

Hello Illinois Power Agency,

Thank you for engaging the development community and other stakeholders in another round of comment solicitation. We certainly believe an open process beginning with this comment period and including a series of workshops to review contract structure/key terms will lead to an improved form contract that will benefit all parties.

Cypress Creek Renewables comments focus primarily around #1 a. and b. in the IPA's April 9, 2020 Request for Stakeholder Comments (copied here for simplicity in *italics*, with comments):

- a. *The Agency is considering shortening and simplifying the REC Contract (and, if possible, synthesizing the contract into a single set of terms and conditions). This would remove the reliance of a coversheet to modify existing provisions or remove inapplicable provisions in the ABA-EMA-ACORE Master REC Purchase and Sale Agreement. What are key considerations as the Agency undertakes to redraft the REC Contract?*
 - This is very important and will be addressed with a new template we will be proposing (see below). At the very least, condensing to a single contract that does not reference previous revisions is absolutely critical to improving the contract and enabling it to be more easily comprehended by financing parties.
- 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 for the ABP? What are the advantages of these other contract forms?*
 - We propose submitting redacted REC contracts *in camera*, but are not comfortable with sharing the forms for the public sphere out of respect to counterparties. It is important to point out, our proposed form REC Contract examples are not those taken from other public AHJs/States. We are not aware of other states with similar enough programs whereby using those form templates would be prudent. Further these would already be publicly available. We believe the IPA/stakeholders can learn a lot by incorporating context taken from private offtake REC agreements (which make up the vast majority of the REC market). It is not, however, reasonable to publicly disclose forms of REC agreements we have entered into with offtakers that are, generally, the proprietary information of our offtakers. With all this said, the reasons these proposed form REC agreements are superior:
 - Project-specific REC agreements (rather than master agreements covering multiple projects) are much preferred from a development and financeability standpoint, at least for projects at the community solar scale and up. Projects in the ~1MWdc+ range may be sold or financed separately, and need the underlying revenue contract(s) to stand alone rather than existing as a subset of an “umbrella” agreement that may not transfer with the project. As a general matter, financing parties disfavor offtake agreements that are set up in a master agreement format. All parties will want to ensure that any such master agreement is financeable on a project-by-project basis and is not jeopardized by any potential for cross-defaults or otherwise.
 - REC agreements should be organized in a coherent manner from a simple drafting standpoint. I.e., there should be one contract,

potentially with an attached set of defined terms, potentially with a one-page “Purchase Confirmation” setting out the purchased volume and price. The current IPA form is not at all intuitive or clear, replete with internal references that are troublesome to follow. A REC agreement should take an hour to read and generally look to a third party like other REC agreements. The IPA form, instead, includes a “purchase order” which is governed by an attached set of terms and conditions that is itself then modified by a separate set of revisions to that template, plus several additional schedules/exhibits. Our financing parties and their counsel have found it very challenging to understand and get comfortable with this form.

- The termination mechanics should be straightforward, providing for clear penalties in the event the agreement is terminated at varying points during the pre-construction or post-construction phases of a project. We were challenged to quantify and understand the termination prices for our IPA contracts, especially when multiple projects were governed by the same agreement.

A key follow up to the above- we are certainly willing to help draft an agreement from scratch that would be publicly available and used as a baseline to move forward should that be an approach the IPA prefers to consider.

Finally, while we do hope substantial changes can be made to the form, it is of paramount importance for us to ensure the above issues get corrected regardless of the improved contract starting point.

Sincerely,

Scott

Scott Novack

Cypress Creek Renewables

