



# ADJUSTABLE BLOCK PROGRAM REC Contract Stakeholder Workshop

AUGUST 7, 2020

Benjamin Chee, NERA



# Agenda



1 Background and Objective

2 Summary of Topics

3 Discussion



# 01 | Background and Objective

# Disclaimer

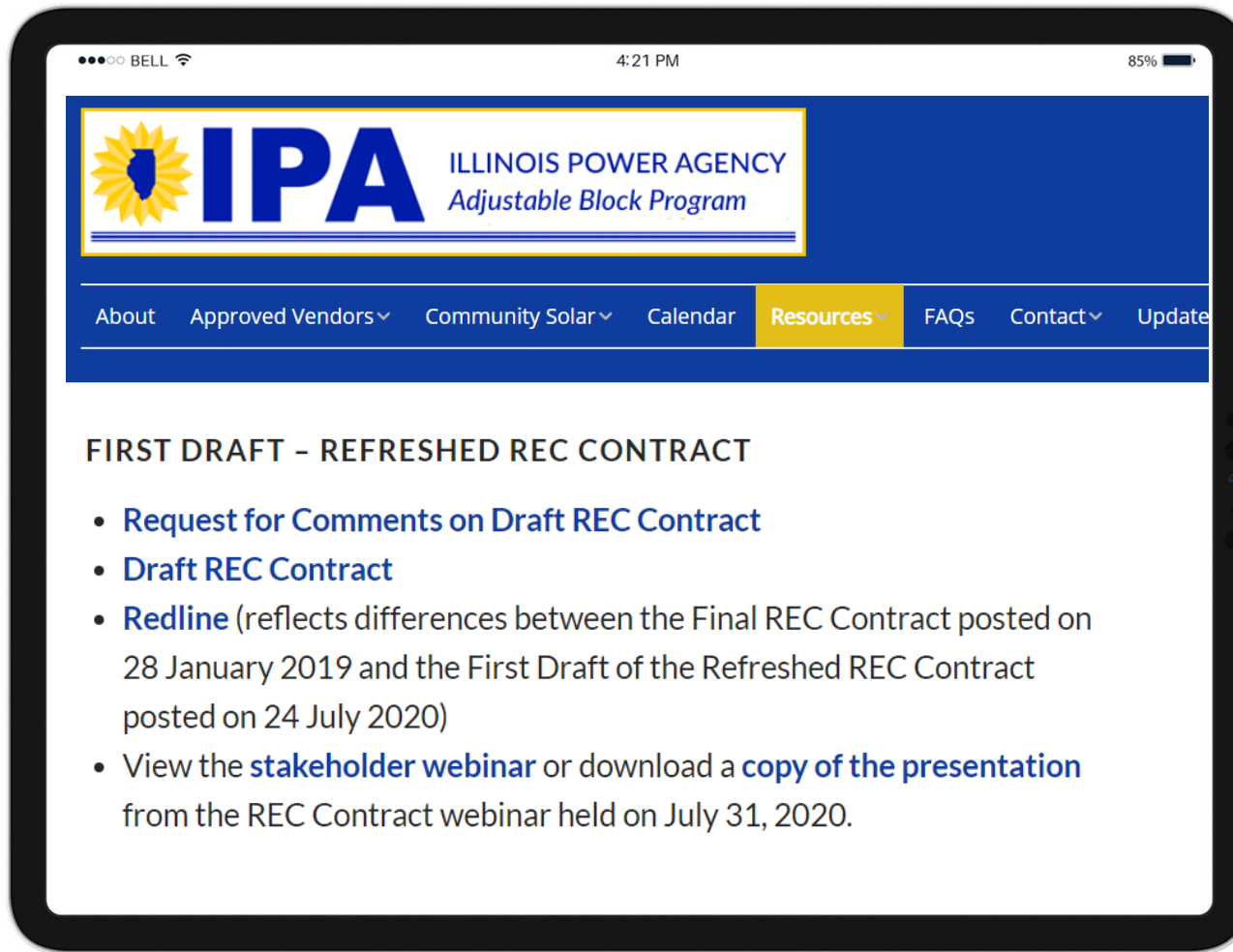
- Any statements herein or made on the call describing or referring to the draft agreement or governing documents are summaries only and are qualified in their entirety by the documents
- The draft agreement was posted on July 24, 2020 (i.e., first draft of the refreshed contract), and participants bear full responsibility for reviewing and understanding the written agreement
- Governing documents include Public Act 99-0906, the IPA's Revised Long Term Renewable Resources Procurement Plan, and ICC Order in Docket No. 19-0995

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Download contract materials, this presentation and audio recording: [IllinoisABP.com/rec-contract/](https://IllinoisABP.com/rec-contract/)

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IllinoisABP.com/rec-contract/



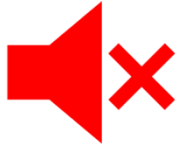
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The recording of this stakeholder workshop will be posted online

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# House Keeping Items

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**Please mute yourself when you are not speaking.**

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During the Discussion Session

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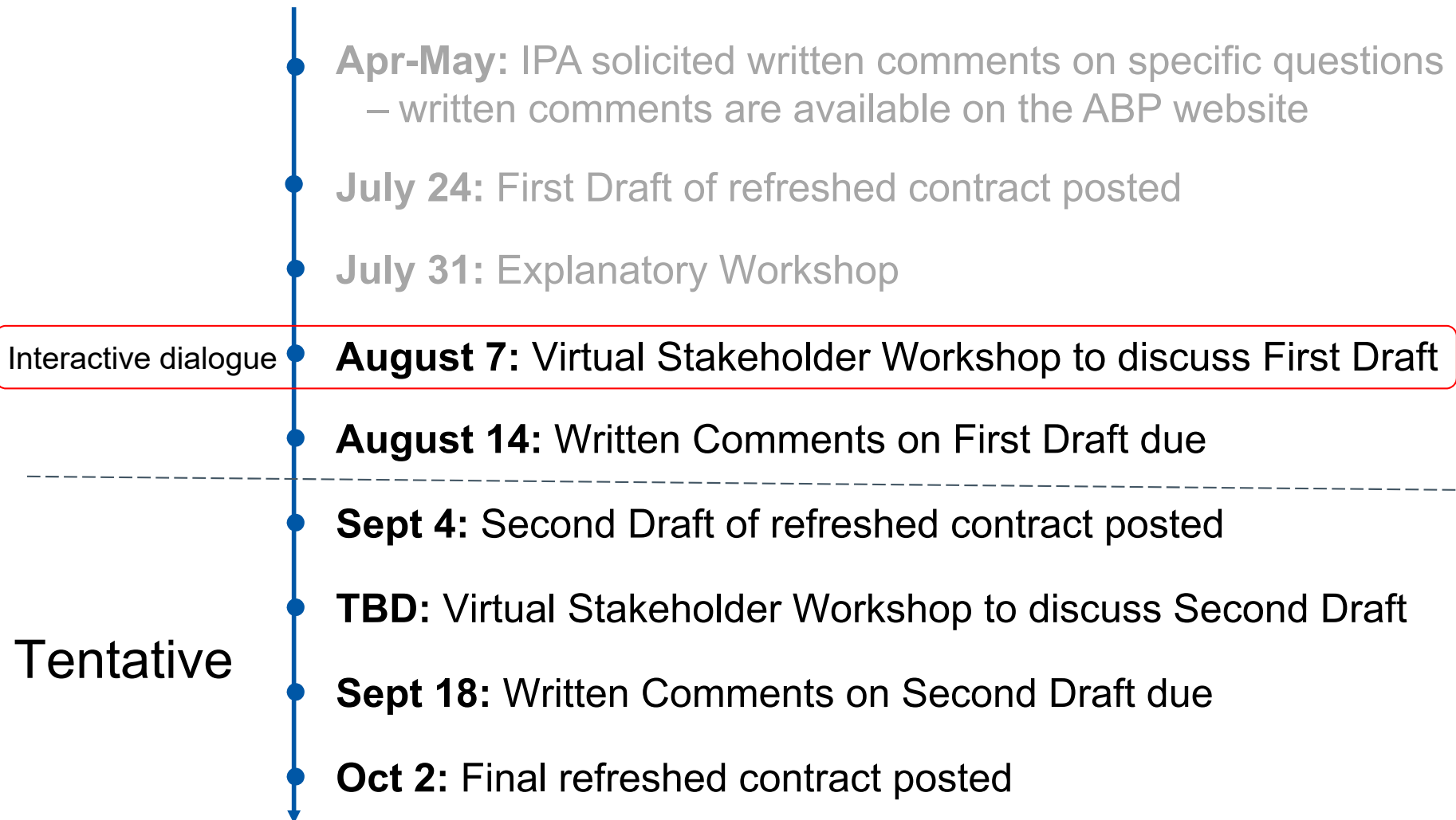
**If you would like to make a new comment, please raise your hand and wait. We will let you know when to speak.**



**If you would like to respond to the comments currently made, please simply unmute yourself and respond.**

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# Comment Process and Timeline



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Submit your comments by 5PM CPT on August 14

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# Comment Process



**August 14**

- download materials at: <http://illinoisabp.com/rec-contract/>
- email written comments: IPA.Solar@illinois.gov
- use tracked changes; provide explanatory notes in a separate document or highlight in tracked changes
- comments will be posted online

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Today's workshop is about hearing from stakeholders. **Please provide any comments you make today in writing as well.**

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## 02 | Summary of Topics

# Summary of Topics

1	Timing of the Implementation of the Refreshed Contract
2	Contract Administration
3	REC Contract Structure
4	Quarterly Payment Cycles (Section 5.1; Exhibit F-4)
5	Termination for Convenience and removal of systems (Section 2.4(d); Section 9)
6	Mechanism of collateral holdbacks (Section 7.1(c))
7	Form of the Letters of Credit (Exhibit E)
8	Collateral if Project is Resubmitted (Section 2.5 (b))
9	Contract Capacity Factor (Section 1.21)
10	Cure Period for Community Projects (Section 2.6 (a) (iii))
11	IPA as Mediator (Section 15.2)
12	Confidentiality Provisions (Section 15.4)
13	Suspension of Payments under Section 1-75(c)(1)(L)(vii) of IPA Act (Section 5.4)
	<b>Other Pertinent Issues?</b>



## 03 | Discussion

# 1. Timing of the Implementation of the Refreshed ABP REC Contract

- In accordance with Section 6.7 of the Revised Plan:

*“Assuming that the contract structure will be altered as a result of the above-mentioned stakeholder workshops and subsequent feedback process, the Agency recommends that projects approved by the Commission after the contract finalization date would use the new contract, regardless of application date. The Adjustable Block Program will also provide an “off-ramp” option offered for any already applied projects that were expecting to be subject to the original contract and could now be nonfinanceable (or otherwise unable to be developed) under the updated contract.”*

## 2. Contract Administration

- **Assignment**

- If a Product Order from a current (January 2019) REC Contract is assigned, under which contract does the assignee receive the Product Order?

- **Collateral and Surplus RECs across different versions of the REC Contract**

- How will collateral and surplus RECS be treated across multiple versions of the REC contract with a single utility?

### 3. REC Contract Structure

- The REC Contract Structure is a key issue to be considered in the refreshed contract development process (Section 6.7 of Revised Plan):
  - Shortening and simplifying the REC Contract (and, if possible, synthesizing the contract into a single set of terms and conditions)
  - Clarifying contract default versus system default versus penalties
  - Clarifying Product Orders, Master Contracts, and Portfolio-level responsibilities
  - Incorporation of Acknowledgement of Assignment forms

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The first draft of the Refreshed REC Contract has been posted on July 24, 2020.

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# REC Contract consists of 15 Articles and 6 Exhibits

Article	Topic Covered
1	Definitions
2	Product and Facility Requirements
3	Product Orders; Delivery Term; Payment Cycles
4	Delivery Obligations
5	Payment And Invoicing
6	Reporting Requirements
7	Credit And Collateral Requirements
8	Representations and Warranties
9	Events Of Default; Remedies
10	Force Majeure
11	Government Action
12	Governing Law
13	Assignment
14	Liability
15	Miscellaneous

Exhibit	Topic Covered
<b>A</b>	<b>Form of Product Order</b> <ul style="list-style-type: none"><li>– Schedule A (Proposed System Info)</li><li>– Schedule B (Final System Info)</li><li>– Schedule C (summary of Designated Systems)</li><li>– Schedule D (Removal Notice)</li></ul>
<b>B</b>	<b>Contact Information</b>
<b>C</b>	<b>Form of Reports and Notices</b> <ul style="list-style-type: none"><li>– Bi-Annual System Status Form</li><li>– Community Solar Quarterly Report</li><li>– REC Annual Report</li><li>– Assignment and Consent Notice</li></ul>
<b>D</b>	<b>Sample Invoice Form</b>
<b>E</b>	<b>• Form of Security Instruments</b> <ul style="list-style-type: none"><li>– Letters of Credit</li><li>– Letters of Full Transfer</li></ul>
<b>F</b>	<b>Examples</b> <ul style="list-style-type: none"><li>– Delivery Schedule</li><li>– Surplus RECs and Drawdown Payments</li><li>– Community Solar Quarterly Payment Adjustment</li><li>– Quarterly Netting Statement Calculations</li></ul>

REC Contract is no longer divided in a Cover Sheet and Master REC Agreement.  
It is **one** document.

## 4. Quarterly Payment Cycles (Section 5.1; Exhibit F-4)

### Payment Cycle A

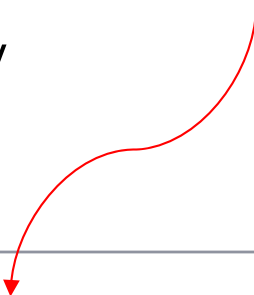
- 1 Jan–31 March
- 1 April–30 June
- 1 July–30 Sept
- 1 Oct–31 Dec

### Payment Cycle B

- 1 Feb–30 April
- 1 May–31 July
- 1 Aug–31 Oct
- 1 Nov–31 Jan

### Payment Cycle C

- 1 March–31 May
- 1 June–31 Aug
- 1 Sep–30 Nov
- 1 Dec–28/29 Feb

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- For example, if system is energized in May, then system is associated with Payment Cycle C and first invoice due by June 10 and paid by June 30

- LTRRPP Section 6.6: “However, the Agency recommends that as part of the contract update process, new contracts allow for three separate quarterly delivery schedules to reduce the lag time between a project being approved for payment and the first (or only) payment being received.”



## 5. Termination for Convenience (Section 2.4(d))

- Upon Approved Vendor's determination that a Designated System will not be constructed, Approved Vendor may submit a written notice to the utility and the Agency to remove the Designated System from the Agreement.
    - AV uses Schedule D to the Product Order for such written notice
    - AV forfeits Collateral Requirement
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- LTRRPP Section 6.7: "The Agency plans to conduct stakeholder workshops ... Key issues to be considered include...:
    - Termination for convenience (subject to applicable penalties)
    - Removal of a project from the contract

## 5. Not all Events lead to Contract Termination (Section 9.2)

- Individual Systems may be removed if:
  - Costs are being recovered through rates (Sec 2.2)
  - System is non-conforming (Sec 2.2 and Sec 2.4)
  - System fails to meet Scheduled Energized Date (Sec 2.4)
  - Seller determines it will not complete construction (Sec 2.4)
  - Size has changed (Sec 2.5)
  - System fails to maintain minimum subscriber rate (Sec 2.6)
  - System fails to deliver at least 1 REC by deadline (Sec 4.1)
  - Seller's request due to interconnection estimate > \$0.30/watt (Sec 7)
  - A Force Majeure event occurs (Sec 10)

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Unless specified otherwise, AV forfeits Collateral Requirement and returns payment for undelivered RECs associated with the removed System

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## 6. Mechanism of collateral holdbacks (Section 7.1(c))

- Upfront collateral will be required from AVs in all cases, including for already energized projects.
  - In the event that Seller has posted Seller's Performance Assurance in the form of a Letter of Credit, Seller may request for Buyer to withhold a portion of the last REC payment of a Designated System as Seller's Performance Assurance for a Letter of Credit amount reduction.
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- LTRRPP Section 6.14.6: "In cases where collateral was posted through a letter of credit, the Approved Vendor may choose for the utility to withhold the collateral amount for each system from the last (or only, if a distributed generation system of 10 kW or smaller in size) REC payment in exchange for a release/reduction of the letter of credit."
  - LTRRPP Section 6.14.6: "Approved Vendors do not have the option to decline to post collateral within 30 business days once they have signed the contract."

## 7. Form of the Letters of Credit (Exhibit E)

- In the July 2020 Draft REC Contract, the Approved Vendor must post collateral in the form of cash or a letter of credit. The form of the standard letter of credit to be used is provided as Exhibit E to the July 2020 Draft REC Contract.

## 8. Collateral if Project is Resubmitted (Section 2.5 (b))

- If a Designated System is removed from the contract and a new ABP application for the same Designated System is resubmitted pursuant to Section 2.5 (related to change in size or class or resource), then the previously forfeited portion of such Seller's Performance Assurance Amount shall be applied to meet the Collateral Requirement of such newly approved Designated System.
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- LTRRPP Section 6.15.3: "If a project is resubmitted, the collateral associated with the original system may be applied to the resubmitted system, if approved."

## 9. Contract Capacity Factor (Section 1.21)

- Contract Capacity Factor. For purposes of determining REC delivery obligations, the Contract Capacity Factor shall be based on lesser of **(a)** proposed nameplate capacity x P1 capacity factor vs. **(b)** actual nameplate capacity x P2 capacity factor.
    - P2 capacity factor cannot be greater than P1 capacity factor.
    - P2 capacity factor may or may not be the Contract Capacity Factor.
    - Contract Capacity Factor shall be the capacity factor for the first Delivery Year (when the system is Energized) and subject to 0.5% degradation annually.
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- LTRRPP Section 6.15.3: “The final capacity factor can be adjusted down from the initial capacity factor but cannot be increased from the original capacity factor, including changes in capacity factor due to switches between tracking technology, non-tracking and tracking systems, and bifacial vs standard module use.”

## 10. Cure Period for Community Projects (Section 2.6 (a) (iii))

- The draft refreshed contract introduces a cure period of one additional quarter if a Community Solar Project does not meet the 50% minimum Actual Nameplate Capacity on the last day of the 4<sup>th</sup> Quarterly Period.
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- LTRRPP Section 6.15.4: “At least 50% of the capacity of the project must be subscribed at the time of energization in order to receive payment for RECs, and that payment will be based upon calculating the number of RECs that correspond with the amount of the project’s capacity that has been initially subscribed.... The calculation of the number of RECs for payment will be updated after one year of operation (based on the final quarterly report of that first year) to allow for the acquisition of additional subscribers..... The calculation of the maximum number of RECs due payment will be determined by the project’s subscription level after one year of operation”

## 11. IPA as Mediator (Section 15.2)

- If a dispute or claim arises between the parties, either party may request in writing that the other party mediate the dispute.
  - The Agency shall conduct mediation unless one or more of the parties objects to the Agency acting as mediator
  - If either party objects, then mediation shall be conducted by a mediator affiliated with the American Arbitration Association (AAA)
  - Binding arbitration is an option
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- LTRRPP Section 6.7: “The Agency plans to conduct stakeholder workshops ...key issues to be considered include...:
  - Adoption of a measure providing for mediation by the IPA between utilities and Approved Vendors in certain REC Contract disputes”



## 12. Confidentiality Provisions (Section 15.4)

- To the extent that Seller obtains information relating to a Subscriber's utility account that is confidential, proprietary or generally non-public from Subscribers, including Subscribers' utility account number, utility account name, and meter number, Seller shall maintain the confidentiality and security of such information received from Subscribers. Further, Seller shall not release such Subscriber's information to any other person or entity other than the Subscriber without the Subscriber's written consent to such release.

## 13. Suspension of Payments under Section 1-75(c)(1)(L)(vii) of the IPA Act (Section 5.4)

- In accordance with 1-75(c)(1)(L)(vii) of the Illinois Power Agency Act (20 ILCS 3855), utilities are not required to pay any amounts that exceed the actual amounts of revenues collected:

*“Nothing in this Section shall require the utility to advance any payment or pay any amounts that exceed the actual amount of revenues collected by the utility under paragraph (6) of this subsection (c) and subsection (k) of Section 16-108 of the Public Utilities Act, and contracts executed under this Section shall expressly incorporate limitation.”*

# Suspension of Payments (Section 5.4)

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**Payment suspended if amounts exceed actual revenues collected.** Per 1-75(c)(1)(L)(ii) of IPA Act, utility is not required to pay amounts that exceed revenues collected under 1-75(c)(6) of IPA Act and Section 16-108(k) of PUA.

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## **Buyer's payment obligations in a given Delivery Year**

- Payments for RECs to Seller
- Payments to other Sellers under renewable contracts executed under 1-75(c)(1) of IPA Act
- Applicable fees, charges, and administrative costs related to REC purchases



## **Buyer's payment limitation in a given Delivery Year**

- Rate Impact Limitations for such Delivery Year pursuant to 1-75(c)(1)(E) of IPA Act

The available funds include:

1. any utility-held Alternative Compliance Payments authorized for procuring RECS by the ICC
2. any unspent revenues collected by the utilities is permitted to carry over across delivery years

# Other Pertinent Issues





Contact | [IPA.Solar@illinois.gov](mailto:IPA.Solar@illinois.gov)