CYPRESS CREEK RENEWABLES
COMMENTS ON
DRAFT REC CONTRACT

Cypress Creek Renewables ("CCR") appreciates this opportunity to provide written comments and proposed edits to the Illinois Power Agency's ("IPA") draft updated renewable energy credit ("REC") standard delivery contract between utilities and approved vendors. While CCR is a member of the Joint Solar Parties ("JSP") and generally supports the JSP comments, CCR is taking this opportunity to offer comments and proposed edits separately in order to provide additional information and options for consideration. Given the limited number of edits to the contract being proposed by CCR, the discrete sections of the contract affected by CCR's proposals are reproduced within this document rather than through a separate document consisting of the complete draft contract. CCR's comments and proposed edits are offered in the order in which they appear in the draft contract.

1. Section 2.6 Additional Provisions Related to Community Renewable Energy Generation Projects

Section 2.6 addresses, among other topics, cure periods for community renewable energy generation projects. Subsection (a) calculates subscription levels, and the availability of price adders, based on the last day of the fourth quarter reporting period. Cure periods are similarly based on a specific date. CCR is concerned that assessing subscription levels based on a single day is not fair to Sellers and recommends a cure

period that is more representative of a Seller's subscription level in the fourth quarter. To this end, CCR offers the following new Section 2.6(a)(iv):

> (iv) In the event that the Subscription Mix or percent of Actual Nameplate Capacity Subscribed is higher on at least one calendar day during the fourth full Quarterly Period than on the last day of the fourth full Quarterly Period, Seller may identify such date in the fourth (4th) Community Solar Quarterly Report. The IPA shall use the higher Subscription Mix or percent of Actual Nameplate Capacity Subscribed for purposes of making any quarterly payment adjustment to the Contract Price. Notwithstanding the foregoing, however, in no event shall the IPA recognized subscription level exceed ten percentage points of the corresponding value on the last day of the fourth (4th) Quarterly Period.

CCR submits that this language is preferable to relying on a random date that may not be reflective of a Seller's typical subscription levels but at the same time protects against extreme variations.

2. Section 5.4 Cost Recovery through Pass-Through Tariffs

Appendix A to the July 24, 2020 Request for Stakeholder Comments identified Section 5.4 of the draft contract as containing new language related to Section 1-75(c)(1)(L)(vii) of the Illinois Power Agency Act ("IPA Act"), 20 ILCS 3855/1-1 *et seq*. While CCR understands why the IPA has included the new first paragraph in Section 5.4, it is concerned that the language may be interpreted too literally. In other words, CCR fears that a Buyer may temporarily have insufficient funds to pay a Seller of RECs due to cash flows issues, rather than a systemic lack of funds under the tariff pass through mechanism. To address this concern, CCR offers an alternative first paragraph under Section 5.4 of the contract. The only change of substance is the addition of the sentence, "For the avoidance of doubt, the temporary lack of present funds in the account referred to in subsection (k) of Section 16-108 of the Public Utilities Act does not warrant Buyer's

non-payment." The other changes are proposed to conform the language/references in the new paragraph with the remainder of the contract.

> In accordance with Section 1-75(c)(1)(L)(vii) of the IPA Act, ~~As required under 20 ILCS 3855/1-75(c)(1)(L)(vii),~~ nothing in this Agreement shall require Buyer to advance any payment or pay any amounts that exceed the actual amount of revenues collected by Buyer ~~the utility~~ under Section 1-75(c)(6) of the IPA Act~~paragraph (6) of this subsection (c)~~ and subsection (k) of Section 16-108 of the Public Utilities Act (220 ILCS 5). Buyer's payments for RECs in a given Delivery Year therefore shall not cause the sum of the cumulative payments to Seller and all Other Sellers under contracts executed pursuant to Section 1-75(c)(1)~~20 ILCS 3855/1-75(c)(1)~~, as well as all other applicable fees, charges, and administrative costs related to the purchase of RECs under Section 1-76(c)(1)~~20 ILCS 3855/1-75(c)(1)~~, to exceed the rate impact limitations for such Delivery Year as calculated under Section 1-75(c)(1)(E) of the IPA Act~~20 ILCS 3855/1-75(c)(1)(E)~~. For the avoidance of doubt, the temporary lack of present funds in the account referred to in subsection (k) of Section 16-108 of the Public Utilities Act does not warrant Buyer's non-payment. For the purposes of this Agreement, the available funds under Section 1-75(c)(1)(E)'s rate impact limitations shall be calculated inclusive of any ~~utility~~Buyer-held Alternative Compliance Payments authorized for procuring RECs by order of the Illinois Commerce Commission or any unspent revenues collected by Buyer ~~the utility~~ under Section 1-75(c)(6) of the IPA Act~~paragraph (6) of this subsection (c)~~ and subsection (k) of Section 16-108 of the Public Utilities Act (220 ILCS 5) that Buyer ~~the utility~~ is permitted to carry over across delivery years.

CCR believes the additional sentence is consistent with other aspects of the account referred to in subsection (k) of Section 16-108 of the Public Utilities Act, 220 ILCS 5/1-101 *et seq*. Notably, subsection (k) provides: "Any taxes due on the funds in the account, or interest earned on it, will be paid from the account or, if insufficient monies are available in the account, from the monies collected under the tariffed charges to recover the costs of procuring renewable energy resources." This language recognizes that the account may temporarily have insufficient funds, but that tariff charges will continue to replenish the account so that obligations can be paid. Similarly, the initial four-year reconciliation period provided for in subsection (k) further indicates that

collected funds can be dispersed without regard to the year in which the funds were collected, which reflects an acknowledgement that the fund balance will ebb and flow depending on amounts collected and dispersed. Accordingly, CCR respectfully requests that its edits to Section 5.4 be considered.

3. Section 7.1 Performance Assurance

CCR seeks clarification of a sentence in subsection (c) of Section 7.1 concerning a reduction in the letter of credit amount. CCR does not object to the concept embodied in subsection (c) but is not clear on the meaning of the latter half of the sentence highlighted below. Specifically, the sentence appears to indicate that Seller will send an invoice to Buyer if Seller wants Buyer to withhold a portion of the last REC payment. CCR is uncertain why Seller would send an invoice to Buyer in this situation. Depending on the intended meaning, CCR suggests that this sentence may need to be reworded.

> (c) Option to Withhold Last Payment to Reduce Letter of Credit Amount. 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 (or withhold a portion of the only REC payment if the Designated System has an Actual Nameplate Capacity equal to or less than 10.00kW) as Seller's Performance Assurance for a Letter of Credit amount reduction. Seller's written request must be made by the applicable Invoice Due Date along with an invoice requesting for payment to be applied to Seller's Performance Assurance Requirement. Buyer shall apply the withheld payment to the Performance Assurance Requirement on the date the last payment is scheduled to be made and Buyer shall return the excess Performance Assurance Amount upon receipt of a Letter of Credit amendment for the reduced amount from Seller, or cancel the Letter of Credit if the amount of such last REC payment exceeds the Letter of Credit amount.

4. Section 13.1 Assignment of Agreement and Product Orders

The eighth unnumbered paragraph in Section 13.1 refers to two fees 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 is puzzled as to calculation of these fees and their purpose. Although CCR recognizes that the IPA is not the Illinois Commerce Commission ("Commission"), CCR notes that utilities appearing before the Commission must justify any fee that they collect.[1] In this instance, CCR is not aware of any costs that a Buyer incurs that would warrant the fees imposed. Nor is CCR aware of any reason why a subsequent assignment should be assessed a higher fee. CCR respectfully asks that Buyers offer information explaining why the fees are appropriate. In the absence of such justification, CCR proposes that the eighth and ninth unnumbered paragraphs in Section 13.1 be omitted from the contract.

5. Section 15.2 Dispute Resolution

Section 15.2 describes means of resolving disputes under the contract, which include mediation. CCR appreciates the IPA's willingness to mediate disputes but also recognizes that situations may arise in which it may not be appropriate for the IPA to act as mediator. When the IPA is not available to mediate a dispute, the contract provides that mediation is to be conducted through a mediator affiliated with the American Arbitration Association ("AAA"). CCR understands that mediation as a dispute resolution tool is being offered as way to reduce costs and avoid having to educate a mediator about

[1] See, for example, the Commission's Order in Docket No. 04-0779, *Northern Illinois Gas Company d/b/a Nicor Gas Company, Proposed general increase in natural gas rates* ("As for the possibility of increased administrative costs, if Nicor had presented evidence documenting the level of additional costs it alleges will occur as group sizes increase, the Commission might have had a sufficient basis for establishing an administrative fee. Unfortunately, the record does not contain sufficient information to establish an additional administrative fee.") 2005 Ill. PUC LEXIS 475, 462-463, 245 P.U.R.4th 194 (September 20, 2005 Order), and Order in Docket No. 91-0335, *Illinois Power Company, Proposed changes in rates for the purpose of implementing a redesign of rates for electric service* ("The record shows that IP's proposed changes to the space heat billing provisions will simplify and improve the administration of this rate. The record also shows that the proposed Service Activation Fee is cost-justified and should be approved. This proposed change imposes a charge directly on the cost causer.") 1992 Ill. PUC LEXIS 267, 115 (July 8, 1992 Order).

the Adjustable Block Program. While the IPA as mediator accomplishes those goals, using a AAA mediator arguably does not.

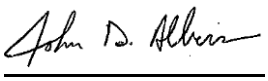
CCR observes that the Commission currently has mediation rules in place at 83 Illinois Administrative Code 201, "Voluntary Mediation Practice" ("Part 201"). While there is some question as to whether contract disputes are subject to Commission resolution, CCR suggests that the IPA consider whether the Commission mediation rule could be utilized for dispute resolution. Use of Part 201, if available, would accomplish the same goals referenced above. Commission Staff may be able to offer some insight into this question. If Part 201 is found to be available, the mediation provisions in Section 15.2 could easily be amended in the next draft of the contract to provide that Part 201 may be utilized if the IPA is not available to serve as mediator.

In conclusion, Cypress Creek Renewables respectfully requests that its comments and proposed edits to the draft standard REC delivery contract be considered.

Dated: August 14, 2020

Respectfully submitted,

Cypress Creek Renewables



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