ENGIE'S COMMENTS IN RESPONSE TO THE ILLINOIS POWER AGENCY'S NOVEMBER 18, 2021 REQUEST FOR STAKEHOLDER FEEDBACK ON THE REVISED REC CONTRACTS FOR THE ADJUSTABLE BLOCK PROGRAM

December 2, 2021

ENGIE appreciates both the continuing efforts by the Illinois Power Agency ("IPA") to update the REC contracts for the Adjustable Block Program ("ABP") and the opportunity to provide these comments. The following comments address (i) payment structure for system removals and (ii) letter of credit requirements relating to contract assignments, with the goal of bringing additional balance and clarity to the contracts.

I. Payment Structure for System Removals

Both the current ABP REC contract and the IPA's currently updated drafts of the new ABP REC contracts contain certain minimum qualifications for eligible systems and establish a mechanism for the removal of non-compliant systems from a contract. Under the current form of the ABP REC contract dated January 28, 2019, a seller's payment associated with such removal is generally *the greater of* (i) the collateral requirement or (ii) the REC payments that have been received. In contrast, the revised ABP REC contracts use language that would make the seller's payment *the sum of both of those amounts*. In ENGIE's view, there has been no demonstrated need or justification for this change. The change could result in (i) an excessive and possibly punitive payment obligation that inappropriately raises project cost-risk in a manner that disincentivizes project development, and/or (ii) a potential windfall for the buyer/utility. Neither outcome is appropriate or consistent with the overall purpose of the ABP.

Accordingly, ENGIE respectfully requests that the following edits be adopted in both Contracts 1 and 2 to restore the current payment structure for system removals.

Contracts 1 and 2 -- Sections 2.2

In addition, for non-compliance with Section 2.2(a), Buyer shall be entitled to payment by Seller in the amount of the **greater~~sum~~** of (i) the Collateral Requirement calculated at the time of the Trade Date as specified in Schedule A to the Product Order with respect to such Designated System **or~~and~~** (ii) one hundred ten percent (110%) of the total payments Seller has received from Buyer associated with RECs from such Designated System; and for non-compliance with any of the provisions of Sections 2.2(b) through (e) (inclusive), Buyer shall be entitled to payment by Seller in the amount of the **greater~~sum~~** of: (i) the Collateral Requirement calculated at the time of the Trade Date as specified in Schedule A to the Product Order with respect to such Designated System **or~~and~~** (ii) one hundred percent (100%) of the total payments Seller has received from Buyer associated with RECs from such Designated System.

Contracts 1 and 2 -- Sections 2.4(f)

(f) The IPA is the primary entity responsible for confirming whether each Designated System's characteristics meet the requirements of the ABP for inclusion in this Agreement, and the Parties

acknowledge and agree that the IPA shall have the right to request more information from Seller on a Designated System and conduct on-site inspections and audits to verify the quality of the installation and conformance with information submitted to the IPA. If the IPA determines that a Designated System as built (i) is in material non-conformance with the requirements of the ABP or (ii) is materially non-conforming with the information previously submitted by Seller to the IPA about that Designated System as reasonably determined by the IPA, then the IPA shall provide notice of the material deficiency to Seller. Seller shall then have twenty (20) Business Days to cure the material deficiency, with extensions for good cause issued at the discretion of the IPA. If Seller fails to cure the material deficiency or the IPA determines in its reasonable discretion that the Designated System's material deficiency continues, the IPA shall have the right to remove the Designated System from this Agreement after the twenty (20) Business Day cure period, or alternatively to impose other discipline on Seller under the ABP. If the IPA determines that the Designated System shall be removed from this Agreement, then the IPA shall notify Buyer and Seller of same and provide to Buyer and Seller a revised Schedule A (and Schedule B, if applicable), Schedule C and Schedule D to the Product Order for such Designated System indicating the removal of such Designated System from the Agreement. Upon the issuance of such written notice to Buyer and Seller, the Designated System shall be so removed, and Buyer shall be entitled to payment by Seller in the amount equal to the **greater~~sum~~** of: (i) the Collateral Requirement estimated at the time of such non-conformance associated with such Designated System **or~~and~~** (ii) one hundred percent (100%) of the total payments Seller has received from Buyer associated with RECs from such Designated System.

Contract 1 -- Section 4.1(b)(iii)

(iii) In the event that, subsequent to the submission of such REC Annual Report pursuant to Section 4.1(b)(ii), Seller fails to Deliver at least one (1) REC by the immediately upcoming October 13 if the Actual Nameplate Capacity of such Designated System is greater than 5kW or by the immediately upcoming January 11 if the Actual Nameplate Capacity of such Designated System is equal to or less than 5kW, the Designated System shall be removed from this Agreement. As soon as practicable after the occurrence of such failure by Seller to Deliver at least one (1) REC by the deadline set forth in this Section 4.1(b)(iii), the IPA shall provide to Buyer and Seller a revised Schedule A, Schedule B, Schedule C and Schedule D to the Product Order for such Designated System indicating the removal of such Designated System from the Agreement. Upon the occurrence of such failure by Seller, Buyer shall be entitled to payment by Seller in the amount of the **greater~~sum~~** of: (i) the Collateral Requirement for such Designated System **or~~and~~** (ii) one hundred percent (100%) of the total payments Seller has received from Buyer associated with RECs from such Designated System.

Contracts 1 and 2 -- Exhibits A -- Designated System Removal Notice -- Codes A, B, C, D, and J

A: The Designated System was determined to be noncompliant with the requirements under Section 2.2(a) of the Agreement, including after Seller had a period of twenty (20) Business Days after notice as provided in this Agreement to demonstrate that the event had not occurred, and the Designated System was thus automatically removed.
*Resulting payment: Seller pays the **greater~~sum~~** of (i) the Collateral Requirement with respect to*

*such Designated System **or**~~and~~ (ii) one hundred ten percent (110%) of the total payments Seller has received from Buyer associated with RECs from such Designated System.*

B: The Designated System was determined to be noncompliant with the requirements under Section 2.2(b), including after Seller had a period of twenty (20) Business Days after notice as provided in this Agreement to demonstrate that the event had not occurred, and the Designated System was thus automatically removed.
*Resulting payment: Seller pays the **greater**~~sum~~ of (i) the Collateral Requirement with respect to such Designated System **or**~~and~~ (ii) one hundred percent (100%) of the total payments Seller has received from Buyer associated with RECs from such Designated System.*

C: The Designated System was determined to be noncompliant with the requirements under Section 2.2(c), including after Seller had a period of twenty (20) Business Days after notice as provided in this Agreement to demonstrate that the event had not occurred, and the Designated System was thus automatically removed.
*Resulting payment: Seller pays the **greater**~~sum~~ of (i) the Collateral Requirement with respect to such Designated System **or**~~and~~ (ii) one hundred percent (100%) of the total payments Seller has received from Buyer associated with RECs from such Designated System.*

D: The Designated System was determined to be noncompliant with the requirements under Section 2.2(d), including after Seller had a period of twenty (20) Business Days after notice as provided in this Agreement to demonstrate that the event had not occurred, and the Designated System was thus automatically removed.
*Resulting payment: Seller pays the **greater**~~sum~~ of (i) the Collateral Requirement with respect to such Designated System **or**~~and~~ (ii) one hundred percent (100%) of the total payments Seller has received from Buyer associated with RECs from such Designated System.*

J: The IPA determined in its reasonable discretion that the Designated System is in material non-conformance with requirements of the ABP; or is materially non-conforming with the information previously submitted by Seller to the IPA about that Designated System, and the Seller did not cure the deficiency within twenty (20) Business Days (plus any extensions for good cause granted by the IPA); the IPA then exercised its right to remove the Designated System, pursuant to Section 2.4(f) and so notified Buyer and Seller.
*Resulting payment: Seller pays the **greater**~~sum~~ of (i) the Collateral Requirement with respect to such Designated System estimated at the time of such non-conformance associated with such Designated System **or**~~and~~ (ii) one hundred percent (100%) of the total payments Seller has received from Buyer associated with RECs from such Designated System.*

Contract 1 -- Exhibit A -- Designated System Removal Notice -- Codes K and Q

K: The Designated System was Energized but failed to Deliver at least 1 REC within 90 days after Energization (for an Actual Nameplate Capacity > 5 kW) or within 180 days after Energization (for an Actual Nameplate Capacity ≤ 5 kW), and Seller failed to remedy such deficiency in a timely manner pursuant to Section 4.1(b); the Designated System was thus automatically removed, pursuant to Section 4.1(b).
*Resulting payment: Seller pays the **greater**~~sum~~ of (i) the Collateral Requirement with respect to such Designated System **or**~~and~~ (ii) one hundred percent (100%) of the total payments Seller has*

received from Buyer associated with RECs from such Designated System.

Q: The Designated System was (i) determined to be noncompliant with the requirements under Section 2.2(e), including after Seller had a period of twenty (20) Business Days after notice as provided in this Agreement to demonstrate that the event had not occurred, and (ii) Seller or its contractors were not exempt from the requirements under Section 2.2(e) as indicated in as indicated on Schedule A to the Product Order, and the Designated System was thus automatically removed.
Resulting payment: Seller pays the ***greater~~sum~~*** *of (i) the Collateral Requirement with respect to such Designated System* ***or~~and~~*** *(ii) one hundred percent (100%) of the total payments Seller has received from Buyer associated with RECs from such Designated System.*

Contract 2 -- Exhibit A -- Designated System Removal Notice -- Code R

R: The Designated System was (i) determined to be noncompliant with the requirements under Section 2.2(e), including after Seller had a period of twenty (20) Business Days after notice as provided in this Agreement to demonstrate that the event had not occurred, and (ii) Seller or its contractors were not exempt from the requirements under Section 2.2(e) as indicated in as indicated in Schedule A to the Product Order, and the Designated System was thus automatically removed.
Resulting payment: Seller pays the ***greater~~sum~~*** *of (i) the Collateral Requirement with respect to such Designated System* ***or~~and~~*** *(ii) one hundred percent (100%) of the total payments Seller has received from Buyer associated with RECs from such Designated System.*

II. Letter of Credit Requirements relating to Contract Assignments

In the context of a seller's assignment of a full REC contract or select Product Orders under a REC contract, the ABP REC contract allows the assignee to fulfill its performance assurance obligations through a cash deposit or a letter of credit. However, with respect to letters of credit, there is a lack of a consistent policy as to whether an assignee that is an affiliate of the original seller must obtain an entirely new replacement letter of credit or may instead use an amendment to the seller's existing letter of credit during the assignment process. This often creates confusion as between the various involved parties, including the seller, the seller's financial institution issuing the letter of credit, and the buyer. As such, ENGIE proposes the following edits to clarify that in the assignment context where the assignee is an affiliate of the original seller, the use of either a replacement letter of credit or an amendment to the existing letter of credit is acceptable. Adopting this edit will not increase any risk for the REC buyer, but will facilitate a smoother assignment process.

Contracts 1 and 2 -- Sections 13.1

In the event of a direct assignment by Seller permitted by this Agreement, any Performance Assurance posted in the form of cash may constitute the Performance Assurance applicable to the assignee for the transferred Product Order(s) and will continue to be held by Buyer; alternatively, Seller's Performance Assurance with respect to the Designated Systems in the transferred Product Order(s) may be refunded upon request if and when the assignee posts

replacement Performance Assurance. In the case of Performance Assurance in the form of a Letter of Credit, Seller's original Performance Assurance shall remain in place with respect to the transferred Product Order(s) until the assignee posts replacement Performance Assurance consistent with Section 7.1 of this Agreement. **Further, in the case of Performance Assurance in the form of a Letter of Credit for an assignment by Seller to an Affiliate of Seller, the posting of the replacement Performance Assurance may take the form of a new replacement Letter of Credit or an amendment to the current Letter of Credit.**