amounts<u>Years</u> be excused; such written request shall be provided to the IPA no later than five (5) Business Days from the date of</p>	<p>improbable that a project would generate less than P99 in a single year, much less multiple consecutive years.</p> <p>When running a P99 scenario, lenders will likely assume that the IPA REC Contract ends the year in which the P99 case shows an event of default, effectively shortening the tenor of a 20-year contract substantially. This materially reduces the amount of debt the lenders can underwrite, despite the fact that the statistical probability of a sustained P99 generation profile is near zero.</p> <p>While bidders to the current contract may anticipate lenders underwriting to P99 production, bidding a P99 production amount is also unlikely because RECs beyond the total quantity bid are not compensated and thus the system would be expected to substantially over-generate relative to the REC Contract contracted amount and leave a significant number of RECs uncontracted, thus putting upward pressure on bid prices for some bidders.</p> <p>The edits in 1(a) redefine a “Shortfall Amount” to allow cushion beyond a single REC of underdelivery to cause a Shortfall Year. The blank percentage could be 65-70%, which is commonly seen in the industry, to allow for flexibility without requiring substantial underbidding relative to nameplate capacity and anticipated capacity factor.</p>

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		<p>Buyer’s written notice to Seller. Approval of waivers to Shortfall YearsAmounts 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 sole discretion. For the avoidance of doubt, Buyer and Seller agree that the IPA has authority to make such a determination on good cause and to grant a waiver excusing Shortfall YearsAmounts. Good cause may include long-term changes in weather patterns, serial defects in the Project’s components, and other events outside of the control of Seller that impact the Project’s ability to meet its Delivery Year Requirement. The approval of any such requests shall be at the IPA’s sole discretion. If approved, the IPA shall provide to Buyer and Seller a written notice indicating its approval of the Seller’s request and the Shortfall YearAmount that is being excused; such IPA’s written notice shall be provided within the twenty (20) Business Day period from the date of Buyer’s initial written notice to Seller indicated above in this section. Notwithstanding the foregoing, the IPA may extend the twenty (20) Business Day period by written notice to Buyer and Seller; provided that such written notice indicates the date which the IPA shall confirm whether it approves or rejects Seller’s written request to waive any Shortfall YearsAmounts. If the IPA does not provide a written notice to Buyer and Seller indicating its approval or rejection of the waiver request within the twenty (20) Business Day period or extended deadline, Seller’s request shall be deemed rejected. Any Shortfall YearsAmounts excused by the IPA pursuant to this Section 0 shall no longer be deemed a Shortfall YearAmount. For such Event of Default, Buyer shall be entitled to payment by Seller in the amount of the Collateral Requirement as Buyer’s sole</p>	

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		and exclusive remedy.	
(4)(b) Downside risk based on severe underperformance	Draft Indexed REC Contract, Sections 4.1(g) and 9.2(k)	4.1(g) As specified in Section 0, an Event of Default shall be deemed to occur if five (5) or more Shortfall Years occurred and the cumulative sum of the Shortfall Amounts for all Shortfall Years, as such sum may be adjusted pursuant to Section Error! Reference source not found. or Section 0, equals or exceeds <u>five</u> two (52) times the Annual Quantity. Upon the occurrence of such Event of Default, Buyer shall terminate this Agreement twenty (20) Business Days after written notice by Buyer to Seller unless Seller demonstrates, within such twenty (20) Business Day period and to the satisfaction of Buyer in its reasonable discretion that such event has not occurred, has been cured, or the IPA has provided written notice to Buyer and Seller granting a waiver excusing such Shortfall Amounts or a portion of such Shortfall Amounts. Seller may request such waiver pursuant to Section 0. For such Event of Default, Buyer shall be entitled to payment by Seller in the amount of the Collateral Requirement. The Parties acknowledge that (A) Buyer shall be damaged by the failure of Seller to comply with the provisions set forth in this Section 0, (B) it would be impracticable or extremely difficult to determine the actual damages resulting therefrom, (C) the remedies specified herein are fair and reasonable and do not constitute a penalty and, (D) the remedy specified in this Section 0 shall be Buyer's sole and exclusive remedy in such Event of Default and, for the avoidance doubt, neither Buyer nor	As an alternative to the edits proposed to address Issue (4)(a), ██████ suggests reducing the threshold for an Event of Default associated with severe underperformance. For the same reasons as stated above (<i>i.e.</i> , how prospective lenders to such projects model performance in underwriting debt associated with the projects), the current threshold results in a P99 scenario indicating an Event of Default before the end of the term of the agreement. This materially reduces the amount of debt the lenders can underwrite, despite the fact that the statistical probability of a sustained P99 generation profile is near zero. █████ suggests the cumulative sum of the Shortfall Amounts for all Shortfall Years should equal or exceed five (5) times the Annual Quantity (in addition to the occurrence of five (5) or more Shortfall Years) to trigger an Event of Default.

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		<p>Seller shall be entitled to any Settlement Amount calculated pursuant to Section Error! Reference source not found. under such circumstance.</p> <p>***</p> <p>9.2(k) the occurrence of five (5) or more Shortfall Years and the cumulative sum of the Shortfall Amounts for all Shortfall Years, as such sum may be adjusted pursuant to Section Error! Reference source not found. or Section 0, equals or exceeds <u>five</u> two (5) times the Annual Quantity, in which case, Buyer shall terminate the Agreement twenty (20) Business Days after written notice by Buyer to Seller unless (i) Seller demonstrates, within such twenty (20) Business Day period and to the satisfaction of Buyer in its reasonable discretion, that such Event of Default has not occurred or has been cured or (ii) the IPA has provided written notice to Buyer and Seller granting a waiver excusing such Shortfall Amounts or a portion of such Shortfall Amounts. Upon Seller's receipt of such Buyer's written notice, Seller may provide a written request along with supporting documentation to the IPA requesting that a portion of or all of the Shortfall Amounts be excused; such written request shall be provided to the IPA no later than five (5) Business Days from the date of Buyer's written notice to Seller. Approval of waivers to Shortfall Amounts 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 sole discretion. For the avoidance of doubt, Buyer and Seller agree that the IPA has authority to make such a determination on good cause and to grant a waiver excusing Shortfall Amounts. Good cause may include long-term changes in weather patterns, serial defects in the Project's components, and other events outside of the control of Seller that impact the Project's ability to meet its</p>	

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		<p>Delivery Year Requirement. The approval of any such requests shall be at the IPA's sole discretion. If approved, the IPA shall provide to Buyer and Seller a written notice indicating its approval of the Seller's request and the Shortfall Amount that is being excused; such IPA's written notice shall be provided within the twenty (20) Business Day period from the date of Buyer's initial written notice to Seller indicated above in this section. Notwithstanding the foregoing, the IPA may extend the twenty (20) Business Day period by written notice to Buyer and Seller; provided that such written notice indicates the date which the IPA shall confirm whether it approves or rejects Seller's written request to waive any Shortfall Amounts. If the IPA does not provide a written notice to Buyer and Seller indicating its approval or rejection of the waiver request within the twenty (20) Business Day period or extended deadline, Seller's request shall be deemed rejected. Any Shortfall Amounts excused by the IPA pursuant to this Section 0 shall no longer be deemed a Shortfall Amount. For such Event of Default, Buyer shall be entitled to payment by Seller in the amount of the Collateral Requirement as Buyer's sole and exclusive remedy.</p>	
(4)(c) Downside risk based on severe underperformance	Draft Indexed REC Contract, Sections 2.1(a), 4.1(a), and 9.2(k)	<p>2.1(a) Renewable Energy Credits. <u>Except as specified in Section 9.2(k),</u> the Product to be Delivered by Seller and received by Buyer under this Agreement is RECs generated from the Project, for which summary information is specified in the Product Order. Seller may not substitute RECs generated from a generator other than the Project. For avoidance of doubt, Buyer is not purchasing Seller's Project and Buyer shall have no ownership interest in, or responsibility for, the Project. For avoidance of doubt, subject to Section Error! Reference source not found., there is no restriction on changes to the Nameplate</p>	<p>The edits for this Issue (4)(c) are to create an explicit cure mechanism in which replacement RECs are provided to address a Shortfall Amount by a separate project that can still count towards both the Buyer's and the State's RPS goals. While [REDACTED] appreciates the proposed revisions to Section 9.2(k), which allow the IPA to grant a waiver excusing such Shortfall Amounts or a portion of the Shortfall Amounts, this waiver is fully discretionary. In addition, it is still</p>

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		<p>Capacity of the Project during the Term of this Agreement; provided that if the Project is a Utility-Scale Wind Project or a Utility-Scale Solar Project, the Nameplate Capacity remains greater than 5,000 kilowatts.</p> <p>***</p> <p>4.1(a) <u>Except as specified in Section 9.2(k), a</u>All RECs Delivered to Buyer from Seller under this Agreement shall be associated with electric energy generated by the Project. For avoidance of doubt, with respect to a Project co-located with an energy storage facility, the RECs Delivered shall be associated with energy generated exclusively from the Project as measured by the Project's Revenue Quality Meter and not from any other electric source. Each Delivery shall be deemed a representation by Seller to Buyer that the Product meets the requirements specified in this Agreement.</p> <p>***</p> <p>9.2(k) the occurrence of five (5) or more Shortfall Years and the cumulative sum of the Shortfall Amounts for all Shortfall Years, as such sum may be adjusted pursuant to Section Error! Reference source not found. or Section 0, equals or exceeds <u>five</u>two (52) times the Annual Quantity, in which case, Buyer shall terminate the Agreement twenty (20) Business Days after written notice by Buyer to Seller unless (i) Seller demonstrates, within such twenty (20) Business Day period and to the satisfaction of Buyer in its reasonable discretion, that such Event of Default has not occurred or has been cured. <u>For purposes of curing such an Event of Default, Seller may provide RECs to Buyer from one or more Utility-Scale Solar Projects, Utility-Scale Wind Projects, Hydropower Projects, or Brownfield Solar Projects (in each case other</u></p>	<p>unclear how Seller can cure such Event of Default under Section 9.2(k)(i). [REDACTED] proposes to clarify how Seller can cure for underdelivery due to weather or other circumstances outside of Seller's control. A clear, objective way to cure the default provides certainty to the Project and financing parties.</p> <p>In this proposed cure mechanism, Seller would provide the RECs for free in order to cure the Event of Default and these RECs would be additive (not otherwise counted toward the RPS requirements if not transferred to the Buyer utilities for retirement due to the Event of Default). As a result, in this scenario the requirement of Sections 2.1(a) and 4.1(a) should be qualified to not apply to this proposed cure mechanism.</p> <p>In addition, the edits for this Issue (4)(c) include increasing the trigger for an Event of Default to five times the Annual Quantity. If the IPA chooses to retain this structure to incentivize REC delivery (instead of adopting the proposals in Issues (4)(a) and (b)), this change is necessary to finance these projects efficiently and on reasonable terms.</p>

COMMENTS OF [REDACTED]

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		<p><u>than the Project) that meets the requirements of Section 2.2(a) through 2.2(i).</u> or (ii) the IPA has provided written notice to Buyer and Seller granting a waiver excusing such Shortfall Amounts or a portion of such Shortfall Amounts. Upon Seller’s receipt of such Buyer’s written notice, Seller may provide a written request along with supporting documentation to the IPA requesting that a portion of or all of the Shortfall Amounts be excused; such written request shall be provided to the IPA no later than five (5) Business Days from the date of Buyer’s written notice to Seller. Approval of waivers to Shortfall Amounts 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 sole discretion. For the avoidance of doubt, Buyer and Seller agree that the IPA has authority to make such a determination on good cause and to grant a waiver excusing Shortfall Amounts. Good cause may include long-term changes in weather patterns, serial defects in the Project’s components, and other events outside of the control of Seller that impact the Project’s ability to meet its Delivery Year Requirement. The approval of any such requests shall be at the IPA’s sole discretion. If approved, the IPA shall provide to Buyer and Seller a written notice indicating its approval of the Seller’s request and the Shortfall Amount that is being excused; such IPA’s written notice shall be provided within the twenty (20) Business Day period from the date of Buyer’s initial written notice to Seller indicated above in this section. Notwithstanding the foregoing, the IPA may extend the twenty (20) Business Day period by written notice to Buyer and Seller; provided that such written notice indicates the date which the IPA shall confirm whether it approves or rejects Seller’s written request to waive any Shortfall Amounts. If the IPA does</p>	<p>These proposed changes are important to address the same challenges in project financing as Issue (4)(a) and (b) above.</p>

COMMENTS OF [REDACTED]

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		<p>not provide a written notice to Buyer and Seller indicating its approval or rejection of the waiver request within the twenty (20) Business Day period or extended deadline, Seller’s request shall be deemed rejected. Any Shortfall Amounts excused by the IPA pursuant to this Section 0 shall no longer be deemed a Shortfall Amount. For such Event of Default, Buyer shall be entitled to payment by Seller in the amount of the Collateral Requirement as Buyer’s sole and exclusive remedy.</p>	
<p>(5)(a) Uncertainty regarding compliance with MES obligations</p>	<p>Draft Indexed REC Contract, Section 6.4(d)</p>	<p>6.4(d) The IPA is the entity responsible for evaluating the submissions of Seller related to the Minimum Equity Standard and for confirming Seller’s compliance with the Minimum Equity Standard requirements, and the Parties acknowledge and agree that the IPA shall have the right to request more information from Seller related to the Minimum Equity Standard requirements and to grant waivers or impose remedies should Seller fail to comply with the Minimum Equity Standard or the reporting requirements in this Section Error! Reference source not found. in accordance with the IPA’s long term renewable resources procurement plan as approved by the Illinois Commerce Commission in ICC Docket No. 23-0714. <u>For purposes of granting waivers of Minimum Equity Standard requirements, the IPA will appraise efforts to achieve compliance against a standardized, public scoring guide or rubric.</u> Unless instructed by the IPA and consistent with the IPA’s long term renewable resources procurement plan as approved by the Illinois Commerce Commission in ICC Docket No. 23-0714, no other remedies are contemplated under this Agreement for Seller’s failure to comply with the Minimum Equity Standard requirements as set forth in this Section Error! Reference source not found.. For avoidance of doubt, if Seller is an Equity Eligible Contractor, then</p>	<p>The mechanism for obtaining a waiver of the MES standards provides a number of required or suggested actions and steps that a winning bidder should take prior, and in order, to obtain a waiver of the MES obligations.</p> <p>These edits in this Issue (5)(a) are to provide for such a scoring guide or rubric, which the IPA would need to develop pursuant to its policy preferences and interpretation of relevant statutory authority.</p> <p>While no successful or potential bidder intends to avoid fulfilling their MES obligations, the current system does not give a pathway to the lenders to a bidder to be assured in due diligence that the bidder will obtain a waiver, if, after best efforts, the bidder is ultimately unable to comply with the MES.</p> <p>In addition to lending parties, unions (who must be engaged due to project labor agreement requirements) also want to make sure that they are doing what is necessary to</p>

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Issue	Document and Section	Discussion Item/Text with Redline Changes	Comments
		<p>Seller shall be deemed to have met the minimum percentage of the Project Workforce indicated in the Product Order for the Minimum Equity Standard. The foregoing shall apply only if Seller is an Equity Eligible Contractor and this does not apply if Seller relies on a subcontractor that is an Equity Eligible Contractor, but itself is not an Equity Eligible Contractor. Further, if Seller’s subcontractor is an Equity Eligible Contractor, then each Equity Eligible Person of Seller’s subcontractor shall be counted 1.5 times toward meeting the Minimum Equity Standard; for avoidance of doubt, the foregoing does not apply to meeting the higher equity commitments pursuant to Section Error! Reference source not found.</p>	<p>have a waiver granted (assuming they are unable to obtain compliance with the MES requirements despite efforts).</p> <p>To the extent that the steps and actions spelled out in the waiver requirements for the MES are policy goals of the State, providing a scoring guide would enhance the likelihood that a winning bidder is able to craft efforts so that even if they are ultimately unable to comply with the MES, they made considerable efforts the IPA believes are meaningful. In addition, a lender or other financing party could then better diligence a MES compliance plan and more fully assess a strong compliance plan.</p> <p>Access to the Energy Workforce Portal has proven difficult or impossible for unions who seek that information in connection with MES compliance when working on projects awarded an Indexed REC Contract. Guidance on how unions may access that portal would be very helpful for winning bidders (some of which are not Approved Vendors or Designees under the ABP) and unions working with those bidders.</p>
(5)(b) Uncertainty regarding compliance with MES obligations	Draft Indexed REC Contract, Section 6.4(b)	6.4(b) Requests for waivers may be submitted to the IPA during the Term of this Agreement and no later than Delivery of the first REC pursuant to Section 2.4, which approval <u>or denial</u> shall be at the sole discretion of the IPA <u>and provided within [] days of submission of the waiver request</u> . Unless a waiver has been granted by the IPA, during a delivery year in which Construction Activities are	Approved Vendors, contractors (both general contractors and subcontractors) and unions would benefit significantly from having a designated IPA representative to field and address questions related to MES compliance. This is particularly true given that the hiring process for projects is

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		<p>carried out, the Project Workforce shall consist of Equity Eligible Persons or Equity Eligible Contractors such that these Equity Eligible Persons or Equity Eligible Contractors comprise at least the minimum percentage of the Project Workforce indicated in the Product Order for the Minimum Equity Standard. For avoidance of doubt, the minimum percentage indicated in the Product Order for the Minimum Equity Standard shall not change during the Term of this Agreement. <u>The IPA has a designated representative available to address questions related to Minimum Equity Standard compliance, who can be contacted at [REDACTED].</u></p>	<p>typically very fast, sometimes as short as 1-2 weeks.</p> <p>The edits in this Issue (5)(b) add language indicating that such a representative may be contacted, but the IPA would need to designate such a representative in its discretion as the entity responsible for “evaluating the submissions of Seller related to the Minimum Equity Standard and for confirming Seller’s compliance with the Minimum Equity Standard requirements” pursuant to Section 6.4(d) of the draft Indexed REC Contract. In addition, [REDACTED] proposes a timeline by which the IPA must respond to the waiver request.</p>

COMMENTS OF

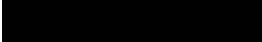


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ATTACHMENT A

CONFIDENTIAL

Attachment A - CONFIDENTIAL

 seeks protection of the following confidential and proprietary information contained in Attachment A - CONFIDENTIAL to the maximum extent allowed pursuant to Section 1-120 of the Illinois Power Agency Act and 2 Ill. Admin. Code § 3700.430(c) and other applicable law.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]