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Comments on Update to REC Contract

Thank you for the opportunity to provide stakeholder feedback. We appreciate the questions asked in the request and look forward to the updated contract created as a result of this process.

Responses to questions in stakeholder feedback request:

a. The Agency is considering shortening and simplifying the REC Contract (and, if possible, synthesizing the contract into a single set of terms and conditions). This would remove the reliance of a coversheet to modify existing provisions or remove inapplicable provisions in the ABA-EMA-ACORE Master REC Purchase and Sale Agreement. What are key considerations as the Agency undertakes to redraft the REC Contract?

Although this was a major issue when the REC Contract was first developed, the market has adapted and is now used to the current contract structure. We support changes to the REC contract and fixes along the lines outlined in this document, but do not feel a full overhaul of the structure of the contract is necessary at this point.

b. Are there other contract forms that you have used or reviewed from other jurisdictions that could serve as a basis for updating the contract structure for the ABP? What are the advantages of these other contract forms?

As stated above, we find it best to work off of the contract form that the market has become familiar with instead of starting over whole cloth with a new contract template.

c. The January 2019 REC Contract is used for both distributed generation projects and community solar projects, with numerous provisions specific to either distributed generation projects or community solar projects. Should there be separate contracts used for distributed generation projects and community solar projects?

Even though there are many community solar only requirements and stipulations in the current contract we would prefer to keep one master contract for both DG and CS projects. There are already a number of project level cover-sheets and reporting requirements. We think that the mechanics of having additional Master Contracts for each Approved Vendor would only serve to make the administration of the program more complicated. Given that systems already have system and batch level requirements limiting the number of Master Contracts per utility per Approved Vendor is preferable.

d. Various exhibits have been developed to record the progress of projects included in the REC delivery contract and to implement the requirements of the ABP. Do you have any specific comments on any of the exhibits appended to the January 2019 REC Contract (such as the form of the annual report or the Schedules to the Product Order)? Are there any which you believe are unnecessary? Are there any additional exhibits which should be included?

We have found the exhibits themselves to be totally adequate and would prefer they not change substantially. However, we would like to request a CSV or spreadsheet copy of the information that is sent out via cover-sheet only. This would be very helpful, especially for batches with a large number of systems and as Approved Vendors portfolios of projects grow.

Also, the 6 Month Project Update does not seem to be particularly useful. The process for filing the updates is relatively easy, but it is also one extra requirement that adds some additional administrative work and complication without seeming to provide much additional useful information about the system.

2. Removal of Projects for convenience at the Approved Vendor's Request. The January 2019 REC Contract requires each project to meet certain development milestones, the failure of which will lead to the removal of the project from the REC contract. The Agency recognizes that in some cases, the developer may learn that development of the project is no longer feasible in advance of the energization deadline and that it would be sensible at such point to remove the project from the REC contract (subject to penalties if applicable). Under the January 2019 REC Contract, prior to the ICC's Order in Docket No. 19-0995, such a project could not be removed from the contract until contract requirements related to the Approved Vendor meeting the project's energization deadline were not timely met. The Agency will introduce provisions that would allow the Approved Vendor to make requests to Buyer for the removal of the project from

the REC Contract subject to applicable penalties such as the forfeiture of collateral. In introducing such provisions, are there specific issues that the Agency should consider? Are there other reasons that the Agency should consider for allowing the Approved Vendor to request the removal of a project from the contract or for allowing an early termination of the contract for convenience (subject to applicable penalties)?

It would also be helpful to have a mid-contract term buyout provision. For example if a property is sold part way through the 15 year contract and the new owner does not want to deal with REC delivery requirements it makes sense for the contract to be terminated at that point. I believe it can currently be done in the current REC Contract by reducing the remaining REC quantity to zero, but it is not a clean exit to the contract.

7. Other Pertinent Issues. Are there other pertinent issues to consider or areas where the January 2019 REC Contract has proven to be complex or inflexible in ways that may not benefit the Program? Do you have specific feedback on sections such as Extensions (Section 5(b)), Treatment of Performance Assurance in Connection with Interconnection Cost Estimates (Section 4.3(b)), Force Majeure (Article 6) or Assignments (Section 9.2) of the January 2019 REC Contract?

The method of collateral calculations especially combining the surplus RECS from all systems held by an AV into one pool is a significant issue in this contract. There are certainly some benefits to portfolio level delivery requirements, and we would not want to lose the ability to combine REC delivery requirements for many systems in our portfolio, but it would be helpful if there were some changes to the way these provisions work.

To summarize the issue systems with higher priced surplus RECS are penalized when they are assigned to fill shortfalls on lower priced REC contracts. Also, weather fluctuations make it likely that many systems that do not under deliver over a 15 year period will still have collateral drawdowns occur over the course of the contract. We have described these issues in both LTRRPP proceedings and all previous rounds of contract comments. To avoid beating a dead horse we will not go into full detail again, but will happily provide more detail to the extent if it would be helpful.

Additionally these issues do not just impact solar developers and Approved Vendors, but also impact system owners including homeowners. The risks in the current collateral drawdown and clawback provisions are reflected in higher lease and PPA rates for those system types. It is often reflected even more directly in cash sales as the delivery obligation must be passed onto the system owner who is often a homeowner or small business owner.

Two help manage the collateral risk in the REC contract we suggest two options:

The first is to allow for a 2 year period after the 15 year duration of the REC contract is up to deliver RECS that were not generated during the standard term of the contract and recover the collateral that was drawn down for those under deliveries. This would not trigger any additional REC payments to that system, but instead would allow it to recoup some or all of the money that was paid as collateral during the initial 15 years of the contract.

We understand that the RECS delivered in after the 15 year term would not match the energy year where the original REC shortfall occurred. However, this does give the utility an option for retiring the correct amount of RECS corresponding to the given system. It also gives the system owner an opportunity to recover collateral that was paid during the course of contract duration.

The second option we would suggest is lowering the threshold at which a collateral drawdown occurs. Instead of a 1 REC shortfall triggering a collateral shortfall a system would have to fall below a threshold percentage to trigger a collateral shortfall. We think 90% would be a good threshold if this suggestion is adopted. An example of how this would work is if a system had 20 RECS required in a given delivery year it would only trigger a collateral drawdown if the system dropped below 90% of that year's delivery requirement. So if that system delivered 18 or 19 RECS there would be no collateral drawdown, but if the system delivered 17 RECS there would be a collateral drawdown for the price of 1 REC.

Thank you again for the opportunity to give feedback on the contract update process. We look forward to continuing to participate as stakeholder as the updated contract is developed.

Sincerely,

Dylan DeBiasi