ADJUSTABLE BLOCK PROGRAM REC CONTRACT
ENGIE COMMENTS
May 12, 2020

I. INTRODUCTION

ENGIE strongly supports the IPA's proposal to substantially refresh the standard REC delivery contract between the utilities and Approved Vendors that was developed and published for use in January 2019 (the "January 2019 REC Contract").

ENGIE North America ("ENGIE") is a power generator, energy services company and retail electricity supplier committed to shaping a more sustainable future throughout the United States and Canada. ENGIE North America has more than 19,000 MW of renewable power projects in operation or development, including wind, solar, battery storage, biomass, biogas, and hydropower. Approved Vendor SoCore Energy LLC – ENGIE's wholly owned subsidiary operating as "ENGIE Distributed Renewables" – is headquartered in Chicago.

ENGIE, through SoCore, is developing a portfolio of 29 large DG and community solar projects under the Illinois Adjustable Block Program ("ABP") and, as such, is very familiar with the January 2019 REC Contract. ENGIE appreciates this opportunity to provide input on the questions the IPA poses in its April 9, 2020 Request for Stakeholder Comments.

II. RESPONSES TO SPECIFIC QUESTIONS

1. STRUCTURE OF THE REC DELIVERY CONTRACT

(a) What are key considerations as the Agency undertakes to redraft the REC Contract?

ENGIE strongly supports efforts to shorten and simplify the January 2019 REC Contract. The IPA Request for Comment explains that the current agreement is based on the ABA-EMA-ACORE Master Renewable Energy Certificate Purchase and Sale Agreement. The ABA-EMA-ACORE master agreement structure is advantageous in allowing parties to enter multiple transactions (i.e. product orders), each of which is governed by the terms that are located in the master agreement. ENGIE encourages the IPA to maintain this master agreement structure.

The problem with the current January 2019 REC Contract is that the "cover sheet" is not simply a list of modifications to the ABA-EMA-ACORE master agreement, which is typically how a cover sheet to a master agreement is used. Instead, the "cover sheet" is a fully separate contract, with its own contract title and exhibits, that barely relies on the ABA-EMA-ACORE master agreement. In fact, the "cover sheet", which is titled Renewable Energy Credit Agreement, spans 70 pages including exhibits, while the ABA-EMA-ACORE master agreement spans only 42 pages.

However, out of the 42 pages of the master agreement, almost two dozen pages are made inapplicable through the Renewable Energy Credit Agreement (aka "cover sheet"), leaving roughly 18 pages of applicable. Yet, of these roughly 18 pages that are applicable, the Renewable Energy Credit Agreement (aka "cover sheet") modifies many

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of the terms on these pages. This results in a lot of unnecessary verbiage being introduced into the contract, as 21 pages of the cover sheet (pages 14-35) are used to make modifications to the roughly 18 pages of ABA-EMA-ACORE master agreement terms that remain applicable. Incorporating the full 42 pages of the ABA-EMA-ACORE master agreement into the Renewable Energy Credit Agreement only to make 24 of those pages inapplicable and then to include 21 pages of modifications to the 18 pages that remain applicable is highly confusing and unnecessary.

ENGIE believes the 18 or so pages of applicable content from the ABA-EMA-ACORE master agreement (as modified by the existing “cover sheet”) should be incorporated directly into the Renewable Energy Credit Agreement, allowing the “cover sheet” to stand alone as its own master agreement. ENGIE believes doing so will go a long way towards simplifying and shortening the agreement and making it much more readable.

(b) Are there other contract forms that you have used or reviewed from other jurisdictions that could serve as a basis for updating the contract structure?

Yes, there are other master agreement forms besides the ABA-EMA-ACORE master agreement that could have been relied upon to facilitate the sales of RECs under the ABP. For example, the WSPP (https://www.wspp.org/pages/Agreement.aspx) and Edison Electric Institute (https://www.eei.org/resourcesandmedia/Pages/Master-Contract-HP.aspx) master agreements both can be used to facilitate the purchase and sale of RECs.

However, ENGIE encourages the IPA to focus instead on incorporating the roughly 18 pages of relevant content from the ABA-EMA-ACORE master agreement (as modified by the existing “cover sheet”) into the Renewable Energy Credit Agreement (aka “cover sheet”) rather than moving to an entirely different contract structure or incorporating terms with which Approved Vendors may be less familiar.

As discussed above, the vast majority of the applicable contract terms (roughly 71 pages) are located in the Renewable Energy Credit Agreement (aka “cover sheet”). These terms were developed specifically for the ABP, and parties are now familiar with these terms. No standard master agreement is going to help update these ABP-specific terms, and so they should be retained.

With respect to the roughly 18 pages of ABA-EMA-ACORE master agreement terms that are made applicable (with significant modifications by the cover sheet), many parties are now familiar with these terms. ENGIE sees no reason to replace this content with terms from another agreement, such as the WSPP or Edison Electric Institute master agreements, as parties that are already participating in the ABP may be less familiar with such terms.

(c) Should there be separate contracts used for distributed generation projects and community solar projects?

ENGIE believes a single master agreement is better than two and is more flexible for Approved Vendors that may be developing both types of projects.

(d) Do you have any specific comments on any of the exhibits appended to the January 2019 REC Contract?

ENGIE believes Exhibits A through I of the Renewable Energy Credit Agreement (aka “cover sheet”) are helpful to facilitating the ABP program and should be retained in any updated agreement.

(e) Are there areas where the structure of the contract is currently unclear and should be clarified in respect of obligations or penalties applicable at a project level, or at a batch level, or at a master contract level?

ENGIE’s primary concern is having the ability to control which batches Designated Systems are placed into. With regard to this issue, ENGIE submitted comments to the IPA on April 29, 2020 in response to the IPA’s April 15, 2020 Request for Feedback on the Updating Batching Process. In our comments, ENGIE stated its appreciation for the IPA’s updates to the ABP’s batch approval process, which is described in the IPA’s Final Revised Plan on Page 153 as follows:

> *“Approved Vendors will be allowed to select which batches approved systems are placed into, so that they can better manage their financing portfolios. Once systems’ Part I applications are verified, and before they are sent to the Commission for approval, an Approved Vendor will be consulted and given the opportunity*

to specify how its verified systems are batched, so long as those batches of verified systems are at least 100 kW in size."

ENGIE believes this approach is a significant improvement over the previous process.

ENGIE also encourages the IPA to consider separating Performance Assurance by batch and measure performance and limit cross-default risks within each batch (i.e. Product Order) and not across batches. ENGIE understands that the IPA has chosen to determine whether REC delivery obligations are being met at the portfolio level (i.e. contract level), rather than the individual project level, to allow for the possibility that some systems may produce more RECs than forecast while others produce fewer RECs, thereby reducing the risk of contract default.

ENGIE agrees that measuring performance at the portfolio level can be beneficial, so we encourage the IPA to maintain flexibility for Approved Vendors to determine performance across the portfolio at the contract level. However, we also encourage the IPA to allow Approved Vendors the option to determine performance at the batch level as well.

Currently, Performance Assurance is equal to the sum of the Collateral Requirement postings across all Designated Systems included under a single master agreement. Although Collateral Requirements are determined for each Designated System, and although each Product Order has its own Performance Assurance posting, the Performance Assurance postings for all batches are aggregated into a single Performance Assurance Amount that stretches across all Designated Systems under a single master agreement (see Section 4.3 of the Master Agreement).

The problem with the current structure is that it does not limit the utility to drawing on just the Performance Assurance applicable to a single Product Order. Instead, the contract appears to allow a utility to draw on *any* Performance Assurance a Seller has posted for any Product Order rather than just the Performance Assurance relevant to the batch within which a Designated System may be experiencing a performance issue.
This creates a headache for financing, as an Approved Vendor may use different lenders and/or investors for different Product Orders. It is exceedingly difficult to get a lender or investor comfortable that the Performance Assurance posted for its Designated Systems may be used to cover performance issues for a system that is located in a different batch and therefore may be funded by a different lender or investor.

Allowing Approved Vendors to determine the batch within which to place a Designated System helps with this problem, but ENGIE sees no reason why a utility shouldn't be limited to drawing on the Performance Assurance relevant to the Designated System that has had a performance issue, rather than the Performance Assurance posted for a different Product Order within which the Designated System does not reside, particularly since Performance Assurance for each batch is replenishable.

A similar issue exists for the process with which the contract looks across all Designated Systems under a single master agreement to determine the Aggregate Drawdown Payment amount under Section 6(d). Section 6(d) essentially averages performance of Designated Systems under all batches to determine if there is a Delivery Year Shortfall Amount for all Designated Systems under a single master agreement as a whole. If there is a Delivery Year Shortfall Amount, then Buyer may draw against any of Seller's Performance Assurance postings.
As discussed above, ENGIE understands that this structure is intended to benefit Seller, and it does, but this approach also creates significant challenges for Approved Vendors that may have different lenders or investors for different batches of Designated Systems, as it means that the performance of systems in which a lender or investor does not have an interest may result in penalties being assessed against systems in which they do have an interest and a potential draw against their Performance Assurance even if the Designated System(s) experiencing a performance issue is not a system in which they have an interest. Again, it is exceedingly difficult to get a lender or investor comfortable with this.

Lastly, for related reasons, ENGIE believes that Approved Vendors should be allowed to choose to limit defaults and termination at the batch level, not the master agreement level. Otherwise, a lender or investor may be subject to termination for performance issues related to Designated Systems that reside in a batch for which the lender or investor has no interest. Again, allowing Approved Vendors to select the batch within which a Designated System is placed helps address these issues. Nevertheless, ENGIE encourages the IPA to allow Approved Vendors to separate Performance Assurance, measure performance, and limit cross-default risks within each batch and not across batches.

2. REMOVAL OF PROJECTS FOR CONVENIENCE AT THE APPROVED VENDOR'S REQUEST

(a) Are there specific issues that the IPA should consider in introducing provisions that would allow an Approved Vendor to make requests to Buyer for the removal of the project from the REC Contract subject to applicable penalties such as the forfeiture of collateral?

ENGIE supports the IPA's proposal to introduce provisions that will allow an Approved Vendor to make a request to Buyer for the removal of a project from the master agreement, subject to applicable penalties. As discussed above, ENGIE believes any forfeiture of collateral should be limited to the Performance Assurance posting associated with the batch within which a Designated System was placed.

(b) Are there other reasons the IPA should consider for allowing the Approved Vendor to request the removal of a project from the contract or for allowing an early termination of the contract for convenience (subject to applicable penalties)?

So long as an Approved Vendor is subject to liquidated damages for requesting removal of a project or early termination of a contract for convenience, ENGIE sees no reason to limit an Approved Vendors to only specific reasons for making such a request.

3. VERIFICATION OF COMMUNITY SOLAR SUBSCRIPTION LEVELS

(a) Should Exhibit I to the contract specify certain verification information that it requires from the interconnection utility including: utility account number, utility account name, subscription size, subscription start date, subscription end date, and any changes to the subscription size over time?

ENGIE offers no comment on this question at this time.

(b) What are best practices for obtaining such subscription verification information from the interconnecting utility (which may not be a counterparty to the REC Contract) observed in other jurisdictions?

ENGIE offers no comment on this question at this time.

4. MECHANISM OF COLLATERAL HOLDBACKS

(a) What issues should the IPA consider related to the process for a release/reduction in a letter of credit held as Performance Assurance if an Approved Vendor requests that a utility withhold an amount from the last REC payment under a Product Order?

ENGIE supports the IPA's proposal to introduce flexibility to allow an Approved Vendor to request for a utility to withhold an amount from the last REC payment as the Approved Vendor's Performance Assurance in exchange for a release/reduction in Performance Assurance posted as a letter of credit. ENGIE also encourages the IPA to allow a reduction in Performance Assurance in the amount of each Designated System's associated collateral amount as a Designated System reaches the end of its delivery period. Retaining collateral for a Designated System that is no longer subject to the contract is unnecessary. Collateral postings should equal the risk to which the utility is exposed, which risk is reduced as Designated Systems reach the end of their delivery term. Given that Performance Assurance is replenishable, it is unnecessary to require larger security postings for longer periods of time than is necessary to cover the utility's risk.

5. INCORPORATION OF ACKNOLWEDGEMENT OF ASSIGNMENT FORMS

(a) What are key issues that should be considered or captured in standard forms used to acknowledge consent to assignment?

ENGIE supports the IPA's proposed incorporation of the standard acknowledgement of assignment forms into master agreement. ENGIE encourages the IPA to also develop and include a form of notice to use in the event of a collateral assignment or pledge, which neither of the forms seems to accommodate but which is allowed without consent but upon notice under Section 9.2 of the master agreement.

(b) Are there other contract forms from other jurisdictions that could serve as a basis for implementing the provisions related to assignments in the REC contract under the ABP?

ENGIE offers no comment on this question at this time.

6. IPA AS MEDIATOR

(a) What issues should be considered for the IPA to act as a mediator in contract disputes between the utility counterparty and the Approved Vendor?

The binding arbitration provisions of Section 9.8 of the master agreement will need to be amended to specify that the IPA will act as the arbitrator.

(b) Under what circumstances should the IPA recuse itself from serving as a mediator?

The IPA should recuse itself for bias, impartiality, or a direct or indirect interest in the outcome.

(c) Should the IPA's determinations be binding on all parties, or merely advisory?

In accordance with Section 9.8 of the master agreement, any judgment issued by the IPA as arbitrator should be allowed to be entered in any court of competent jurisdiction by the party in whose favor such award is made.

(d) How should the IPA memorialize or publish its determinations?

Section 9.8(G) of the master agreement should be amended to allow for IPA arbitration determinations to be made public, subject to reasonable confidentiality restrictions applying when appropriate to protect information that may be confidential in nature.

7. OTHER PERTINENT ISSUES

(a) Are there other pertinent issues to consider or areas where the January 2019 REC Contract has proven to be complex or inflexible in ways that may not benefit the Program?

ENGIE offers no comment on this question at this time.

(b) Specific feedback on extensions (Section 5(b))?

ENGIE offers no comment on this question at this time.

(c) Specific feedback on treatment of Performance Assurance in connection with interconnection cost estimates (Section 5(b)(iv))?

ENGIE offers no comment on this question at this time.

(d) Specific feedback on Force Majeure (Article 6)?

ENGIE offers no comment on this question at this time.

(e) Specific feedback on Assignments (Section 9.2)?

ENGIE encourages the IPA to reevaluate the assignment provisions in Section 9.2 of the master agreement with respect to the assignment fees. It is difficult to understand how such fees are just and reasonable without a clear understanding and demonstration by the utilities that their actual cost of accommodating an assignment is equal to the amounts established in the master agreement.

8. ILLINOIS SOLAR FOR ALL REC CONTRACTS

ENGIE offers no comment on this question at this time.