

[Commenter 3 Letterhead]

Illinois Power Agency
160 North LaSalle Street
Chicago, Illinois 60601

InClime, Inc. - Program Administrator

Comments on Draft Program Guidebook

[Commenter 3] thanks the IPA and InClime for the opportunity to comment on the Draft REC Contract. We hope that our comments are helpful in developing an effective contract for the ABP.

The bulk of our comments are included in our redline Draft Contract. These comments are to cover a few additional topics that were either too long or did not fit into any one section of the contract.

Second Round of Comments and Workshop

Due to the complex nature of these contracts and the program that they encompass it is imperative that there is at least a second round of comments on the Contract. This Contract is likely to be used to allocate hundreds of millions of ratepayer dollars before it is revised. Stakeholders should have the opportunity to respond to others' comments and contract changes before it is finalized to help mitigate program risk and unintended consequences. **[Commenter 3]** believes that a workshop and second round of comments can be held and not delay the program opening, however, if given the option between a second round of contract comments and a program delay, **[Commenter 3]** would suggest that the program is delayed.

We would additionally like to request a workshop be held to go through the mechanics of the contract and the collateral requirements. The complex interplay between the Approved Vendors portfolio, the Contract, the Designated Systems, the batches, and the system level documents leaves room for misunderstanding and confusion. There is not any consensus in the industry about what level this contract applies to (AV, Designated System, or batch) and a workshop would go a long way to help explain these complexities.

[Commenter 3] has made its best efforts to comment on this contract as we envision it being implemented.

However, if our understanding of how the contract and collateral requirements changes given additional feedback in a workshop or other communication from the IPA we may have other concerns or modifications to our comments.

General Collateral Concerns

[Commenter 3] understands and fully supports the need for collateral in the REC Contract. We understand that the 5% collateral is a part of the final LTRRPP and will be used in the implementation of this program. Our concerns below are about the mechanics used to apply the collateral requirements and the calculation of collateral and collateral drawdown.

It is very important that the contract has protections in place to punish bad actors and prevent gaming.

[Commenter 3 address, and contact information]

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However, there may be some significant unintended consequences resultant of some of the collateral provisions we comment on below. In order to protect against future year collateral drawdown Approved Vendors will need to charge additional fees to system owners and or withhold REC payments from system owners. The less leeway there is in the collateral requirements and the harsher the punishments are for under delivery of RECS the more expensive compliance with the Contract will be.

Our concern is that very strict delivery requirements in the ABI REC contract is not aligned with the intention of the LTRRPP. These strict requirements will result in less money going to the system owner and more money being spent on risk mitigation and contract compliance. This will reduce the benefit that system owners receive from the ABP with very little increase the consistency of REC deliveries made to the utilities.

The LTRRPP instructed the IPA to not even attempt to achieve the percentage based renewables goals of the RPS. Hitting the REC delivery targets for any given delivery year is not a priority in the LTRRPP. Instead the building of new renewables was designated as the main target of the LTRRPP. Because this was clearly set as the priority it seems like the contract terms should lean toward favoring new build of renewables and not toward a marginal increase in the consistency of RECS delivered to the utility. To reiterate, strict collateral and delivery requirements will harm system owners and in our interpretation do not contribute to the goals of the LTRRPP.

Collateral Drawdown Even for Systems that Hit 15 Year Delivery Targets (Section 6(d))

It is our interpretation of the contract that system and portfolios that hit or exceed the full 15 year delivery would still be subject to non-refundable collateral drawdowns. This calculation of a drawdown essentially results in a fine being paid by an AV or system owner for low solar production years.

To continue the example from Exhibit G:

Step 4: Allocate Surplus RECs from Surplus REC Account to Shortfall Amounts

Designated System ID	Contract Price (\$/REC)	Shortfall Amount	Surplus RECs applied	Drawdown REC Quantity	Drawdown Payment
1000	73.23	-3	0	-3	-\$219.69
1001	65.61	-5	3	-2	-\$131.22
1003	48.07	-6	6	0	0

In this case the three systems would be required to pay an additional \$350.91 to the utility as a penalty for under delivery.

If then over the duration of the contract the three systems deliver a total of 7 surplus RECS the utility will have received both an additional REC and a payment of \$350.91. This clearly harms systems without providing any additional benefit to the program.

[Committer 3] would like to also note that low solar production years (such as 2018) will impact almost all systems in a portfolio so it is more likely that there are not other systems with surplus RECS from the portfolio to fill in the missed production.

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We did not propose specific language to address this concern because it is a structural rethinking of how collateral is calculated. The best option would be a change in the calculation of collateral drawdown. If change is not made we would like to ask that at a minimum that additional collateral be refunded if systems or the portfolio hits its delivery targets in later years. We are happy to provide additional feedback or a suggested calculation method, but we wanted the IPA to have a chance to think through the implications of this collateral calculation method and input from other stakeholders on this topic and decide if they wish to change this method.

5% Collateral Requirement not Based on Remaining Contract Value

The 5% collateral requirement calculation does not seem to match the language used in the LTRRPP the definition of Collateral Requirement in the Draft Contract does not reduce over time as RECS are delivered:

The following is added as Section 1.15.2:

““Collateral Requirement” means, (i) with respect to a Designated System that is not Energized, an amount equal to five percent (5%) of the multiplicative product of the (a) Proposed Price and (b) Designated System Expected Maximum REC Quantity; and means, (ii) with respect to a Designated System that is Energized, an amount equal to five percent (5%) of the multiplicative product of the (a) Contract Price and (b) Designated System Contract Maximum REC Quantity.”

However the LTRRPP states 5% of the remaining portfolio value not 5% of the original contract value:

LTRRPP - pg 136

“Nonetheless, an Approved Vendor will be responsible for delivering RECs each year under its contracts (subject to the reduction options described in the following Section). On an annual basis, failure to deliver RECs for the previous year will result in the utility drawing on the collateral to be compensated for the undelivered RECs from that year that already received payment. After any such drawing the Approved Vendor will need to restore its collateral level to bring it back up to the 5% of remaining value of the portfolio within 90 days.”

For this reason and our reasons listed above we suggest that the language in our redline comments be adopted for this section.

Collateral Drawdown Assigned to Lowed REC Value

[Commenter 3] understand the IPAs initial approach to assigning Surplus RECS to the lowest value first. However, there are some unintended situations that could arise from this arrangement. The first is that a large underperforming system could essentially rob surplus RECS from higher priced contracts. Then when there is a down year in solar production collateral is owed to the utility at the higher priced contract rate, even though over the life of the systems the higher priced contracts have delivered a higher percentage of their contracted value than the lower priced contracts.

This issue still exists when all systems are underperforming equally, such as in a low solar production year. Please see the calculation below for an example:

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Current Contract Calculation Method

System ID	Contract REC Price	Surplus REC Account	Surplus/Under Delivery Current Year	Surplus Assignment Under Current Contract	Current Contract Calculation of Collateral
100	\$85.10	1	-1	-1	\$85.10
101	\$52.54	2	-1	-1	\$52.54
1003	\$46.85	1	-1	-1	\$46.85
104	\$43.42	1	-5	0	\$0.00
Total		5	-8	-3	\$184.49

Proposed Contract Calculation Method

System ID	Contract REC Price	Surplus REC Account	Surplus/Under Delivery Current Year	Surplus Assignment Under Current Contract	Current Contract Calculation of Collateral
100	\$85.10	1	-1	0	\$0.00
101	\$52.54	2	-1	0	\$0.00
1003	\$46.85	1	-1	0	\$0.00
104	\$43.42	1	-5	0	\$130.26
Total		5	-8	-3	\$130.26

We used simple numbers here to illustrate this point, but over the contract lifetime this is exacerbated. This is especially true when a portfolio has a large number of small systems that perform well and a few under-performing larger systems. It is also useful to note that in the current contract method the collateral drawdown is for a larger value than the payment received for RECS that were not delivered. This only adds costs to AV's and System Owners without providing any benefits to the program.

To remedy this we suggest matching the surplus RECS with the same or closest to the same Contract Price to the facility that generated them. There should also be a system by system true up at the end of the 15 year period if requested by the Approved Vendor. This would prevent the AV or system owner from being penalized by more than the original REC payments.

Force Majeure

[Committer 3] is unsure of the best section of the contract to include these modifications. We have included them in the Force Majeure section, but they could be effectively addressed in a different section of the contract.

Several circumstances could arise where the Approved Vendor is required to payback the entire remaining contract value where it is of no fault of the Approved Vendor, Developer, or System Owner. The first is the death of a homeowner. This would result in system production being unused until

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someone else moves into the home and meter reads being extremely difficult or impossible to obtain. If it takes more than a year for the situation to be resolved the contract would be forfeited and leave the Approved Vendor to either pay for the remaining cost of the REC contract or try to recoup the contract value from the deceased estate. Neither of these options seem to make sense in this circumstance.

The sale of a home could also result in an unenforceable contract between the Approved Vendor and the original home owner. In this case the new homeowner receives no benefit from reporting meter readings for the system, the original home owner has no access to the property to do so, and the Approved Vendor has little remedy to resolve the situation other than the original homeowner.

To help mitigate the risk in these situations [Commenter 3] recommends that the Force Majeure language be expanded as defined in our redline comments.

Thank you for your consideration of our comments. We look forward to working toward a successful program opening.

Sincerely,

[Commenter 3 representative's contact information]

[Commenter 3 address, and contact information]