

PUBLISHED FOR COMMENT: Second Draft of the Adjustable Block Program’s REC Delivery Contract

The Illinois Power Agency, through its Procurement Administrator and Adjustable Block Program (“ABP”) Administrator and in consultation with the Ameren Illinois Company, Commonwealth Edison Company, MidAmerican Energy Company, and the Staff of the Illinois Commerce Commission (as required by the Long-Term Renewable Resources Procurement Plan or “Plan”), has developed a second draft of its ABP REC Delivery Contract (“Second Draft Contract”), which takes into account comments received from stakeholders on the first draft of the ABP REC Contract previously published on December 7, 2018 (“First Draft Contract”).

Comments on this Second Draft Contract are due by 5:00 PM CPT on January 18, 2019. Once finalized, this contract will serve as the standard contract form for the delivery of RECs under the ABP.

CHANGES FROM FIRST DRAFT CONTRACT

The Agency deeply appreciates all comments received through both its December 19th and December 31st written comment periods and its December 28th webinar. As noticed in the Agency’s January 4th announcement, this Second Draft Contract features revisions addressing key concerns identified by commenters. These revisions include, but are not limited to, the following:

- Clarifies that system-related defaults would not generally constitute Events of Default under the contract
- Revisions to provisions governing assignment
 - Allowing for the assignment of a minimum of one or more Product Orders (i.e., batch assignment) without having to assign the contract in its entirety
 - In specified circumstances, allowing for assignment by Seller without the express consent of Buyer
 - In specified circumstances, allowing for temporary assignment to an entity other than an ABP-registered Approved Vendor
- Revisions to provisions governing collateral
 - Allowing for systems already energized at the time of contract execution to immediately exercise the option to hold 5% of contract value back as collateral
 - Modifying the calculation of the three-year rolling average for evaluating REC delivery performance
 - In the case of a drawdown for underperformance, clarifying that requirements to replenish collateral apply to 5% of the contract’s remaining value rather than of the contract’s total value
 - Clarifying edits related to the calculation of REC payment adjustments to account for community solar subscription levels (including a provision that no collateral drawdown will be required for a community solar project with over 90% average subscription percentage in a given delivery year, regardless of its contracted subscription percentage)
 - Not requiring drawdowns until collateral due back exceeds de minimis amounts
- Revisions to the process of extending the system energized date

- Reconciling language for extensions in the case of electrically complete, but not yet interconnected systems with provisions in the Plan
- Allowing fees to be refundable in the case of extensions for community solar projects requiring an extension to acquire subscribers
- Increasing the variance to the greater of: +/-5 kW or +/-25% for changes between proposed system size and actual system size

SPECIFIC ITEMS FOR CONSIDERATION IN SECOND DRAFT CONTRACT

While commenters may comment on any aspect of this Second Draft Contract, feedback is specifically sought on the following topics:

ASSIGNMENTS: The goal of the Second Draft Contract’s assignment provision is to permit assignments when necessary or consistent with standard commercial practices, but to a) provide disincentives to an endless string of assignments, and b) ensure that the new counterparty (the assignee) is fully capable of fulfilling the responsibilities of an Approved Vendor as required by the Plan. Assignment restrictions used to accomplish these objectives could take many forms: fees (or potentially escalating fees), circumstantial limitations, quantitative limitations, or along other dimensions. Feedback is sought on what may most effectively accomplish these ends while still allowing necessary flexibility to Approved Vendors.¹ Feedback is also sought on how to address any surplus REC balance should individual batches be assigned: should the surplus RECs associated with those projects remain with the original Seller or be transferred to the assignee?²

EVENTS OF DEFAULT TRIGGERS: Multiple parties expressed concerns about the potential for default due to system-specific delinquencies under the First Draft Contract whereby a failure, breach, or any other default specific to a particular project or projects could cause an Event of Default for the entire contract; feedback is sought to ensure that those concerns are adequately addressed in this Second Draft Contract.³

THREE-YEAR ROLLING AVERAGE CALCULATION: Under the Second Draft Contract, not only are three full years of deliveries required before assessing a project’s performance for purposes of a drawdown; there must be three full Delivery Years of deliveries (which may be greater than three calendar years since delivery of the first REC),⁴ with the resulting surplus REC balance calculated on an average basis over that period. Feedback is sought on any unintended consequences created through this approach.

COLLATERAL ISSUES: As outlined above, the Second Draft Contract features multiple collateral-related revisions;⁵ feedback is sought on the wisdom and propriety of these changes.

¹ Please see Section 13(j) of the Cover Sheet, modifying Section 9.2 of the Master REC Agreement.

² Please see Section 6(g) of the Cover Sheet and Section 13(j) of the Cover Sheet, modifying Section 9.2 of the Master REC Agreement.

³ Please see Section 13(f) of the Cover Sheet, modifying Article 5 of the Master REC Agreement.

⁴ Please see Section 6(d) of the Cover Sheet.

⁵ Please see, in particular, Section 6(d)(v) of the Cover Sheet and Section 13(e) of the Cover Sheet, modifying Section 4.3 of the Master REC Agreement.

LETTERS OF CREDIT: Revisions to the standard Letter of Credit attached to the Second Draft Contract will not be entertained outside of this process, so any suggested revisions (or requests for additional variations to the standard Letter of Credit language) should be included with this round of comments. Also, please consider the propriety of including an evergreen clause in the standard Letter of Credit to ease administrative burden over the Contract's term.

SETTLEMENT AMOUNT CALCULATION: Feedback is sought on the appropriate way to calculate a settlement amount after a contract is terminated following an Event of Default.⁶

COMMUNITY SOLAR PROJECT QUARTERLY ADJUSTMENTS: Feedback is sought on the appropriate way to adjust payments for RECs from a community solar project following each of the four Community Solar Quarterly Reports that provide information on a project's subscription percentage and small subscriber mix, implementing the Illinois Commerce Commission's directive at pages 117-118 of its April 3, 2018 Order.⁷

PROCESS & SCHEDULE

As referenced in its January 4th announcement, the Agency has set the following schedule for the remainder of the REC contract development process and the opening of the Adjustable Block Program to project applications:

- Friday, January 11, 2019: Second Draft REC Contract will be released
- **Friday, January 18, 2019, 5:00 PM CPT: Stakeholder comments on Second Draft REC Contract due**
- Monday, January 28, 2019: Final REC Contract will be released
- Wednesday, January 30, 2019: Adjustable Block Program will open for project applications
- Wednesday, February 13, 2019: Deadline for project applications/batches to be submitted in order to qualify for any required lottery in a Group/category combination

Comments should be submitted by email to the ABP Program Administrator at: comments@illinoisabp.com. As this is the final round of comments on the draft contract, precision in comments is crucial. The Agency highly encourages including tracked changes (in MS Word) on the contract itself, as well explanatory notes in a separate document.

As with prior rounds of comments, all comments received will be reviewed by representatives of the IPA, the Program Administrator (InClime, Inc.), the Procurement Administrator (NERA Economic Consulting), AIC, ComEd, MEC, and the Staff of the Illinois Commerce Commission. Such comments will be posted to the www.illinoisabp.com website and made publicly available. The Program Administrator will redact the name of the commenter, but may not fully redact any information that may otherwise identify the submitter.

Please direct all questions to the Program Administrator at: admin@illinoisabp.com

⁶ Please see Section 13(f) of the Cover Sheet, modifying Section 5.2 of the Master REC Agreement.

⁷ Please see Section 5(e)(iv) of the Cover Sheet.