

[Commenter 9 Letterhead]

December 19, 2018

Via Electronic Mail

Anthony Star
Director, Illinois Power Agency
160 North LaSalle Street, Suite C-504
Chicago, Illinois 60601
comments@illinoisabp.com

Re: Comments on IPA's December 7 draft Renewable Energy Credit Agreement for Community Renewable Energy Generation Projects

Dear Director Star,

[Commenter 9] files this letter in response to the Illinois Power Agency's ("IPA") December 7 draft Renewable Energy Credit Agreement for Community Renewable Energy Generation Projects ("Community REC Agreement").

[Commenter 9] is a community solar farm developer/owner/operator that is [Commenter 9's information]. We are excited to participate in the Illinois community solar market, and respectfully request the following modifications to the draft Community REC Agreement.

1) The IPA and ABP should not require a Community Solar REC award winner to abandon its award merely because a project has been downsized by more than 5 percent.

The draft Community REC Agreement would place harsh penalties on a community-solar application that decreases its project-capacity size prior to energization, even if the size reduction is compelled or made reasonable by a revised utility interconnection study:¹

(f) . . . For all Designated Systems where the difference between the Actual Nameplate Capacity and the Proposed Nameplate Capacity is not within the greater of: +/-1kW or +/-5% of the Proposed Nameplate Capacity, as communicated by the IPA or its designee in writing to Buyer and Seller, **then such Designated System shall be removed from this REC Contract**, and Seller shall have the option for such Designated System to be submitted under a new ABP application.

While it may make sense to prohibit a significant increase in the project Nameplate Capacity, it is not fair or reasonable to effectively prohibit a community-solar project from

¹ December 7, 2018 Renewable Energy Credit Agreement, at 5 (emphasis added).

decreasing its size by more than 5 percent. There are multiple legitimate reasons why a project may need to be downsized after it submits its Proposed Nameplate Capacity. For example, the project may be downsized by the utility during the interconnection process, especially if the utility undertakes a new interconnection study for the project due to other projects ahead in the substation queue exiting due to lack of an ABP REC award following the Block 1 lottery. Or the applicant may voluntarily decrease the project size to avoid having to pay for an expensive upgrade to the distribution system, or avoid impacting any environmentally-sensitive portion of the project site that is detected during on-site wetland delineation (which must take place in warmer months).

It is thus unreasonable to require an applicant that downsizes the project Nameplate Capacity by more than 5 percent to essentially abandon its REC award and have to start the ABP application all over again.²

We thus respectfully request that the IPA revise this portion of the Community REC Agreement to read:

(f) . . . For all Designated Systems where the difference between the Actual Nameplate Capacity and the Proposed Nameplate Capacity is not within the greater of: ~~+/- 1kW or +/- 5%~~ a 1 KW or 5% increase of the Proposed Nameplate Capacity, as communicated by the IPA or its designee in writing to Buyer and Seller, then such Designated System shall be removed from this REC Contract, and Seller shall have the option for such Designated System to be submitted under a new ABP application.

At the very minimum, the IPA should revise the Community REC Agreement to allow for a Nameplate Capacity decrease of more than 5% if the project receives an interconnection restudy after the REC award, as contemplated in ComEd territory.

2) The IPA should revise Article 9.2 (Assignment) to assure compatibility with the Block 1 Lottery process and allow for third-party project financing.

The draft Community REC Agreement appears to allow the Buyer to reject a Seller assignment for any reason, or for no reason at all:³

Seller may make a request to Buyer for the transfer or assignment of Seller's rights and obligations under the Agreement to the "Transferee" provided that the assignment is for all Transactions under this Agreement. . . . Buyer may request additional information from Seller, and Buyer will have thirty (30) calendar days

² Note, [Commenter 9] offered the same feedback in our December 10, 2018 Comments on IPA's November 28 Draft Adjustable Block Program Guidebook, at 4.

³ December 7, 2018 Renewable Energy Credit Agreement, at 25.

to provide consent or to notify Seller that Buyer rejects the assignment or transfer.”

The IPA should clarify in the Community REC Agreement that the REC Buyer cannot unreasonably withhold consent for assignment, and that the Seller can appeal any Buyer rejection to the IPA and court system.

In addition, we express concern that the draft Community REC Agreement may not be fully compatible with the ABP Approved Vendor process, Block 1 Lottery processes, ComEd interconnection restudy process, and the timing for allocating the Community REC Agreement to individual project-level LLCs (which may or may not be registered as an Approved Vendor within the 7 day period contemplated in the draft Community REC Agreement). We thus ask the IPA to closely consider these timing and workability issues, and to allow for an orderly and unrushed transfer of REC awards to the final project company.

3) The REC Contract should not allow for unilateral, indefinite suspension by the REC Buyer.

The draft Community REC Agreement contains a concerning provision that would allow the Buyer to indefinitely suspend payments due to no fault of the Seller:⁴

. . . If, for whatever reason, Buyer is not allowed to or cannot recover such costs [incurred under the Agreement] from its customers through its pass-through tariffs, then, notwithstanding anything to the contrary in the Agreement, the obligations of both Seller and Buyer, including Delivery of and payment for RECs, ***shall be suspended upon written notice from Buyer to Seller until Buyer provides written notice to Seller that Buyer is able to recover all of its costs under this Agreement through its pass-through tariff***, whereupon the respective rights and obligations of the Parties under this Agreement shall resume as of the effective date indicated in such notice (pro-rated, as applicable, based on the duration of such suspension).

This scenario, where the REC Buyer somehow loses the authority to pass the cost of the contract along to its customers, is completely outside the REC Seller’s control, but presumably within the control of the REC Buyer and the IPA. We therefore suggest that the IPA strike this provision and require the REC Buyer to bear the risk of any such loss of their authority under this scenario.

Further, if the REC Buyer believes that it may lose such authority due to a given regulatory or court proceeding, the Buyer should be required to provide advance written notice to all potentially impacted REC Buyers earlier enough in time to allow the Buyer to intervene in the relevant regulatory or court proceeding.

⁴ *Id.*, at 19 (Section 2.2 (Payment)) (emphasis added).

[Commenter 9 Letterhead]

Conclusion

Although these comments are not comprehensive, we respectfully ask the IPA to consider these points along with any other concerns raised by other stakeholder comments.

Sincerely,

[Commenter 9 representative's contact information]