January 18, 2019

[Submitter 3]
[Submitter 3 address]

Re: Adjustable Block Program– Second Draft REC Contract Comments

[Submitter 3] appreciates the opportunity to comment on the revised draft of the Renewable Energy Credit Agreement released on January 11th ("REC Contract").

We are generally supportive of the comments submitted by [redacted party] on even date herewith (the "[redacted party] Comments"), and would like to offer the following additional comments and proposed language:

1. Assignment

As noted by many parties throughout the REC Contract review process, the assignment language is critical to a functioning market for financing counterparties. While the REC Contract moves in the right direction from the initial draft, it does not properly distinguish between direct and collateral assignment, and includes a few provisions that are off market and will be concerning to financing parties. As requested by the IPA,

a. Distinguishing Collateral from Direct Assignment

The Long Term Renewable Resources Procurement Plan ("LTRRPP") speaks to requirements around direct assignment – that is, transfer of a REC Contract from the existing Seller to a new counterparty who assumes the obligations thereunder.[1,2] It thus follows that the IPA, e.g., in framing this issue in the announcement, is concerned about ensuring that "the new counterparty (the assignee) is fully capable of fulfilling the responsibilities of an Approved Vendor…"

The key distinction is that a collateral assignee does not become party to this agreement. It is a contingent right, whereby any related direct transfer of the agreement from Seller to its

[1] "The key consideration is that the Approved Vendor is ultimately responsible for the fulfillment of contractual obligations, including any obligations delegated to subcontractors, in a manner consistent with the requirements of this Plan and of the Approved Vendor's contract with the counterparty utility" LTRRPP at 118.

[2] "Approved Vendors will be the entity that is the contractual counterparty with the utility, and thus will be the entity that receives payments from the utility for REC deliveries as contract obligations are met." Ibid.

financing party would only occur in the event such financier exercises its remedies under a financing default scenario, at which point such remedy may result in the financing party or its affiliate/designee becoming a party to the agreement and as a result subject to the Approved Vendor requirements.

As such, financing parties (particularly secured lenders) anticipate that while they may be a collateral assignee, this does not bestow upon them any liabilities or obligations unless and until the relevant collateral (i.e., the REC Contract) is directly transferred to such financing party, including in a foreclosure scenario. Therefore, the revised assignment provisions should include a few adjustments to reflect this critical distinction between direct and collateral assignment, as described below, with proposed language following (paragraph numbers denote paragraphs in the revised definition of Section 9.2 (Assignment):

- 3rd paragraph, clause (ii): This provision should clarify that only direct assignments be restricted to no earlier than 30 days after the Trade Date. Otherwise, developers would be precluded from placing secured financing on a project until after ICC approval of the REC Contract, which could restrict the development of project-financed portfolios.

- 3rd paragraph, clause (a): We suggest making a distinction in the parenthetical at the end to clarify that relief from liability is the identifying factor for direct vs. collateral assignment.

- 3rd paragraph, end of the penultimate sentence: It is critical to remove the requirement that an assignment will only qualify under the financing carveout in clause (a) if determined as such by Buyer. Financing parties will consider a provision allowing for Buyer determination of direct vs. collateral assignment as effectively removing the carveouts for collateral assignment. Providing for utility determination in this situation is off-market, as there is typically simply a carveout for these type of financing transfers. Without this revision, the remainder of the important protections for collateral assignment will arguably be rendered moot.

- 3rd paragraph, last sentence: As described in the [redacted party] Comments, the REC Contract should not require a collateral assignee to provide financial and settlement information since they are not counterparty to the agreement.

- 4th paragraph, first sentence: This paragraph could be clarified by adding "direct" in the opening. As noted above, banks will not finance projects if they have to qualify as an Approved Vendor just to be a collateral assignee.

- 4th paragraph: Since failure to abide by the 120 grace period results in default, this provision should make clear what date the 120 days key off; we've suggested the date of any such foreclosure or exercise of remedies, and are supportive of the [redacted party] Comments to extend this period to 180 days.

a. Proposed Transfer Fees

Requiring payment from Seller to Buyer as a condition to assignment is off market and should be deleted. First, this obligation is not symmetric and only applies to Seller; there is no corresponding obligation for Buyer's assignment. In addition, there is not a clear reason why a transfer fee should be required. A fee will not dissuade multiple transfers that are otherwise economic or rational. Finally, this requirement adds administrative burdens to the transfer process and potentially lead to "foot faults" if, for example, there is an issue/delay in paying the relevant fee. The utilities and IPA should be comfortable that the consent rights (subject to clearly defined carveouts) are sufficient to protect against excessive transfers of these agreements. These transfers are normal in the ordinary course of project development. As a result, [Submitter 3] recommends that the fee provision be deleted.

In order to implement the comments above, we recommend the following revisions to Section 13(j):

"The following changes are made to Article 9:

Section 9.1 shall not apply.

Section 9.2 is replaced in its entirety with the following:

"9.2 Assignment.

This Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the successors and assignees of the Parties, except that no assignment, pledge or other transfer of this Agreement by either Party shall operate to release the assignor, pledger, or transferor from any of its obligations under this Agreement unless the other Party (or its successors or assigns), except where otherwise provided for below, expressly releases the assignor, pledger, or transferor from its obligations thereunder, provided that such release shall not be unreasonably withheld or delayed.

Buyer may not assign Buyer's rights and obligations under the Agreement without the prior written consent of the Seller, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that Buyer may, without the consent of Seller, (i) transfer or assign this Agreement to an Affiliate of Buyer which is creditworthy on the Effective Date, or (ii) transfer or

assign this Agreement to any person or entity succeeding to all or substantially all of the assets of Buyer that is creditworthy on the Effective Date.

Seller may not assign Seller's rights and obligations under the Agreement without the prior written consent of the Buyer, which consent shall not be unreasonably withheld, conditioned or delayed; provided that any such assignment (i) shall be a minimum of one or more Product Orders in their entirety and (ii) in the case of a direct assignment, may be made no earlier than thirty (30) days after the Trade Date of the applicable Product Order(s); and provided further, that Seller may, without the consent of Buyer, (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds with respect to the Agreement or applicable Product Order(s), in connection with any financing or other financial arrangements with respect to the Agreement or Product Order(s) (and without relieving itself from liability hereunder, a collateral assignment) or (b) transfer or assign this Agreement or a Product Order to an entity already registered with the IPA as an Approved Vendor having a valid REC Contract with Buyer through the ABP~~; whether or not an assignment is made in connection with a financing or a financial arrangement as specified in (a) above, shall be determined at the reasonable discretion of Buyer~~. In the case of any direct assignment made by Seller without the consent of Buyer, the assignor is required to notify Buyer of any such assignment, and provide Buyer with all pertinent ~~financial, settlement, and~~ contact information with respect to the assignee.

As required by the ABP, Seller's rights and obligations under the Agreement may only be directly assigned or transferred to Approved Vendors. However, if the assignee is a financing party that has foreclosed on collateral (including this Agreement) pledged or assigned as described above, the requirement that such assignee be approved by the IPA as an Approved Vendor shall be waived for up to one hundred twenty (120) calendar days following the date of any such foreclosure. Failure of such assignee to become an Approved Vendor or to assign this Agreement to an Approved Vendor within such one hundred twenty (120) day period constitutes an Event of Default for the Agreement between Buyer and the assignee.

In the event of an assignment by Seller permitted by this Agreement, any Performance Assurance posted in the form of cash may constitute the Performance Assurance applicable to the assignee for the transferred Product Order(s) and will continue to be held by Buyer; alternatively, Seller's Performance Assurance with respect to the Designated Systems in the transferred Product Order(s) may be refunded upon request if and when the assignee posts replacement Performance Assurance. In the case of Performance

Assurance in the form of a Letter of Credit, Seller's original Performance Assurance shall remain in place with respect to the transferred Product Order(s) until the assignee posts replacement Performance Assurance consistent with Section 4.3 of this Agreement.

In the event that the assignee is (a) an Approved Vendor and (b) already a counterparty under a separate ABP REC Contract with Buyer, then any Product Order(s) so transferred will constitute Product Order(s) under such assignee's existing REC Contract under the ABP with Buyer, with the portion of the Performance Assurance Amount applicable to such assignee's assigned Product Orders calculated based on the Performance Assurance Amount applicable to such assignee's entire portfolio of Product Orders and the Performance Assurance Amount that has already been posted under such assignee's existing REC Contract under the ABP with Buyer.

~~In the event Seller makes an assignment of Product Order(s) under this Agreement or an assignment of the Agreement in its entirety, a fee of one thousand five hundred dollars ($1,500) will apply payable to the Buyer at the time of such assignment; provided that, if such assignment is to an Affiliate of Seller, no such fee shall apply for the first assignment only. Any subsequent assignments of Product Order(s) under this Agreement by Seller will have a fee of five thousand dollars ($5,000) payable to the Buyer at the time of such assignment.~~

For purposes of calculating assignment fees, if the assignee is a financing party that has foreclosed on its interests collaterally assigned as described above and that financing party reassigns Product Orders to an Approved Vendor within the permitted one hundred twenty (120) day period, both the assignment to that financing party and the reassignment to the Approved Vendor shall constitute a single assignment.

For avoidance of doubt, in the event of an assignment by Seller, Surplus RECs shall remain in the Surplus REC Account under this Agreement regardless of whether such Surplus RECs were generated from one of more Designated Systems being transferred by Seller; provided, that if Seller is transferring this Agreement in its entirety (with all remaining Product Orders thereunder), then in such instance the Surplus RECs would also transfer and such assignee would assume such Surplus REC Account(s) with respect to such Designated System(s).

This Agreement will bind each Party's successors and permitted assigns. Any attempted assignment in violation of this provision will be void ab initio."

2. Letter of Credit

[Submitter 3] strongly supports the recommendation in the [redacted party] Comments to revise the Letter of Credit language to allow for the normal course variation of forms between banks. Because it is not possible to account for these variations in the REC Contract itself, we cannot suggest specific revisions to the language in the proposed Letter of Credit forms. However we understand it is important to maintain the substantive provisions of the proposed forms.
Accordingly, [Submitter 3] would recommend the following revision to Section 13(b) of the REC Contract:

"The following is added as Section 1.37.5:

> ""Letter of Credit" means an irrevocable, transferable standby letter of credit issued by a major U.S. commercial bank or the U.S. branch office or U.S. agency office of a foreign bank ~~utilizing~~ in substantially in the form of either of the ~~forms~~ options attached as Exhibit E to the REC Contract.""

3. Seller's Performance Assurance

We note that a number of parties have indicated interest in adjusting the Seller's Performance Assurance mechanics to coordinate with current uncertainty about interconnection costs. Ameren and ComEd have repeatedly emphasized the likelihood that their initial interconnection cost estimates will change during the restudy process. Neither Ameren nor ComEd have finalized those processes, nor shared such final processes with developers. Moreover, all parties are on notice that interconnection costs will change simply as a result of projects moving in queue based on the lottery results. As a result, it is nearly certain that projects which appear to have financeable interconnection costs today will be unfinanceable as a result of the restudy, at which point the entire Seller's Performance Assurance will be forfeit. [Submitter 3] believes that the program should take steps to balance the risks and harms that are almost certain to result.

[Submitter 3] understands that the IPA must continue to strike a balance between developer cost certainty, workable processes, and minimizing incentives for developers to submit projects that are unlikely to be constructed. Throughout the ABP process we have supported measures to dissuade developers from submitting speculative projects, and we appreciate the steps that the IPA has taken to strengthen the ABP along those lines. Given that the IPA has taken these additional steps to minimize speculative projects, it is worth considering whether we can better align developer and utility decision-making regarding which projects will move forward. We support an adjustment to the mechanics around Seller's Performance Assurance that makes at least a portion of such assurance refundable until the relevant utility has released a cost estimate as a result of the interconnection restudy process, and we have signed onto comments recommending as much.

In addition, [Submitter 3] believes it would be reasonable for a portion of the Seller's Performance Assurance to be nonfundable under any circumstance, in order to further ensure that developers are submitting projects with a high likelihood of being built given what they know about the interconnection costs and queues at the time of application for a REC award. We believe that designating a portion of the Seller's Performance Assurance of, for instance, 25% of the amount would balance the benefits of a refundable deposit until interconnection costs are more certain with the concern over speculative projects being submitted to the program. In the case of a typical 2MW community solar project, this would amount to a $50,000 nonrefundable deposit, which would dissuade developers with even the deepest of balance sheets from submitting speculative projects.

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Thank you for your consideration.