

**CYPRESS CREEK RENEWABLES
COMMENTS ON
DRAFT 2 OF REVISED REC CONTRACT**

Cypress Creek Renewables (“CCR”) appreciates the Illinois Power Agency’s (“IPA”) consideration of the August 14, 2020 comments on the first updated draft of the renewable energy credit (“REC”) standard delivery contract between utilities and approved vendors. The revisions appearing in the second draft of the REC standard delivery contract released on September 4, 2020 overall constitute improvements to the document. While CCR is a member of the Joint Solar Parties (“JSP”) and generally supports the JSP comments, CCR would like to offer some additional comments on the second draft of the updated REC contract. In light of the nature of its comments, CCR is not offering specific replacement language. CCR’s comments are offered in the order in which they appear in the second draft of the REC contract.

1. Sections 2.2, 2.4(f), and 4.1(b)(iii) “Greater Of” vs “Sum Of”

Sections 2.2, 2.4(f), and 4.1(b)(iii) describe situations in which a Seller must make a payment to a Buyer as a form of penalty. Twice in Section 2.2 and once each in Sections 2.4(f) and 4.1(b)(iii) the revised REC contract reflects a change in the calculation of the penalty from what is contained in the currently effective version of the REC contract. Specifically, in all four instances, the penalty would be increased to reflect the “sum of” rather than the “greater of” two amounts. The JSP noted the change in Sections 2.2 and 2.4(f) in their August 14, 2020 comments on the first draft of the revised REC contract

and pointed out that the basis for the change was unclear. The second draft of the revised REC contract retained the change, for which no explanation was provided.

CCR shares concern over the unexplained increase in the penalty calculation. In the absence of an explanation, CCR respectfully suggests that the original language be restored in all three sections. Changes without an explanation are arguably arbitrary.

2. Section 13.1 Assignment of Agreement and Product Orders

The JSP and CCR's respective August 14, 2020 comments each address the fees set forth in the eighth unnumbered paragraph in Section 13.1 of the REC contract to be paid by Seller to Buyer when an assignment occurs. The fees amount to \$1,500 and \$5,000 depending on certain circumstances set forth in the paragraph. CCR understands from the September 11, 2020 workshop that the fees are designed to discourage assignments because they are considered administratively burdensome. CCR further understands that the fee payments may be contributed to funds used to purchase RECs.

CCR supports the comments offered by the JSP to the second draft of the revised REC contract. To the extent that any fee is applied, however, CCR respectfully submits that there should be a correlation between the amount of the fee and the administrative burden imposed by assignments. As noted on pages 4 and 5 of CCR's August 14, 2020 comments, the Illinois Commerce Commission ("Commission") expects fees assessed by utilities to be cost based. CCR respectfully requests that Buyers offer information explaining why specific fees are appropriate. In the absence of such justification, CCR proposes that unsupported fee amounts be omitted from the contract.

3. Section 15.2 Dispute Resolution

a. Mediation

At page 5 and 6 of its August 14, 2020 comments, CCR discussed the mediation provisions in Section 15.2 of the REC contract and the possibility of requesting mediation under Commission rule 83 Illinois Administrative Code 201, “Voluntary Mediation Practice” (“Part 201”), when the IPA is unable to mediate a contract dispute.¹ While the availability of Part 201 to such disputes remains uncertain, CCR respectfully encourages the IPA and Commission Staff to evaluate, and identify impediments to, the use of Part 201 to facilitate the resolution of disputes under the REC contract. Utilizing Part 201 would advance the goals of reducing costs and avoiding having to educate a mediator about the Adjustable Block Program. While the pending update of the REC contract may not be able to reflect Part 201, a future version may be able to do so if any obstacles, whether administrative or legal, are identified and addressed.

b. Arbitration

CCR supports the JSP recommendation to make arbitration a voluntary dispute resolution option. Because the types of disputes that can arise from the REC contract are subject to repetition, allowing parties to rely on a public court proceeding, rather than private arbitration, is good public policy. CCR notes, however, a minor apparent inconsistency in the arbitration language. Subsection (1) refers to arbitration administered by the American Arbitration Association (“AAA”) “in Chicago.” At the same time, subsection (1)(B) refers to arbitration being “held at a location within the State of Illinois.” How the reference to Chicago is interpreted may create a conflict. If the

¹ To be clear, CCR supports the JSP mediation comments on the second draft of the revised REC contract.

reference to Chicago simply means using arbiters from the AAA Chicago office, there is no conflict. If the reference to Chicago means the arbitration is to be conducted in Chicago, the interpretation conflicts with the latter statement that the arbitration is simply to be within Illinois. CCR respectfully suggest that this ambiguity be clarified.

In conclusion, Cypress Creek Renewables respectfully requests that its comments on the second draft of the standard REC delivery contract be considered.

Dated: September 18, 2020

Respectfully submitted,

Cypress Creek Renewables

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