COMMENTS ON SECOND DRAFT RENEWABLE ENERGY CREDIT AGREEMENT

[Submitter 7]

January 18, 2019

[Submitter 7] respectfully submits these comments on the Second Draft Renewable Energy Credit Agreement ("Second Draft"). [Submitter 7] appreciates the changes made to the REC Agreement between the first and second drafts. Our comments herein focus on the remaining issues as we see them, as well as some of the specific topics that IPA flagged for consideration in the January 11th Second Draft Contract Announcement. Note that our recommendations are generally consistent with those of [redacted].

Section 9.2 Assignment

We appreciate the substantial revisions made to this Section between the first and second drafts. In particular, allowing for assignment at the Product Order (or "batch") level is a major improvement. The addition of circumstances under which the Seller may make assigments without the consent of the Buyer is also very helpful, although there are some details here that merit additional attention.

1. The Second Draft of Section 9.2 states that the "Seller may, without the consent of Buyer, (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds with respect to the Agreement or applicable Product Order(s), in connection with any financing or other financial arrangements with respect to the Agreement or Product Order(s) (and without relieving itself from liability hereunder)…" It then later states "whether or not an assignment is made in connection with a financing or a financial arrangement as specified in (a) above, shall be determined at the reasonable discretion of Buyer." This sets up a circular situation in which, for financing purposes, a Seller must seek confirmation from a Buyer that the transaction in question does not require the Seller to seek consent from the Buyer. For this reason, we recommend striking this language: ~~whether or not an assignment is made in connection with a financing or a financial arrangement as specified in (a) above, shall be determined at the reasonable discretion of Buyer.~~

2. As [Submitter 7] and other parties noted in previous comments, the banks and other entities that finance renewable energy projects, are likely to bristle at – or be forced to flat out reject – a requirement that as an Assignee, they become an Approved Vendor under the ABP. We have not studied the details, but we understand that commercial banking regulations may limit the disclosures that banks can make. That said, we respect the fact that the IPA has made an affirmative decision to maintain this requirement in the Second Draft by adding the note: "As required by the ABP, Seller's rights and obligations under the Agreement may only be assigned or transferred to Approved Vendors." We are not sure how to thread this needle, but at a minimum, we recommend increasing the 120 day "grace period" to 180 days. This would allow more time for a financing party who cannot or will not become an Approved Vendor to find a long-term asset owner and execute a transaction. Another potential solution would be to re-consider allowing Assignees to outsource the responsibilities and obligations of an Approved Vendor to an Approved Vendor, as we suggested in our December 31st comments.

3. We understand that the IPA has proposed a fee structure for Assignments in order to "provide disincentives for an endless string of assignments." In this objective, be assured that the interests of both counter-parties and the IPA are one and the same. It is difficult to imagine that a Seller would assign a project any more or less than is absolutely necessary to execute on its financing and/or sell-down strategy. If the IPA determines that fees are necessary to cover administrative expenses, we suggest that $1000 per transaction should be sufficient; $5000 is certainly excessive. Regardless of the final fee amounts, any portion of the fee that is intended to disincent rather than cover expenses should be directed to the Renewable Resources Budget.

Finally, please note that [Submitter 7] is a signatory of a multi-party letter to Director Star addressing the timing problem of the collateral deadline vis-à-vis the interconnection re-study process. As you are aware, the current process requires that collateral be posted 10 days after the REC Agreement is executed. For many projects, this deadline will come before ComEd has issued a final, non-binding estimate of interconnection costs for the project. As you also know, initial interconnection estimates have been described as "funny money" and are subject to dramatic changes – either up or down – after the lottery takes place and projects that are not selected for an ABP contract exit the queue.

We believe that the cleanest solution to this problem is the one proposed in the multi-party letter: amend the REC Agreement so that an Approved Vendor may terminate a Product Order without prejudice and without surrendering collateral up to 30 days after the utility has provided the revised interconnection estimate. We support this approach because it provides a temporary solution to what we hope will be a temporary problem in Illinois, stemming from the sequencing of the ABP lottery and ComEd's re-study process.

At first blush, it might appear that a project that has its interconnection costs increase after the re-study may be more worthy of relief than a project with a high initial estimate for which the costs failed to decrease. We have come to believe that any project should be eligible for refundable collateral post-restudy, whether the final interconnection costs increase, decrease, or stay the same. In the particular structure of this year's ABP, whether a project is "good" or "bad" has nothing to do with the data available today, e.g. the utility's initial interconnection cost estimates and that project's current queue position at its substation and/or feeder. It has everything to do with the future results of the ABP lottery. If there were no lottery, it would be rational to decide not to participate in the ABP program with a project that is #8 in the substation queue with a $10M interconnection estimate. However, as it is, it would be irrational *not* to participate, because after the lottery that project might wind up #2 in the substation queue with a $450K interconnection cost. It was a "bad" project pre-lottery; now it's a "good" project. But with the current timing, developers won't know for sure whether a project is bad or good until after the REC collateral is due, requiring us all to make expensive decisions without the key inputs. [Submitter 7] is committed to working with the IPA, the utilities, and other stakeholders to rationalize the timing and processes for the next go-around. In the meantime, we urge you to adopt the solution proposed in the multi-party letter.

Thank you for the opportunity to provide this feedback. We would be happy to answer any questions that the IPA or the Program Administrator may have – please do not hesitate to reach out.

[Submitter 7 representative]