

From: [Commenter 1 representative]
Sent: Wednesday, December 19, 2018 11:51 AM
To: comments@illinois@abp.com
Cc: [Commenter 1 representative]
Subject: Comments on the Draft REC Contract Form

Dear ICC, IPA and other Stakeholders,

Upon review of the recently released REC contract for community solar projects in the Adjustable Block program, we have the following comments and recommendations:

Section 2.2 (Payment) states,

“...if the IPA delivers notice to Buyer that any portion of the Product Delivered by Seller does not conform to the requirements of this Agreement (such Product the “Non-Conforming Product”), Buyer’s payment obligation with respect to any Non-Conforming Product shall be excused.” This definition of “Non-Conforming Product” is broad and provides much room for interpretation. Solar projects, and the lenders and investors that finance these projects, rely on revenue-certainty to finance these projects. An overly broad definition of Non-Conforming Product raises concerns as to how the IPA may interpret a Non-Conforming Product, leaving the Seller potentially bearing disproportionate risk if Buyer is unduly excused from paying.

As such, we request a more specific definition of Non-Conforming Product, including, but not limited to adding language referring to a “material” breach of the requirements of this Agreement.

Section 6. Deliveries and Quantity (d) (iii)- (v)

- As a preferred solution, Developer should be able to utilize future Surplus RECs to recuperate Aggregate Drawdown Payments made by Seller explicitly for shortfalls in Years 1 and 2. The following language is proposed:
 - “Notwithstanding the foregoing, for years [1 -2] in which the Designated System that has a Delivery Year Shortfall Amount and before the estimate of future performance over a 3 year period is determined, any Surplus RECs in year(s) [2 or 3] shall be retroactively credited upon Seller’s request in the amount of the Aggregate Drawdown Payment Seller was required to replenish its Performance Assurance as provided herein.”
- Alternatively, if the preferred solution is not acceptable, then for years 1 -2, prior to a three-year rolling average having been established and a chance for accumulation of surplus RECs, we recommend that the IPA/ICC allow for weather-adjusting actual vs. expected REC production in those years prior to calculating a “Drawdown Payment”. Expected production is based on PVsyst or similar models, which generally use P50 as an average year’s production that will factor for years of under or over performance that level out over time. If year 1, year 2, or both suffer abnormally poor weather years for solar irradiation, the developer should not be punished for weather risk prior to an average being established. We recommend the following language:
 - “- Notwithstanding the foregoing, for years [1 -2] in which the Designated System that has a Delivery Year Shortfall Amount and before the estimate of future performance over a 3 year period is determined, if measured insolation in year 1 and 2 is less than the historical mean, then scale expected production for year 1 and 2 according to the fraction of lower insolation for the given year to the long term insolation mean from NREL NSRDB v4 Database.

Section 1.62.2 “Surplus REC”

- Please clarify how the virtual Surplus Account is expected to be administered. It would be the Seller’s understanding that on an annual basis they would transfer the contracted amount of Expected Delivery RECs to the Buyer and then maintain surplus RECs in their respective PJM-GATS or M-RETS account until a given year in which they need to cover a shortfall. In lieu of a final payment at the end of Year 15 for accumulated Surplus RECs, will remaining RECS, if any, be transferred back to the Seller for sale outside of the REC contract once all obligations have been fulfilled, or is the Seller expected to forfeit Surplus RECs remaining at that time?

Section 5.3 “Net Out of Settlement Amount”

- In reference to “plus any or all other amounts due to the Non-Defaulting party under this Agreement,..”, we suggest that the IPA/ICC limit the financial recourse for undelivered RECs to a reasonable timeframe to which the Buyer should be able to recontract for such RECs from an alternative project. For example, if default occurs in Year 5, Seller should not be expected to pay for the remaining 10 years of the REC contract value, when it is commercially reasonable for the Buyer to replace and contract for those undelivered RECs from an alternative project within one to two years.

Thank you,

[Commenter 1 representative’s contact information]