Introduction

[Commenter 16] greatly appreciate this second opportunity to comment on the draft REC Contract released on December 7, 2018 and informed by the webinar held by the IPA on December 28, 2018. In comments submitted on December 19, 2018, [Commenter 16] addressed several issues, including some that either impacted or were a potentially fatal flaw to financeability. [Commenter 16] continue to take the positions advocated in those comments.

[Commenter 16] understand that the IPA is considering making several changes to the REC Contract, including to allow assignment at the batch level and in limited circumstances allowing assignment without consent and/or to entities other than Approved Vendors. [Commenter 16] greatly appreciate that the IPA is entertaining changes on these changes, identified by [Commenter 16] and others as critical to financing availability and terms. For the reasons stated below, the [Commenter 16] strongly urge that the IPA implement the changes consistent with the recommendations below. [Commenter 16] expect individual developers to submit detailed redlines to effectuate some or all of these changes and other proposed changes.

[Commenter 16] note that several issues that impact the REC Contract have been raised in other contexts by [Commenter 16] and others. Those issues include:

- The 5% tolerance for project capacity and location. [Commenter 16] have addressed this issue in other contexts and continue to believe that if a project maintains its Interconnection Agreement, the project should be eligible for a REC Contract. The IPA's expectations are sufficiently protected from over-commitment by the "lesser of" language. The IPA can simply procure more capacity in the then-currently open block if reductions in size lead to under-commitment.
- The 0.5% degradation factor. [Commenter 16] recommended allowing a customized factor.
- Cure Period. [Commenter 16] addressed having a universal cure period of 90 days consistent with the LTRRPP in comments submitted on December 19, 2018. [Commenter 16] continue to believe for the reasons set out in those comments that there should be a cure period; even if the IPA concludes that the LTRRPP does not require a universal 90-day cure period then a commercially reasonable cure period of at least 30 days is important to address real or perceived contract performance deficiencies.

Additional Process

[Commenter 16] believe that a successful Adjustable Block program and meeting FEJA's procurement goals will be impossible without substantial improvements to the REC Contract. [Commenter 16] do not make this statement lightly. For the reasons set out by [Commenter 16] in their initial comments, comments raised during the webinar held by the IPA on December 28, 2018, and the reasons outlined below, [Commenter 16] believe the current draft of the REC Contract has fatal flaws that very likely render it unfinanceable. In the best case, the current draft REC Contract will render it difficult to finance projects and in the worst case make it impossible to finance projects. In addition, these fatal flaws limit the ability of developers to flexibly structure financing arrangements, and limit the number of potential financing parties willing to participate in the Illinois solar market. Even if these fatal flaws were all corrected in an appropriate manner,

there remain substantial issues that may not independently render the REC Contract unfinanceable but are substantial impediments to securing financing and collectively could lead to the REC Contract being unfinanceable. These impediments extend to all common forms of solar financing, from debt to tax equity financing, and will negatively impact market participants of all sizes.

While [Commenter 16] respect the experience of NERA and others involved, many of the terms in the draft REC Contract lead [Commenter 16] to recommend additional input from the solar industry. [Commenter 16] understand that the IPA is looking at addressing a substantial number of these issues—which [Commenter 16] view as a very positive development--[Commenter 16] appreciate the webinar that the IPA held on December 28, 2018, but the limitations on the format led to less depth and fewer opportunities for back and forth than [Commenter 16] believe are necessary.

[Commenter 16] have long believed that the Adjustable Block Program should open on January 15, 2019. Thus, [Commenter 16] urge the IPA in the strongest terms possible to conduct the following steps with all due haste. In turn, [Commenter 16] will remain committed to working diligently and quickly with the IPA. [Commenter 16] intention is to ensure a successful program while limiting any potential delay and, ideally, avoiding a delay entirely.

- Release a second draft of the REC Contract based on the comments submitted on 12/9/18 and comments submitted on 12/31/18;
- Schedule an in-person meeting a short but reasonable amount of time after releasing the second draft for the primary purpose of the solar industry providing further information to the IPA, the Program Administrator, NERA, the utilities, and Commission Staff about the pending issues and getting answers about specific contract terms;[1]
- Release a final contract prior to the start of the program based on the meeting and any additional input solicited by the IPA.

Aspects Of The REC Contract Threaten Financeability

Unless the REC Contract is financeable, participation in the Adjustable Block Program will be severely restricted. In the solar industry, although actual values vary by developer and project, a substantial portion of projects are third party-financed. This is a combination of construction and operation financing (which is often debt finance) and tax equity finance. For some entities, tax equity financing makes up as much as 40% of the capital structure while for others construction financing can comprise up to 80% or more of the capital structure. In other words, when taken together, tax equity and debt financing are critically important for the solar industry.

In a typical tax equity transaction with a third-party tax equity investor, the system will be owned by a Limited Liability Corporation (LLC) created specifically for the purpose of owning the system—possibly only that system. While many tax equity transactions will cover a subset of the developer's portfolio, some can be executed on the system level. The typical tax equity investor requires that the LLC be the counterparty to all of the revenue-generating agreements, which would

[1] While [Commenter 16] request that the meeting be run for the benefit of the solar industry, [Commenter 16] do not object to the meeting being open to all interested parties. [Commenter 16] do recommend, however, that the meeting be managed to favor constructive dialogue and understanding of the contract.

include an agreement that monetizes the energy offset or net metering credit and the REC contract. The tax equity investor will frequently own a majority of the LLC earning a fixed return on their investment, while a managing member will manage the day to day operations of the system or systems and the relationships with the revenue counterparts, earning their return on the more variable revenue streams generated by the system. Tax equity financing parties have little tolerance for risk or even ambiguity that could create risk in the tax equity transaction.[2]

In addition, many developers rely on debt to finance. Again, while actual values vary by developer and project, debt may make up 80% or more of a project's capital initial structure.

In a typical debt transaction, once again the system—perhaps only that system—will be owned by an LLC. The LLC will also hold the revenue-generating agreements, including the REC contract. The industry standard for these agreements is for the debt to be "non-recourse"—meaning that if party or parties responsible for the performance of the LLC fail to uphold obligations, the only remedy available to the lender is foreclosure on the asset and its associated contracts.

[Redacted].

The number of institutions engaged in tax equity financing is small. General appetite for tax equity financing has shrunk is in recent years due to federal tax law changes that made tax equity less valuable by lowering certain tax rates. The parties that remain in the financing space are increasingly risk-averse and wary of contractual ambiguity.

Thus, when [Commenter 16] conclude that certain issues independently threaten financing or are serious concerns, it is based on [redacted] experience in markets and with similar project revenue contracts across the country. [Redacted] regularly negotiate with financing parties, and have a strong sense of what level of risk financing community will accept (or not) with respect to revenue contracts like the REC Contract.

Based on this experience, [Commenter 16] believe that the financing transactions described above are made unworkable or severely threatened by several aspects of the draft REC Contract, including but not limited to the following:

- REC Contracts are only assignable in whole, and cannot be assigned by Product Order or batch. This prevents single (or batch-level) LLCs from being assigned the Product Order within the master REC contract when an Approved Vendor has more than one batch assigned to a single utility.
- To the extent that REC Contracts are or become assignable to these LLCs, the utility counterparty must provide consent under the draft REC Contract and have the right to conduct potentially intrusive financial inquiries.

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[2] For instance, tax equity investors—or even financing parties—may request assurances that taking advantage of utility net metering tariffs or signing the REC Contract would not be determined to be a violation of Section 1-75(c)(1)(J) of the Illinois Power Agency Act prohibiting participation of projects "whose costs were being recovered through rates regulated by this State or any other state or states on or after January 1, 2017." While non-applicability may seem obvious to some, the requirement in Section 4 of the Cover Sheet that a facility "is not **and will not be**" such a system could lead to an unnecessary perception of risk of a future adverse determination.

- To the extent that the REC Contracts are or become assignable to these LLCs and it can be done without utility or IPA consent and the potentially intrusive financial inquiries are not available to the utility counterparty, the LLC must register as an Approved Vendor to hold the REC Contract. [Commenter 16] doubt that many financial institutions or tax equity investors would be willing to submit the requisite information or submit to the attestation required to be an Approved Vendor.
- The lack of clear language prohibiting cross-default and set-off to effectuate the IPA's intention (as stated during the 12/28/18 webinar) to not allow for cross-default or setoff between projects.

In addition to those issues, the following terms or omitted terms are likely to at minimum increase the cost of financing and, if not properly resolved could in combination lead financing parties to refuse to participate:

- The lack of clarity for how subscription levels and subscription mix are measured and the lack of an opportunity to cure subscription levels.
- The internal contradiction as to what entity owns and may retire RECs in the event a community solar system is not fully subscribed;
- The potential for collateral drawdown during the initial and second year of operation despite the three-year rolling average

[Commenter 16] note that the more likely at least some financing parties are to refuse to finance the REC Contract, the more likely smaller developers are likely to lose their exclusive financing party or small pool of potential financing sources.

In addition to the issues raised and the reasoning provided in [Commenter 16] comments dated December 19, 2018, [Commenter 16] wish to emphasize three issues that may impact financeability but even if they do not are important to program success.

<u>Anticipated Fatal Flaws That Are Expected To Independently Threaten Financeability</u>

REC Contracts Must Allow For Assignment Of Batches

As standard practice in the solar industry, assets are bought and sold between different parties. There can be multiple owners/financiers on any given project including tax equity, debt, and cash/sponsor equity. These various entities have different ownership rights in the project LLC described above that allow the transaction to take place. In order to have the most efficient (or even available) financing structures, there needs to be flexibility for developers to structure their project ownership as needed. Because the solar industry does not follow a single structure, balance, or approach to financing, it is critical to facilitate all commercially reasonable financing structures.

The current consent language and assignment structure impedes (and in some cases could be used to prohibit) standard project ownership structures in multiple ways. First, the lack of clarity as to whether systems or batches within a master REC contract may be assigned (or whether assignment is only permissible at the master contract level) and how many can be assigned per approved vendor makes the legal structuring very difficult if not impossible. For larger behind-the-meter and community solar, each single project LLC needs to have its own REC contract with no

connection to other projects. This allows a financing party to assess projected revenues for that particular project, which is necessary to determine key financing assumptions across capital sources for a project—such as loan sizing for construction debt or internal rate of return (IRR) for tax equity purposes. Standard underwriting procedures, even when working with consistent financing parties, means assessing financing at each LLC level, as each project has its own unique attributes. Limiting assignment and thus making all of a vendor's projects remain under a single Master REC contract limits optionality for financing parties and developers to successfully finance projects.

Second, the performance assurance given to each utility remains unaffected by assignment to such LLCs. There is already significant collateral posting to Buyer's benefit to ensure the performance of the project. The assignee and/or financier(s) should have no impact on the performance of the project itself—the ultimate concern of the utility buyer.

Based on their experience with financing parties, financiers (especially tax equity financiers) will not enter (or only enter at increased costs) into a transaction if there is a chance consent will not be given. This is even more of an issue with construction financing (the capital that is commonly used to build the projects before commercial operation, and which often involves separate lenders than the permanent financing). If construction financing parties see risk regarding consent rights they may not issue any financing as they would not have a clear path to be paid back by permanent financing (debt and tax equity). This would be most problematic for smaller companies that may not have the funds to pay for construction upfront. These issues could stop financing for all community solar systems in the Adjustable Block program. In order for financing to take place, and for systems to be built, owners need the option to transfer the project-specific rights under the master REC contract, with no consent rights given Buyer.

[Commenter 16] recommend the following solution: The IPA should allow assignment at the batch (Product Order) level between one Approved Vendor and another. The batches under a single Master REC contract with a utility counterparty should be reflected in an exhibit that is updated from time to time; the IPA or its designee should serve as a clearinghouse for transfer of batches between Approved Vendors to ensure that relevant exhibits to the respective Master REC contracts are properly updated. Exempting Buyer consent—or perhaps replacing it with pre-assignment or post-assignment notice—from transactions involving certain types of entities will help to facilitate a standardized process while enhancing the financial viability of projects.

In addition to such assignments, the REC Contract should also allow assignment without consent (potentially replaced by notice) if assignment is to the following types of entities: affiliates of Seller; the counterparty or new entity in the event of a merger, consolidation or sale of all or substantially all of Seller's stock, interests or assets; financing party, entity with comparable experience in operating and maintaining photovoltaic systems; and the financial capability to maintain the System and perform under the contract. Due to the mechanics of Approved Vendor licensing, this is perhaps as much as issue about Approved Vendor approval as assignment, but it comes up in the REC Contract in the context of assignment.

Of course, a Product Order is specific to a utility. In order to effectuate this approach, to the extent the assignee Approved Vendor does not have a Master REC contract with the utility delegated the

Product Order, the utility should be compelled to execute a Master REC contract with that Approved Vendor within five business days to effectuate the assignment of the batch.

[Commenter 16] heard the IPA or its administrators requesting comment on how carryforwards and collateral drawdowns would work with assignment. If the IPA adopts [Commenter 16] proposal above, the IPA should simply allow RECs generated before the assignment date to remain with assignor, while only future production is provided to assignee. Any under- or over-production would continue to be assessed on a portfolio basis.

Requiring Consent or Intrusive Financing Party Information Renders the REC Contract Unfinanceable

Simply stated, as part of tax equity financing parties' expectation of minimized risk, tax equity financing parties generally are unwilling to transact when assignment of a substantial revenue agreement is not assignable as of right to the LLC.

[Commenter 16] addressed Section 9.2 of the Master Contract, as rewritten in the Cover Sheet in Initial Comments, including the required consent from both the utility and the IPA to assign. In addition, the assignee—despite agreeing by contract to keep collateral in place—is subject to answering financial inquiries from the utility or the IPA. [Commenter 16] have not changed their position that there is no justification for either the consent requirement or the ability of the utility counterparty or the IPA to request financial information from any party—including a financing party.

Financing Parties Should Not Be Subject To Approved Vendor Disclosure Requirements

[Commenter 16] are concerned that, depending on the structure of the transaction, a tax equity financing party that owns a substantial percentage of the LLC that will hold the REC Contract, the tax equity financing party would be subject to the disclosure requirements for an Approved Vendor. [Redacted] cannot imagine a situation in which a tax equity financing party would be willing to provide sufficient information for the LLC (if it is an Approved Vendor) to make the attestations required to secure Approved Vendor status.

However, even if the Approved Vendor could make a full disclosure, it is not clear what end it would serve. For instance, would the IPA prohibit an Approved Vendor using one of the major banks that has faced lawsuit or government enforcement? Large Banks and potential tax equity investors are frequently subject to lawsuits, regulatory investigations, or other disputes; many of which are federal matters and highly confidential, *i.e.* the tax equity investor would not be allowed to disclose to the aspiring Approved Vendor or the IPA. It is not clear why the IPA could or should use information about financing parties to determine whether a revenue stream (i.e. REC Contract) can be transferred.

Lack of Specific Language Regarding Cross-Default and Setoff

[Commenter 16] were heartened to hear on the December 28, 2018 webinar that the IPA's intent is to not allow cross-default or setoff between projects. As explained in [Commenter 16] initial comments, cross-defaults and setoff between projects would render the contract unfinanceable. As explained above, tax equity financing parties expect a project to be self-contained; similarly, a

lender issuing a "no recourse" loan would face intolerable risk if their sole collateral would be threatened by another asset in an Approved Vendor's portfolio.

While [Commenter 16] did appreciate the IPA's intent, that intent must be clearly and explicitly stated in the REC Contract language. At best, the IPA's intent (however reflected) is parol evidence regarding a contract to which the IPA is not even a party. The language must explicitly and clearly state that cross-default and setoffs are strictly prohibited notwithstanding any language to the contrary.

Serious Flaws That Could Threaten Financing Terms Or Availability

Production Estimates

The Agency is tasked with ensuring that the goals of the Future Energy Jobs Act are achieved. For the Adjustable Block Program, this means ensuring that the utilities procure at least 1,000,000 RECs from qualified new solar energy facilities by 2020, including at least 25% of the RECs procured through the Adjustable Block program from community solar. To achieve these goals, the IPA should assume that systems will seek to deliver the full quantities as bid for 15 years, as the Agency assumes for utility-scale projects.

Instead of the current Contractual language, the Agency should, starting in the third year, begin looking at the three-year rolling average production level. In the current language, an owner may be penalized for issues with production during the first year. Those payments can never be recovered, even if the system (or, as may be the case, the Approved Vendor's entire portfolio) substantially overproduces over the life of the contract. It is not uncommon to have minor production issues in year 1 for any given solar installation. Inverters may need adjusting, final testing and reprogramming may be needed or any variety of 'tune ups' are standard practice. Generally, these do not affect the 15+ year production estimates, *i.e.* overall REC delivery.

The IPA itself proposed a three-year rolling average for collateral drawdowns, but sought from the Commission explicit changes to the Administrative Law Judge's Proposed Order to clarify that year one and year two would be eligible for drawdowns:

> The Agency also proposes the following additional clarification related to the "three-year rolling average" provisions in the Plan: for Year 1 performance, only that first year of REC deliveries will be evaluated, and for Year 2 performance, only the first and second years' worth of performance will be evaluated. For these first two years of performance, banking of over-production will be allowed, while collateral draws for any Year 1 or Year 2 underproduction would be not automatic, but rather determined at the discretion of the Agency and applicable utility.

(ICC Docket No. 17-0838, IPA Brief on Exceptions at 30.) The IPA also proposed explicit language for the Final Order to effectuate this position. However, the Final Order did not include the IPA's proposed language, nor did it provide any explicit indication. The only statement the Commission made on this issue is to state: "The Commission agrees that the three year average makes sense for determining whether a collateral drawdown is required." (ICC Docket No. 17-0838, Final Order dated April 3, 2018 at 129.) The best reading of the Commission's Order is that the Commission did not adopt the IPA's proposal to (as the IPA put it) include "additional

clarification" that year one and year two would be subject to drawdowns before a full three-year rolling average was in place. Therefore, Approved Vendors should not be penalized until the third year for any underproduction, and then only based on the three-year rolling average.

In the alternative, the IPA should at minimum wait until two years of production have taken place to begin drawdowns for underproduction. For the reasons stated above, in the experience of [redacted], the first year's production is frequently below expectations as the system works through kinks and bugs post-energization.

Subscription Levels
All community solar facilities go through natural fluctuations in subscription levels and subscription mix, particularly in the first year of production. As currently drafted, during the first 12 months, a project could be penalized for 15 years of performance for not having exactly 100% subscriptions during the first four quarterly reporting periods after energization.

The IPA can mitigate this issue by defining how it determines subscription levels. In comments submitted on December 19, 2018, [Commenter 16] recommended approaches to determining subscription levels—but those proposals were reliant on the IPA providing a 90-day cure period as set out in the LTRRPP. (*See* Final Approved LTRRPP at 139.) During the webinar on December 28, 2018, NERA indicated that there will be no cure period for subscription levels.[3]

The IPA should allow for a cure period for subscription levels and subscription mix. While especially acute in the first four quarterly reports and at energization, the draft REC Contract allows for an amorphous and completely undefined collateral drawdown in Section 6(e) of the Cover Sheet. Depending on the utilities' finalized approaches for adding and dropping subscriptions, an Approved Vendor may be in a position where—unless the outgoing and incoming subscribers are on the exact same billing cycle—there will be a seam between an outgoing subscriber dropping and an incoming subscriber enrolling—even if the Approved Vendor has a healthy waiting list of potential subscribers. In addition, the proposed REC Contract approach encourages long-term contracts and customer-unfriendly termination provisions (such as a long notice period to drop a subscription) to guard against harsh results for REC payments or clawbacks.

If the IPA does not institute a cure period, it must determine the subscription level and subscription mix based on the highest subscription level and Small Subscriber levels during a reporting period—particularly at energization and during the time periods covered by the first four quarterly reports. To do otherwise would likely eliminate short-term and no termination fee contracts except where required;[4] the IPA already discourages with marketing rules that punish Approved Vendors acquiring Small Subscribers on short-term disproportionate (to other states and as an absolute matter) customer acquisition hurdles.

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[3] [Commenter 16] note that there is nothing inconsistent with the LTRRPP if there is a cure period for subscription levels. Even if the IPA reinterprets the LTRRPP to remove the 90-day cure period for subscription levels, there is nothing prohibiting a reasonable cure period.

[4] [Commenter 16] note that contracts that require a customer to sign up with an ARES under the draft marketing rules require no early termination fee in the event that the customer

Ownership of RECs for Unsubscribed Portions

There is significant ambiguity and inconsistency between the LTRRPP, Draft REC Contract and the statements made on the webinar on December 28th related to the ownership of unsubscribed RECs for which the seller is not paid under the contract. The final REC Contract must clearly and unambiguously explain that unsubscribed RECs remain the property of the seller unless compensated by the utility.

The Plan is clear on this matter. According to Section 6.15.4 of the Final Approved LTRRPP:

> The calculation of the maximum number of RECs due payment will be determined by the project's subscription level after one year of operation (and will be subject to the maintenance of subscription levels as described in Section 6.17). For example, if a project is expected to produce 1,000 REC/year and after one year of operation is 95% subscribed (on a project capacity basis), then the annual REC production value used for the contract payment level would be 950 RECs. Under the REC delivery contract, the Approved Vendor would then be obligated to deliver to the utility 95% of the RECs produced by that system each year. The ownership (and any subsequent transfer or sale) of the remaining 5% of RECs would be outside of the contract.

(Final Approved LTRRPP at 134 (emphasis added).) However, Section 6(b) of the Cover Sheet to the draft REC Contract indicates that RECs are the property of the utility, without regard to whether the Seller receives payment. From Section 6(b) of the Cover Sheet to the draft REC Contract:

> For each Designated System that has been Energized, all RECs designated to be Delivered pursuant to the Standing Order associated with such Designated System shall be Delivered to Buyer commencing from the date such Standing Order is established through the end of the Delivery Term of such Designated System regardless of whether the total payment made by Buyer to Seller for RECs from such Designated System is commensurate with the actual number of RECs Delivered from such Designated System.
>
> (Emphasis added.) [Commenter 16] request that section 6(b) be removed entirely from the Draft Contract because it is inconsistent with the Final Approved LTRRPP.

Even if section 6(b) of the Cover Sheet is removed, section 12(b)(iii) of the Cover Sheet requires that "Buyer shall retire RECs Delivered from Designated Systems by the month after the receipt of such RECs." Because the Contract requires payment based on Quarterly Netting Statements that are influenced by subscription levels, the utility may retire RECs for which the Quarterly Netting Statement does not compensate the Approved Vendor.

Compliance with the Final Approved LTRRPP, in addition to basic fairness, requires changes to the REC Contract. The final REC Contract must include an explicit mechanism for the utility to: (1) modify the irrevocable standing order immediately upon notice from the Approved Vendor that it did not achieve full subscription at the end of the first year, (2) create a reasonable delay in REC retirement after the final maximum subscription level has been assessed, and (3) provide a

penalty for a utility counterparty whose delay in modifying the irrevocable standing order or failure to delay REC retirement leads to utility retirement of RECs to which it was not entitled.

<u>Important Issues Not Directly Related To Financeability</u>

Performance Assurance Timing and Shortfalls

The draft REC Contract outlines that in order to fulfill the Performance Assurance, a Seller must either provide a Letter of Credit ("LC") or cash collateral within 30 business days of the Trade Date of a Product Order. (*See* Master REC Contract Section 4.3, as modified by Cover Sheet.) While these requirements are clearly outlined in the Final Plan of the LTRRPP, there are also collateral requirement options from the Final Plan of the LTRRPP that are currently missing from the current draft.

According to the December 28, 2018 webinar, the Performance Assurance as drafted requires that collateral will be set at the portfolio level once the initial or first REC Contract is established with the Buyer. [Commenter 16] agree that it is acceptable to establish collateral at the portfolio level. However, if an Approved Vendor is required to post its entire collateral obligation for its entire portfolio 30 business days after the first Trade Date, it is not clear how this will apply to batches approved later in time by the Illinois Commerce Commissions. While [Commenter 16] have not reviewed the batch approval process, reasons could include: (1) delays at the Illinois Commerce Commission for some (but not all) of an Approved Vendor's batches, (2) an Approved Vendor submitting a batch later in time, or (3) other delays not currently anticipated prior to Illinois Commerce Commission approval. Taken literally, an Approved Vendor would have to post collateral for its entire anticipated portfolio, rather than grow its collateral with each new batch approval.

If the REC Contract reads that the collateral requirements are instead due per each Product Order, as it can be interpreted in the current draft, this will be acceptable. [Commenter 16] would recommend that the Performance Assurance language also ensure that the Seller has sole discretion over which form of collateral it provides to the Buyer; a Letter of Credit or cash collateral (or, after energization, a holdback of the final REC payment). Thus, if a Seller chooses to post cash, then it must be clear that an Exhibit E is not required per Product Order.

Additionally, within the Final Plan of the LTRRPP, the IPA establishes that an Approved Vendor should be able to replace a portion of its collateral obligation via a holdback of system's final REC payment. (*See* Final Approved LTRRPP at 136.) For the reasons explained in other comments throughout the process, [Commenter 16] continue to believe that Approved Vendors should have discretion to apply the REC payment to its collateral obligations on an ongoing basis as prescribed and that the limitation in the REC Contract is not included in the LTRRPP.

Confidentiality of Reports

As a general matter, all information about pricing, financing, and other contractual terms should be maintained as confidential. In many cases, customer-facing documents have some sort of confidentiality provision. [Commenter 16] understood from the December 28, 2018 webinar that the IPA plans to protect such commercially sensitive information; [Commenter 16] recommend

that the IPA make a blanket determination pursuant to Section 1-120 of the Illinois Power Agency Act that such information will be treated as confidential.

In addition, [Commenter 16] urge in the strongest terms that customer lists provided in quarterly reports for community solar facilities be kept confidential. As noted in previous comments, it is not clear whether names and addresses (or meter numbers—which may be sufficient to enroll an Ameren customer) are protected by FOIA exemptions. If this information is not kept confidential, competitors could easily FOIA each others' subscriber lists. To the extent that disclosure forms created on the IPA's portal are not kept confidential in full,[5] competitors will also be able to FOIA information about everybody an Approved Vendor has marketed—in the community solar context, competitors will be able to cross-reference with actual enrollments on the quarterly reports. Such an environment would be unacceptable for developers and highly customer unfriendly.

In addition to the community solar quarterly reports, any reporting obligation that identifies customer-specific information, including information that might not otherwise be protectable under FOIA such as a customer's name or address, should be kept confidential.

Force Majeure

There are several sections of the draft REC contract related to force majeure that need to be amended in order to comply with standard industry practice and ensure projects are financeable. They are as follows:

- The contract must follow the LTRRPP which grants an indefinite extension if a system is electrically complete (ready to start generation) but the utility has not approved the interconnection, as long as the Approved Vendor documents that the interconnection approval request was made to the utility within 30 days of the system being electrically complete, yet not processed and approved.
- Force Majeure excludes insufficiency or unavailability of insolation to operate the designated system. However, typical industry standards are such that if insolation falls below 80% than predicted in 3 consecutive years, it can be viewed as an act of God. Insufficiency or unavailability of insolation to operate the designated system should not be a termination exercise right, but instead a right that the claiming party can use to adjust performance expectations and collateral liability. The Seller should be relieved from the obligation if such an event occurs and no termination payment is due to either party.
- "Curtailment for economic purposes only…", is a right the Seller should have, and should not be excluded from Force Majeure. If a curtailment event occurs given utility action for economic reasons, the Seller should have the right to claim Force Majeure to adjust performance expectations. However, the utility (Buyer) should not have such a right. The language in the contract should instead state: "Buyer may not claim Force Majeure for economic curtailments made by the interconnected utility or RTO responsible for the operation of the distribution or transmission system to which the Designated System(s) is interconnected."

[5] As [Commenter 16] pointed out in comments on the community solar marketing guidelines, names and addresses may not be protected under FOIA in contrast with e-mail or telephone number. It is also not clear that utility account or meter number would be protected. [Commenter 16] understand that final community solar marketing guidelines have yet to be released.