

**[Commenter 10 Letterhead]**

**FOLLOW-UP COMMENTS ON DRAFT RENEWABLE ENERGY CREDIT AGREEMENT**

**[Commenter 10]**

**December 31, 2018**

**[Commenter 10]** respectfully submits these comments, as a follow-up to our initial comments submitted on December 19th.

The webinar on December 27th clarified a feature of the draft contract structure that **[Commenter 10]** had not previously appreciated. Per the explanation during the webinar, we now understand that the REC Contract is proposed to be executed with an Approved Vendor at the portfolio level, rather than the batch level.

While, on the surface, this structure would appear to streamline the relationship between an Approved Vendor and the utility counter-party, it would also have the unintended effect of rendering projects unfinancable under standard industry practices. **[Commenter 10]** has closed four separate financings to-date including hundreds of megawatts of solar projects. Our finance team has worked with a variety of tax equity investors, traditional equity investors, and debt financiers and has learned, at a granular level, what is required to satisfy the standard risk thresholds of the finance industry.

The bottom line is that commercial DG and community solar projects are treated by the financial institutions as independent assets, and in order for them to value future REC revenues generated by these assets, each project must be its own entity with a stand-alone REC contract with independent obligations and assignability rights. The Long Term Plan enables this structure by explicitly allowing Approved Vendors to submit a single-project “batch,” as long it meets the 100 kW minimum threshold (LTRRP, page 129). **[Commenter 10]** encourages the IPA and the utilities to redesign the contracting structure so that REC contracts are executed between the utility and Approved Vendor at the batch level, not the portfolio level.

We would also like to take this opportunity to further explain one of the comments that we submitted on December 19th, in light of the related nature to the issue above and IPA’s request for additional input on the subject. Also, please note our 12/19 comments on cross-default (1.c), actual vs. proposed capacity (5.e) and other issues. We have also been coordinating with **[redacted]** and are generally supportive of the broader set of issues addressed in its comments.

**9.2 Assignment.** Our 12/19 comments include a redline that removes the Buyer approval language for assignments made in connection with financings and strikes the requirement that the “Transferee” be approved as an “Approved Vendor.” In our experience with solar incentive programs in 20+ different markets, most programs allow for automatic assignment to an entity that is created for financing purposes; others require some minor paperwork to validate an assignment. It is important that the assignment provisions in the contract accommodate industry-standard tax equity financing practices. Typically, a mechanically complete project will be transferred to a newly-created “ProjectCo LLC” immediately prior to energization. Once the REC contract is assigned to the individual LLC, the LLC itself will be transferred to the tax equity partnership. In the Draft Renewable Energy Credit Agreement, there is currently an unmitigated and undefined risk that the Buyer may reject Assignment, risking the

financability of the asset under current industry practices. Our 12/19 comments include proposed replacement language that captures standard industry practice for assignment allowances that balance the needs of both Buyer and Seller.

We are also looking for additional clarity from IPA about how it anticipates “Approved Vendor” certification and ongoing requirements will apply to Transferees that are ProjectCos. One idea for consideration is to allow a Transferee to designate an Approved Vendor responsible for its ongoing obligations and requirements, rather than becoming an Approved Vendor itself. In other words, upon assignment, hypothetical “ProjectCo1 LLC” could designate [Commenter 10] as its responsible Approved Vendor, and [Commenter 10] would remain responsible for consumer protection and marketing requirements, reporting requirements, etc.

We recognize that these are complex issues that are not easy to resolve on a tight timeline. After the holidays, [Commenter 10] encourages the IPA to hold an in-person workshop where dialogue can surface real solutions that meet the needs of all parties. [Commenter 10]’s lead on solar financing will attend and participate; we believe that other solar companies will similarly prioritize this process. It is important to get this right, even if it means delaying the program’s opening date.

Respectfully,

[Commenter 10]