

Energy Storage Procurement Report to the Governor, the General Assembly, and the Illinois Commerce Commission

Submitted Pursuant to Section 16-135(g)
of the Illinois Public Utilities Act



Public Utilities Bureau
Illinois Commerce Commission

May 1, 2025



STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Jonathan A. Feipel
EXECUTIVE DIRECTOR

527 EAST CAPITOL AVENUE
SPRINGFIELD, ILLINOIS 62701
(217) 785-7451

160 NORTH LASALLE STREET
CHICAGO, ILLINOIS 60601
(312) 814-5729

May 1, 2025

The Honorable JB Pritzker
Governor

The Honorable Members of the Illinois General Assembly

The Honorable Members of the Illinois Commerce Commission

Dear Governor Pritzker, Members of the General Assembly, and Members of the Illinois Commerce Commission,

Illinois Commerce Commission staff submits the enclosed Energy Storage Procurement Report in compliance with Public Act 103-1066, which amended the Public Utilities Act by adding Subsection (g) to Section 16-135 of the Act.

Section 16-135(g) required the ICC to initiate a workshop process which focuses on the development of a model contract and procurement process for an initial procurement for utility-scale energy storage resources. Following the workshops, ICC staff was tasked with preparing and submitting a report to the Governor, General Assembly, and the Illinois Commerce Commission members that summarizes the information obtained through the workshop process and recommends the most effective procurement process, structure, and contract terms that would result in a successful initial procurement.

Should you have questions regarding the attached report, please contact Sarah Ryan, Director of Governmental Affairs, at (217) 785-2449, or by email at sarah.ryan@illinois.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Feipel".

Jonathan Feipel
Executive Director

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I. Executive Summary

Pursuant to Section 16-135(g) of the Public Utilities Act, the Staff of the Illinois Commerce Commission (ICC or "Commission") coordinated a workshop process for the purpose of facilitating the development of an initial forward storage procurement process for the procurement of energy storage resources. This report is to address the fourteen questions outlined in Section 16-135(g) of the Public Utilities Act ("Key Questions") and to recommend the most effective procurement process, structure, and contract terms for the initial forward storage procurement. The Key Questions are summarized as follows:

- Key Question 1.** A definition and key terms of contracting structures, including tolling agreements and indexed credits.
- Key Question 2.** An assessment of changes to contract structures necessary to fit Illinois' legal and regulatory frameworks.
- Key Question 3.** Commercial terms required for financeable contracts.
- Key Question 4.** Contract structures that avoid lease classification under accounting principles.
- Key Question 5.** Roles for the owner of an energy storage system in operational functions.
- Key Question 6.** Allocations of rights and responsibilities between the winning bidder and the electric utility.
- Key Question 7.** Assessment of contract lengths and their impact on financeability and net benefits.
- Key Question 8.** A model of a standard contract for the Illinois Power Agency.
- Key Question 9.** Analysis of the appropriateness of the 1,500 megawatts initial procurement size and the value of additional procurements considering Illinois' clean energy goals and resource adequacy needs.
- Key Question 10.** Assessment of cost recovery and allocation structures for electric utilities.
- Key Question 11.** Geographic considerations for battery storage systems.
- Key Question 12.** Minimum application requirements for projects.
- Key Question 13.** Assessment of costs and benefits to Illinois ratepayers.
- Key Question 14.** Recommendations for minimum equity standards and accountability in the procurement process.

A series of seven workshops was held between January 31, 2025, and March 28, 2025. More than two hundred individuals representing a diverse group of stakeholders, including representatives from the utility companies, environmental and consumer advocacy organizations, various government agencies, and energy storage developers, engaged in the workshop events to share insights on Key Questions.

The main points and recommendations of the report include the following:

Contract

- A. Two contract structures were considered by stakeholders: a tolling agreement structure and an indexed storage credit (ISC) agreement structure. The initial procurement should use an ISC agreement structure, rather than a tolling agreement structure. An ISC agreement structure which is a contract for difference, is currently used in utility-scale renewable energy credit procurements conducted by the Illinois Power Agency (IPA) to implement the Renewable Portfolio Standard (RPS); hence the ISC agreement structure is compatible with the legal and regulatory structures of Illinois.¹
- B. The ISC agreement structure is congruent with and leverages the existing PJM Interconnection, LLC (PJM) and Midcontinent Independent System Operator, Inc. (MISO) operational requirements and enforcement mechanisms that apply to storage projects within PJM and MISO wholesale markets. The ISC agreement serves as a hedge against merchant revenue volatility in the wholesale energy and capacity markets and is designed to provide stability and predictability in cash flows. The ISC agreement fills in the energy and capacity payment shortfalls to sustain project economics, which is beneficial for project financeability. The ISC agreement provides ratepayer protections by requiring payments back to utilities and ratepayers when energy and capacity payments exceed the strike price offered by the bidder. Importantly, the ISC agreement structure does not require the utility buyer to dictate how the energy storage system should operate but generally incentivizes the owner operator to optimize its energy and capacity revenues when it operates consistent with the incentives set forth by PJM and MISO for grid reliability and resource adequacy.
- C. The tolling agreement structure generally requires the utility buyer counterparty to assume operational control of the project and to pay a toll to the owner of the project for its use. This tolling agreement payment structure is akin to a lease agreement and is considered a liability on the utility's balance sheet; which impacts the utility's cost of capital and consequently customer

¹ In the indexed REC model, developers submit bids with a strike price in \$/MWh basis and are required to generate a specified amount of RECs based on their electricity production. Payments to developers are based on the difference between the strike price and the spot price of electricity, establishing an indexed cost structure. For energy storage, the ISC agreement incorporates an energy arbitrage price and a capacity price as offsets against the strike price, recognizing the unique capabilities of storage resources to engage in energy price arbitrage and provide resource adequacy through capacity markets.

rates. A tolling agreement is preferred by some developers as it defers operational decisions to the utility buyer while securing revenue certainty through the lease of the project to the utility buyer. Given the tight timeline to conduct an initial procurement by August 26, 2025, a timeline contemplated in Section 16-135(g) of the Illinois Public Utilities Act, adapting existing tolling agreements to fit within the legislative and regulatory framework in Illinois may be challenging vis-à-vis an ISC agreement structure and is thus not adopted for this initial procurement.

- D. A model contract based on an ISC agreement structure is provided in Appendix A. The contract clarifies the roles, rights, and responsibilities between the seller, buyer, and the Illinois Power Agency. While not recommended for this initial procurement, a sample tolling agreement term sheet is provided in Appendix B, which could serve as a starting point for further exploration and discussion in future procurements.
- E. It is recommended that the utility buyer recovers its costs using a pass-through mechanism similar to that which is used for cost recovery of the carbon mitigation credits procurement conducted pursuant to Section 1-75(d-10) of the Illinois Power Agency Act, taking into consideration the lessons learned and best practices for such rate design.
- F. The contract length is set to a 20-year term to complement the tenor of third-party service agreements customary in the industry for such projects so as to enhance project financeability.

Procurement

- A. It is recommended that the initial procurement limits participation to only standalone storage energy storage resources that are greater than 20 megawatts (MW), with a round-trip efficiency of at least 85% and a duration of 4 hours; where standalone energy storage resources refer to those energy storage systems that are (a) separately metered by a revenue quality meter that satisfies the requirements of RTO, (b) where normal operations of such energy storage systems are not constrained or hindered by other generation units, and (c) where such energy storage systems can demonstrate the ability to charge and discharge independent of any generation unit output.
- B. It is recommended that the initial procurement seeks to award approximately 1,038 MW of storage resources. Sufficient competition is assured considering the projects listed in current PJM and MISO interconnection queues and awarding approximately 1,038 MW limits risk of over-procuring from a single technology for the 20-year tenor. The procurement target should be separated for projects interconnected within MISO's Local Resource Zone (LRZ) 4 (450 MW) and for projects interconnected within PJM's ComEd Locational Deliverability Area (LDA) (588 MW). Given the lumpiness of project size, these procurement targets are viewed as soft caps and the RFP should set forth rules to allow for these procurement targets to be exceeded under

specific circumstances if, with respect to a procurement target, accepting the project with the marginal bid would cause the target to be exceeded, but not selecting such project would leave the target unfilled.

- C. It is recommended that proposed projects (i) be sited only within Commonwealth Edison Company (ComEd)'s LDA or Ameren Illinois Company (AIC)'s LRZ; and (ii) are either currently in the interconnection queue of PJM or MISO, or demonstrably in a late-stage development in order to qualify for the initial procurement.
- D. It is recommended that proposed projects located in an Enterprise Zone designated by the Department of Commerce and Economic Opportunity or an eligible area for Energy Transition Community Grants could be granted preference in the project selection in the event of tie bids.
- E. It is recommended that the initial procurement incorporates similar labor and minimum equity requirements as those required under indexed REC contracts for utility-scale renewables projects.
- F. It is recommended that the IPA, in consultation with the ICC and the procurement monitor, conduct up to three additional subsequent procurements between 2025 and 2027 for each of AIC and ComEd, to award up to a minimum of 3 GW of storage capacity inclusive of the initial procurement targets. It is recommended that resources awarded under the initial procurement as well as these additional subsequent procurements be in service and operational by 2030 or as soon thereafter as practicable. Conducting subsequent procurements between 2025 and 2027 will allow for further exploration and development of contracts and contract terms, which may feature a tolling agreement structure and/or hybrid storage resources.
- G. It is recommended that the IPA develop an energy storage procurement plan in 2027 for procurements to be conducted in 2028 and 2029 to meet the resource adequacy needs of Illinois beyond 2030; and that the IPA update the procurement plan every two years. It is recommended that this process follow the general process currently used for utility-scale renewable energy credit procurements, which includes making the IPA procurement plan subject to the approval of the ICC.

II. Statement of Purpose

On February 20, 2025, Public Act 103-1066 was approved by Governor J.B. Pritzker and became effective.

Public Act 103-1066 amends the Public Utilities Act by adding subsection (g) to Section 16-135 of the Public Utilities Act. Among the requirements set forth in Section 16-135(g) of the Public Utilities Act is a requirement that the Illinois Commerce Commission (ICC or "Commission") initiate a workshop process for the purpose of facilitating the development of an initial forward storage procurement process and model contract for the procurement of no more than 1,500 megawatts of utility-scale standalone energy storage resources scheduled to conclude not later than August 26, 2025 ("initial procurement").

Specifically, Section 16-135(g) of the Public Utilities Act states that:

"The Commission, in its role as the relevant electric retail regulatory authority for Illinois, shall initiate a workshop process no later than February 1, 2025, for the purpose of facilitating the development of an initial forward storage procurement process and model contract for the procurement of utility-scale energy storage resources, hereafter "initial procurement". The workshops shall be coordinated by the staff of the Commission, or a facilitator or any other experts or consultants retained by the staff of the Commission, in consultation with the Illinois Power Agency. The workshop process shall be designed to develop an effective initial procurement of no more than 1,500 megawatts of utility-scale stand-alone energy storage resources whereby the Illinois Power Agency shall be positioned to have developed a confidential benchmark and solicited, received, and opened sealed bids for such initial procurement to conclude not later than August 26, 2025. The workshop process shall conclude no later than April 1, 2025. Following the workshop process, the staff of the Commission, or the facilitator retained by the staff, shall prepare and submit a report to the Governor, the General Assembly, and the Commission no later than May 1, 2025, that summarizes the information obtained through the workshop process and recommends the most effective procurement process, structure, and contract terms that would result in a successful initial procurement." (emphasis added)

This report has been prepared in accordance with the requirements of Section 16-135(g) of the Public Utilities Act and includes a summary of the information obtained through the workshop process and recommendations for the most effective procurement process, contract structure, and commercial terms that would result in a successful initial procurement. NERA Economic Consulting was retained by the ICC Staff to help facilitate these workshops and to support ICC Staff in the preparation of this report for the initial procurement.

III. Scope and Limitations of Report

This report aims to address the requirements set forth in Section 16-135(g) of the Public Utilities Act, specifically focusing on the development of a model contract and a procurement process for an initial procurement for utility-scale energy storage resources. Specifically, this report is to provide an assessment of Key Questions outlined in the legislation for purposes of the initial procurement, which we have summarized below as follows:

- Key Question 1.** A definition and key terms of contracting structures, including tolling agreements and indexed credits.
- Key Question 2.** An assessment of changes to contract structures necessary to fit Illinois' legal and regulatory frameworks.
- Key Question 3.** Commercial terms required for financeable contracts.
- Key Question 4.** Contract structures that avoid lease classification under accounting principles.
- Key Question 5.** Roles for the owner of an energy storage system in operational functions.
- Key Question 6.** Allocations of rights and responsibilities between the winning bidder and the electric utility.
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- Key Question 13.** Assessment of costs and benefits to Illinois ratepayers.
- Key Question 14.** Recommendations for minimum equity standards and accountability in the procurement process.

The analysis presented herein is based on the feedback and insights gathered during the workshop sessions, and it may not encompass all possible viewpoints or exhaustively address every aspect of the questions posed. The findings and recommendations are reflective of the discussions held within the

available timeframe and should be interpreted with an understanding of these constraints. While the recommendations provided here include a recommended framework and details for an initial procurement, future engagement and analyses may be necessary during the Illinois Power Agency’s implementation of the initial procurement to further refine the procurement process and ensure comprehensive stakeholder input.

IV. Workshop Process

A series of seven stakeholder workshops was conducted between January 30, 2025 and March 28, 2025 to assess the Key Questions. This report presents the findings and recommendations resulting from these workshops. The workshops brought together more than 200 individuals representing a diverse group of stakeholders, including representatives from the utility companies in Illinois, environmental and consumer advocacy organizations, various government agencies, and energy storage developers. The primary objectives of these workshops were to gather stakeholder input, identify best practices, and collaboratively determine the best approach for the initial procurement process.

Table 1 Overview of Workshop Series

#	Date	Key Topics Covered
1	Friday, January 31, 2025	Foundational concepts/definitions of energy storage (Key Question: 1)
2	Friday, February 21, 2025	Contract types, storage technologies, project siting, Regional Transmission Organization (RTO) queue feasibility (Key Questions: 1, 5, 7, 9, 11)
3	Friday, February 28, 2025	PJM & MISO queue data IPA presentation related to Minimum Equity Standard (Key Questions: 10, 12, 14)
4	Tuesday, March 4, 2025 Wednesday, March 5, 2025	Draft term sheet discussion (Key Questions: 2, 3, 4, 6, 8)
5	Wednesday, March 12, 2025 Thursday, March 13, 2025	Draft contract discussion (Key Questions: 2, 3, 4, 6, 8, 13)
6	Friday, March 21, 2025	Cost-benefit analyses, cost recovery (Key Questions: 3, 9, 10, 13)
7	Friday, March 28, 2025	Draft report discussion

In addition, written comments were solicited from participants at the onset of the workshop process to help guide the discussions and ensure further exploration of the topic during subsequent workshops. Selected materials shared during the workshop process can be found on the Commission’s website here: <https://www.icc.illinois.gov/informal-processes/Storage-Workshops>. This includes the workshop agenda, presentations, referenced materials during the workshop, and written comments.

In addition to the workshops, a draft version of this report (including a draft version of the model contract form of the ISC Agreement) was provided for stakeholder review and feedback on April 1, 2025. Written comments were solicited on both the draft report and the draft model ISC Agreement, resulting in twenty (20) sets of comments received. The insights gathered from the workshops and written comments² informed the development of this report.

V. Findings and Recommendation for the Initial Procurement

In approaching the requirements of Section 16-135(g) of the Public Utilities Act, ICC Staff had minimal guidance on several critical decisions regarding the initial procurement of energy storage resources. Important questions emerged, such as the nature of the storage to be procured – *e.g.*, the eligible technologies, minimum size, and interconnection at transmission versus distribution levels – and the desired hours of duration of storage capabilities. Even where Section 16-135(g) of the Public Utilities Act does provide guidance, questions emerged regarding whether to recommend departure from such guidance, such as whether to expand the nature of the storage to be procured beyond standalone projects to include co-located or hybrid projects. Additionally, clarity was needed on the primary objectives of the procurement: should it focus on resource adequacy or support other objectives? Despite these uncertainties, it is clear that the goal is to recommend elements of a procurement process with bids received by August 26, 2025, a timeline characterized in legislation by urgency and the need for rapid action.

Recognizing the aggressive deadline, we identified that not all Key Questions outlined in the legislation could be addressed with equal priority or in a linear fashion. Certain first-order questions, such as the contracting structure—whether to adopt an ISC agreement or a tolling agreement—were paramount, as they directly impact the feasibility of the project and steer other elements of the initial procurement. For instance, the tolling agreement’s potential classification as a lease poses significant barriers for utility acceptance, while the ISC agreement presents a more readily viable option for both utilities and developers under current structures.

² Written comments received during the workshop process and comments received on the draft report can be found at: <https://www.icc.illinois.gov/Informal-Processes/Storage-Workshops-Comments>

Moreover, the question of what types of storage we are buying and for what purpose is also a first-order consideration, leading us to conclude that the initial procurement should focus on approximately 1,038 MW of standalone grid connected energy storage resources with a 4-hour duration. This recommendation reflects our assessment of Key Question 9 and aligns with the resource adequacy objective, supported by a sufficient number of eligible projects in the pipeline. It is important to emphasize that this August 2025 procurement is intended as an initial step, allowing learning from the process and refinement of approach for subsequent procurements.

Once the questions of first-order relevance are addressed we can then address the remaining questions that are deemed of second-order importance. Ultimately, our recommendations are grounded in practicality, aiming to present a coherent package that enhances the likelihood of a successful procurement process, ensuring that it can be endorsed by a broad range of stakeholders by the August 2025 deadline.

This Section V is organized following the sequence of the Key Questions outlined in Section 16-135(g) of the Public Utilities Act.

1. Definition and Key Terms of Contracting Structures

Key Question (1) A definition and key terms of contracting structures, including, but not limited to, tolling agreements and indexed credits, and whether they are used in other states.

In the context of energy storage procurement process, two primary contract structures are actively considered approaches in the market today: Indexed Storage Credit (ISC) agreements and tolling agreements. Each of these structures serves distinct purposes in facilitating the deployment and operation of utility-scale energy storage resources.

Purpose of Contract Structures:

- **Indexed Storage Credit (ISC) Agreement:** This structure is designed to provide variable monthly payments to energy storage systems, bridging the gap between wholesale market revenues and the project's revenue requirements. The ISC agreement incentivizes developers to build and operate energy storage systems consistent with the existing market framework and mechanisms of the wholesale market of PJM and MISO. The focus of the ISC agreement is primarily on serving as a hedge contract, providing financial stability to the project by ensuring a stable revenue stream across wholesale market revenues and payments under the utility contract, and de-risking the project from fluctuations in market prices.
- **Tolling Agreement:** In contrast, a tolling agreement grants the buyer (typically a utility or a third party on its behalf) operational and dispatch rights to an energy storage system, allowing them

to control when the system charges and discharges. The seller (i.e., the energy storage system owner) retains ownership while receiving fixed monthly payments from the buyer. The focus of the tolling agreement is on how the project is utilized in operations, emphasizing the operational control and dispatch capabilities granted to the buyer. In line with that, market revenues and/or the benefits of operation typically accrue directly to the buyer in tolling agreements.

Terms relevant to the ISC agreement include:

- **Strike Price:** The predetermined price that approximates the revenue requirement of the energy storage resource.
- **Reference Price:** A formula based on wholesale market prices that serves as a proxy for the revenue available to the seller, typically including components like reference capacity price and reference energy arbitrage price.
- **Indexed Storage Credits:** A measurement unit for the project's availability, which forms the volumetric component (as opposed to price component) of payment under the ISC agreement.
- **Settlement Payment:** The monthly payment made by the buyer to the seller, calculated as the ISCs multiplied by the strike price minus the reference prices.

Terms relevant to the tolling agreement include:

- **Dispatch Rights:** The rights granted to the buyer (typically a utility) to control the charging and discharging of the energy storage system.
- **Fixed Monthly Payment:** The predetermined payment made by the buyer to the seller for the right to dispatch the energy storage system, regardless of market conditions.
- **Availability Requirement:** A stipulation that the energy storage system must meet a minimum level of dispatch availability over a specified period.
- **Operational Control:** The responsibilities and rights of the seller regarding the operation and maintenance of the energy storage system while the buyer directs its use.
- **Performance Penalties:** Financial penalties imposed on the seller if the energy storage system fails to meet specified performance metrics or availability requirements.
- **Cycling Limits:** Restrictions on the number of charge and discharge cycles the energy storage system can perform within a given timeframe, which may affect its operational strategy.

Terms that are relevant to describing the energy storage system (regardless of contract structure) include:

- **Availability Guaranty:** Commitment made by the seller (or operator) of the energy storage system to ensure that the system is operational and available for use by the buyer for a specified percentage of time over a defined period.
- **Contract Capacity:** Capability to discharge and deliver electrical power (MW), or the ability to control demand at the direction of RTO.
- **Data sharing obligations:** Requirement for one or both parties (such as the buyer and seller) to share specific data and information related to the operation, performance, and usage of the energy storage system.
- **System Degradation:** Gradual decline in performance, efficiency, or capacity of a system over time due to various factors.
- **Dispatch Notice:** Instructions provided by the Buyer to the Seller, directing the Energy Storage System to operate at a specified output in megawatts.
- **Round Trip Efficiency:** Rate calculated by dividing total energy pursuant to charging by total energy pursuant to discharging.
- **Duration:** Length of time (hour) that an energy storage system can deliver its rated power output before it is depleted.
- **Standalone Energy Storage System:** An energy storage resource that is (a) separately metered by a revenue quality meter that satisfies the requirements of RTO, (b) where normal operations of such energy storage system are not constrained or hindered by other generation units, and (c) where such energy storage system can demonstrate the ability to charge and discharge independent of any generation unit output.
- **Planned Outage:** A period during which any Energy Storage System is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance and approved by RTO.

Many of these terms are also utilized in other states. For example, New York has proposed the use of Indexed Storage Credit agreements in its bulk storage programs, while California has established Tolling Agreements for energy storage resources. These examples illustrate the broader applicability of these terms across different regulatory environments.

Recommendation

For this initial procurement, it is recommended that the ISC agreement be the contract structure. This recommendation is informed by extensive discussions during the workshop process, as detailed in Key Question 4.

For a full list of terms used and their definitions, please see the model contract ("ISC Agreement") prepared for the initial procurement as provided in Appendix A of this report. Article 1 of the model contract provides definitions of the key terms used therein.

2. Assessment of Contract Structures

Key Question (2) An assessment of changes to the contract structures, and the identification of appropriate signatories, used by other states necessary to fit the legal and regulatory structures of Illinois.

In evaluating the appropriate contract structures for the initial procurement of utility-scale energy storage resources, stakeholders provided insights on two primary mechanisms: indexed storage credit (ISC) agreements and tolling agreements.

The ISC agreement structure has been proposed for use in New York for its storage procurement and is a viable contract structure that stakeholders are generally familiar with. Notably, ISC agreements are contracts for difference (CfD), which are already utilized in the IPA's indexed renewable energy credit (REC) procurements. Under the indexed REC structure, developers bid a fixed strike price, typically expressed as a \$/MWh value, and are obligated to generate a specified quantity of RECs based on electricity produced and exported to the grid. Payment to the developer is determined by the difference between the strike price and the spot price of electricity, effectively creating an indexed cost structure. Under the ISC agreement, an energy arbitrage price and a capacity price would be used as offsets against the strike price; this contrasts with the indexed REC agreement where the spot price of electricity offsets the strike price; recognizing the unique capabilities of storage resources to engage in energy price arbitrage and provide resource adequacy through capacity markets. Given that the CfD structure has been used in Illinois to comply with the Illinois Renewable Portfolio Standard (RPS), the ISC agreement fits the legal and regulatory structure of Illinois. Under the ISC agreement structure, the appropriate signatories would be the utility as the buyer counterparty and the owner operator of the project as seller.

Conversely, tolling agreements operate under a different framework. As described by stakeholders, these agreements involve a price paid annually or monthly to the developer. The price is typically a fixed price denominated as a \$/MW value. This structure allows the utility buyer to have input into the operational aspects of the facility and to pay a toll to the owner of the project for its use, which contrasts

with the ISC model where the developer retains full operational control. Stakeholders also provided examples of tolling agreements from various deregulated states, including California, Texas, and New York, illustrating their practical application in the market. However, it was noted that these contract structures would require careful adaptation to align with the wholesale market requirements of PJM and MISO, as well as the legal and regulatory frameworks specific to Illinois.

In general, tolling agreements could be viewed as a lease or debt on the utility's balance sheet given tolling agreements provide the utility the right to dispatch/operate the generating asset. If the contract structure results in a liability on the utility's balance sheet, this could create unfavorable credit implications, which would affect the utility's cost to borrow capital, and consequently negatively impact customer rates. This point is discussed in detail in our assessment of Key Question 4 below.

Recommendation

The workshop discussions led to the determination that, while alternative contract structures, such as tolling agreements, should continue to be explored and developed, the ISC agreement structure is suitable for the initial procurement process. Under the ISC agreement structure, the utility is the buyer counterparty and the owner operator of the project is the seller counterparty. The ISC agreement structure as a CfD has been used to implement the Illinois RPS and fits the legal and regulatory structure in Illinois. This decision will guide the subsequent analysis of the remaining questions, particularly those related to cost recovery, performance obligations, and the overall impact on ratepayers.

3. Commercial Terms Required for Financeability

Key Question (3) Commercial terms required for the contract to be financeable without creating contractual obligations on the utilities that are not contingent on full and timely cost recovery.

The ISC Agreement proposed for the initial procurement serves as a revenue hedge designed to provide stability and predictability in cash flows to the developer/owner, in contrast to a purely merchant storage facility. While ISC agreements tend to place more market risk on developers than tolling agreements – acknowledging that the revenue hedge is not perfect – developers are generally adept at managing this risk. Overall, the ISC agreement structure is particularly beneficial for financeability, as it mitigates risks associated with market fluctuations.

When evaluating the commercial terms necessary for the financeability of utility-scale energy storage projects, it is essential to consider the perspectives of both developers and utility buyers and their customers. It is also important to distinguish between factors that impact financeability and those that render a contract non-financeable, recognizing that financeability exists on a spectrum. The goal is to strike a balance that allows both counterparties to extract value from the transaction, taking into account their differing tolerances for risk on a commercially reasonable basis. The term "financeable" should not

be interpreted as a framework that completely transfers risk from developers to the utility counterparty and its customers in order to obtain the most favorable financing terms for energy storage projects.

While many factors may influence the financeability of a project, including flexibilities and accommodations for underperformance due to events outside a party's control, one key issue stands out: whether the utility buyer should be obligated to advance payment when it cannot recover those costs through pass-through tariffs or other cost-recovery mechanisms. From the developer's perspective, a contract that is financeable at the lowest reasonable cost is one where the buyer (presumably the electric utility) is obligated to pay the seller the full monthly contract payment, even if the buyer does not collect adequate funds. Conversely, from the utility's perspective, it is crucial that costs associated with contract payments are recoverable. If cost recovery may be limited, the contract should include provisions allowing for the suspension of payment obligations if cost recovery cannot be achieved.

These uncertainties highlight the need for legislative action to create funding certainty and to provide that utilities can recover the costs of ISCs through their tariffs with limited restrictions; in the way they are permitted to do with respect to RECs under the Illinois RPS.

In summary, several factors may affect the financeability of the project. Clarity in contract terms and the allocation of risks, along with contractual flexibility for events outside of the reasonable control of seller, are critical. Additionally, anticipated revenue streams under the ISC Agreement may be impacted by payment suspensions from the utility if costs cannot be recovered.

The ISC agreement structure is similar to the indexed REC structure, which should serve as a foundational model for the ISC Agreement. The indexed REC procurements and contracts have undergone numerous refinements across multiple procurements since the enactment of the Climate and Equitable Jobs Act (CEJA), incorporating contractual flexibilities for many contingencies requested by stakeholders. Further, despite provisions in the indexed REC contract indicating that the utility buyer is not required to advance payment if it cannot recover its costs through pass-through tariffs, these procurements, backed by statutory authority to recover costs, with limited exceptions, through pass-through tariffs, have proven successful and resulted in multiple contract awards, demonstrating that these contracts can remain financeable even when certain risks are present.³ However, provisions allowing the buyer to withhold payments could introduce risk premiums in project financing.

Recommendation

It is recommended that the commercial terms established in the ISC Agreement closely align with those of the indexed REC model, which has resulted in multiple awards, evidencing financing viability. The proposed ISC Agreement contained contractual flexibilities to accommodate events outside of seller's

³ As of the date of this report, indexed REC contracts have been executed for 49 renewable projects awarded pursuant to procurement events conducted by the IPA.

reasonable control, but also a provision to protect the utility counterparty from advancing payments if it cannot recover its costs for whatever reason. No rate caps or budget caps are proposed for the initial procurement and our response to Key Question 10 provides a discussion on the proposed cost-recovery mechanism. Additionally, it is recommended that legislative action provide funding certainty for the program.

4. Contract Structures and Accounting Principles

Key Question (4) Contract structures that avoid a requirement that contracting utilities consider such agreement a lease under generally accepted accounting principles, or that such an agreement is reflected as debt on a contracting utility's balance sheet.

Two contract structures have been considered during the workshops by stakeholders for utility-scale energy storage projects; ISC agreements and tolling agreements. Understanding the distinctions between these two contract structures and their implications for the financial health of the involved utilities is essential.

Summary of Contract Structures

The ISC Agreement is designed as a revenue hedge that provides stability and predictability in cash flows. Under this structure, developers receive payments based on the difference between (a) a contracted strike price and (b) a reference energy arbitrage value and a reference capacity value, based on market prices. Such CfD model has been successfully implemented in Illinois through indexed REC procurements to implement the Illinois RPS, which has demonstrated a track record of facilitating financing while minimizing negative impacts on utility balance sheets.

In contrast, tolling agreements involve a fixed payment to the developer. This structure allows the utility to dispatch the asset, which can lead to significant accounting implications. Specifically, if a tolling agreement grants the utility the right to control the use of the asset, it may be classified as a lease under Generally Accepted Accounting Principles (GAAP). As this structure is similar to a lease agreement where the utility pays a toll to the owner of the project for its use, payment is more certain as it is not contingent on how the project is operated by the owner operator; and hence is preferred by some stakeholders.

Concerns about Tolling Agreements

According to GAAP, a contract is considered a lease if it conveys the right to control the use of identified property, plant, or equipment for a period of time in exchange for consideration. If the utility has the right to obtain substantially all economic benefits from the asset and the right to direct its use (i.e., charge and dispatch the asset), the agreement may be classified as a lease. This classification would

require the utility to recognize a liability on its balance sheet, which could lead to higher costs of capital and, consequently, electricity rates for consumers.

For a tolling agreement to be used for energy storage in Illinois, considerable additional work and adaptation would be necessary to avoid adding the project onto the utility's balance sheet as debt. While suggestions have been made regarding how tolling agreements might be structured and modified to mitigate these risks, such proposals remain largely untested. Additionally, it would not be practical to attempt to resolve the challenges of a tolling agreement structure in time for the initial procurement deadline of August 26, 2025.

Under a tolling agreement structure, there is a potential risk that the utility did not operate the project optimally, meaning it failed to maximize profits for ratepayers. The lack of clear guidelines on how to maximize the project's use can lead to disputes over the utility's performance and its impact on ratepayer costs. Establishing clear criteria and decision-making authority regarding operational strategies is essential to ensure that the utility can effectively manage the project while protecting the interests of ratepayers. Additionally, a tolling agreement could be perceived as placing utilities back into the electric generation business; and as such, it would be difficult to fit such arrangement into the current regulatory framework where the regulated utilities are generally wires-only entities and separated from their generation affiliates.

Recommendation

It is recommended that the ISC agreement structure be adopted for the initial procurement of utility-scale energy storage resources.

Given the successful implementation of CfD in Illinois RPS and their ability to provide a balanced approach to risk allocation, as well as the condensed timeline to conclude the initial procurement by August 26, 2025, the ISC structure is favored as the more reliable and tested option for use in Illinois. The experience gained from indexed REC procurements demonstrates that this model can effectively manage costs while ensuring that utilities are not unduly burdened with debt obligations. This approach not only aligns with established practices that have proven effective in Illinois' energy landscape but also mitigates the concerns associated with tolling agreements discussed in this section, the requirement for utilities to contract a lease under GAAP and having such agreement as debt in the balance sheet.

Notwithstanding, it is recommended that further work be conducted, and Staff pledges to continue to work with stakeholders, to explore how to adapt the tolling agreement for potential use in subsequent energy storage procurements.

5. Role of Energy Storage System Owners

Key Question (5) Necessary or appropriate roles for the owner of an energy storage system selected in a procurement to, either directly or through a third-party administrator which may be an affiliate, be responsible for operation, maintenance, dispatch, and other operational functions of the energy storage system.

The energy storage systems contracted through the initial competitive procurement should be incentivized to maximize value to the grid for the benefit of Illinois ratepayers.

Under the ISC agreement structure, the utilities serve as the buyer counterparty while the owner-operator acts as the seller counterparty. It is critical that seller is designated as the primary party responsible for the operation, maintenance, dispatch, and other operational functions of the energy storage system. Seller may choose, but is not required, to utilize a third-party operator at its discretion. The rationale for this arrangement is as follows:

- **Expertise in Maximizing System Performance:** The utility buyer counterparty may lack the necessary expertise to optimize the operational efficiency of the energy storage system. In contrast, seller as the system owner operator has the technical know-how to configure and optimize both the design and operation of the energy storage system, allowing for efficient management of the project.
- **Alignment with Long-term Viability:** The owner operator is incentivized to maintain their assets effectively over the entire lifespan of the energy storage system. Seller is motivated to ensure the project's operational performance to generate a stable revenue stream for the duration of the ISC Agreement in order to recover their investment. As a result, the grid can benefit from the energy storage system throughout the 20-year term (and potentially beyond if the facility continues to operate after the expiration of the ISC Agreement). Moreover, stakeholders have expressed concerns about turning over control of the project to a third party (aside from a third-party operator designated by the owner), including concerns about turning over control to the utility, which may not prioritize the project's long-term viability, leading to behaviors that degrade the battery's long-term performance. This positions seller as the best-suited party to ensure the sustained viability of the energy storage system.
- **Maximized Energy Arbitrage and Capacity Values:** Seller is incentivized to engage in energy arbitrage and participate in the capacity market to maximize its revenue, with due consideration for the system's long-term viability. Under the ISC agreement structure, seller is incentivized to actively manage the charging and discharging of the storage facility based on wholesale market price signals to optimize the economic value of the energy storage system, where these market incentives are aligned with the way energy storage systems provide benefits to the grid. Seller

may also choose to participate in ancillary services markets, also providing benefits to the grid, if seller sees more revenue opportunity in those markets. By participating in the various wholesale markets, the seller would be subject to the applicable RTO's operational rules and standards. Thus, the ISC Agreement approach allows seller to deliver maximum value to the grid without the need for additional terms to dictate their operational behaviors.

- **Access to Non-Public Information:** The utility may have access to certain non-public transmission information. However, it is legally prohibited from using this information to plan financially beneficial purchases or sales in the energy market, which would add an additional layer of complexity were the utility to control the market operations of the storage facility. In contrast, developer/operators of the storage assets, acting as market participants, would not have access to such confidential information so would not face the same complexity as the utilities would, a further reason for making the developers the party to operate the storage system.

Seller's primary responsibilities under the ISC Agreement are to build a storage project that complies with the contract requirements, including cybersecurity requirements⁴ and achieve commercial operation.

In terms of additional performance requirements, minimum operational requirements and post-commercial operation date (COD) obligations to report the facility characteristics are outlined in the ISC Agreement to achieve two primary objectives: 1) to validate the duration and power capacity of the storage system for the purpose of calculating the ISC volume for payment, and 2) to establish a minimum performance standard that ensures the storage system is continuously providing resource adequacy benefits to ratepayers. If these standards are not met, payments should be suspended or terminated, and utility customers should not continue to incur any additional costs.

Beyond these baseline requirements, the ISC Agreement does not require additional operational provisions, but instead incentivizes seller to participate in the wholesale markets of PJM or MISO and thus be subject to the operational rules and regulations set forth by the respective RTO.

Recommendation

Under the proposed ISC agreement structure, the utility buyer will not take ownership or be involved in the operational decisions of the projects. By design, the financial incentives provided through the ISC Agreement will guide seller's operational decisions in response to market price signals, ensuring that seller is motivated to serve the resource adequacy goal, which is a goal achieved through the market-

⁴ Contract requirements include adherence to minimum cybersecurity standards, as known as the cybersecurity baselines defined in National Association of Regulatory Utility Commissioners (NARUC) in partnership with the U.S. Department of Energy, Office of Cybersecurity, Energy Security, and Emergency Response (CESER).

based framework and market rules promulgated and enforced by the RTOs. This arrangement is intentionally different from a tolling agreement, in which the utility buyer would actively participate in the project's operation. The detailed rationale for this distinction is discussed under Key Question 4, where we conclude that the ISC Agreement is the most suitable arrangement for the Illinois market and regulatory landscape for the initial procurement.

Therefore, it is recommended that under the ISC agreement structure, the full responsibility for operation, maintenance, dispatch, and other operational functions of the energy storage system resides with seller, which may choose to engage a third-party operator or administrator at its sole discretion. The responsibilities of the utility counterparty, which are primarily administrative in nature, are outlined in our response to Key Question 6.

6. Allocation of Rights and Responsibilities

Key Question (6) Other allocations of rights and responsibilities between the winning bidder, the electric utility, and, if applicable, the third-party administrator.

Any project awarded should be in the interest of supporting the public good and of benefit to Illinois ratepayers in terms of value, reliability, and resource adequacy; and the rights and responsibilities under the ISC Agreement should be allocated consistent with such objective. As discussed in response to Key Question 5, it is recommended that the developer/operator as the seller counterparty assumes full responsibility for the operation, maintenance, dispatch, and other operational and market functions of the energy storage system, where the seller may choose to engage a third-operator or administrator at its sole discretion. As discussed in response to Key Question 4, the most suitable arrangement for the Illinois market and Illinois regulatory landscape is an ISC Agreement for purposes of this initial procurement. Specifically, the ISC Agreement allocates the rights and responsibilities between Buyer and Seller and contemplates IPA's involvement in salient areas, as discussed below:

- **Seller's Responsibility:** The rights and responsibilities likely assigned to the system owner-operator, including but not limited to those under the ISC Agreement, generally include: permitting, siting, land acquisition, system interconnection, construction and financing, system maintenance, resource insurance, tax payments, accessing incentives and grants, maintaining minimum operational requirements and post-COD obligations, compliance with RTO operational rules, participating where applicable in wholesale markets of RTOs, and invoicing and settlement of ISCs with the utility buyer. Seller may assign any of the above responsibilities to a third-party vendor at its sole discretion, but such third-party vendor shall be deemed as Seller for purposes of this discussion.

- Buyer's Responsibility: The rights and responsibilities likely assigned to the utilities, including but not limited to those under the ISC Agreement, generally include: settling ISCs and payment, cost recovery and customer rate development and implementation, verifying seller-reported system metrics and availability data for ISC payment calculations, and monitoring performance and handling collateral requirements.
- IPA's Involvement: In addition to running the procurement, the IPA is involved in several discretionary actions outlined under the ISC Agreement. For instance, the ISC Agreement allows the Seller to request an extension of the Commercial Operation Deadline beyond May 31, 2031. Such an extension may be granted by the IPA on a case-by-case basis, provided the Seller demonstrates good cause for such extension request to the satisfaction of the IPA. In regard to Force Majeure, if the Seller claims that a Force Majeure event adversely affects the development of the project, preventing the completion of construction, or impacts the Seller's ability to maintain the minimum operational requirements under the contract, the Seller must notify both the Buyer and the IPA. In this case, Buyer's objection to any Force Majeure claim is subject to the concurrence of the IPA. Under the ISC Agreement, IPA also serves as mediator in relations to disputes that may arise between the parties.

Recommendation

The primary allocation of rights and responsibilities between the winning bidder, the electric utility, and the IPA as a third-party is detailed throughout the ISC Agreement, providing a clear pathway for all parties to collaborate in delivering energy storage benefits to Illinois ratepayers. The model contract form of the ISC Agreement is provided in Appendix A.

7. Assessment of Contract Length

Key Question (7) An assessment of whether a contract length different from 20 years is financeable, and whether other contract lengths would impact the net benefits of the storage procurement.

The contract tenor must be appropriately calibrated to maximize the benefits of energy storage projects for Illinois ratepayers. Several key factors must be considered in this assessment:

1. **Financeability**: While many factors affect financeability, as discussed in response to Key Question 3, the length of the offtake contract can impact the financeability of energy storage projects in conjunction with these other factors. As with any capital-intensive project, the cost of investment is recovered through revenues over an appropriate period. A contract that is short typically presents challenges in securing financing, as recovering the investment cost over a short period of time may not be reasonable. Consequently, if revenues are insufficient to cover the project costs, the project must rely on merchant revenue as a source of income in the later years,

which is highly uncertain and can raise the cost of capital. Hence, a contract that provides for revenue streams over a longer period of time is an important consideration for investors and financing parties. Multiple stakeholders have indicated that offtake contract tenors ranging from 15 to 20 years are generally acceptable for securing financing from financial counterparties, whereas terms shorter than 10 years may pose challenges in obtaining the necessary funding. The general consensus among the developer community is that a 20-year term is optimally financeable, as discussed below.

2. **Battery Life and Upstream Service Agreement:** The length of the upstream service agreement entered into by the developer must also be considered. The duration and daily number of charging and discharging cycles expected under the ISC agreement settlement mechanism have implications for the lifespan of the batteries. During stakeholder workshops, the possibility of a contract that could avoid costs related to replacement and augmentation was discussed, including the potential for a shorter term. However, the consensus was that general industry arrangements typically require some form of replacement and augmentation, which is often outsourced to a third party through a customary 20-year service agreement. After achieving commercial operations, the performance of the batteries is usually guaranteed through a service agreement with a third-party vendor, who provides necessary augmentation and replacement services. It is important that the offtake contract tenor covers the duration of this service agreement to ensure stable cash flow, providing the developer/operator with the revenue certainty needed to maintain the system's performance and operational benefits to the grid. From the developer's perspective, if the offtake contract does not extend for the full 20 years of the service agreement, the developer must rely on additional revenue sources for the remaining years to finance the service agreement, which introduces uncertainty. Therefore, aligning the offtake contract length with the long-term service agreement is crucial to ensure that incentives are synchronized.
3. **Technological Advancements:** As the cost of technology may decrease and the optimal type of technology may change over time, stakeholders have raised concerns about the implications for long-term contracts. However, we note that energy storage technology (like almost any other technology) will always and continuously be evolving. As such, the risk of obsolescence can never be eliminated regardless of when the procurement occurs and is not a sufficiently strong reason for proposing a shorter contract tenor at the risk of project financeability.
4. **Ratepayer Annual Cost Impact:** From the utility ratepayer's perspective, a shorter contract term results in fewer years of payment but higher annual costs that must be collected to cover the expenses of the contracted storage projects. Conversely, a longer contract term leads to more

years of payments but lower annual costs necessary to subsidize the storage projects. The costs and benefits to ratepayers are discussed in response to Key Question 13. Therefore, it is essential to find a balance in the contract tenor that maximizes net benefits for the ratepayers while maintaining project financeability.

A well-calibrated contract length should align with industry standards to support project financeability while allowing ratepayers to reap the benefits of energy storage at an affordable price.

Recommendation

A contract term of 20 years following the COD is recommended. This term ensures that the ISC Agreement: (a) is financeable and (b) aligns with upstream service agreement terms customary in the industry. While there remains a concern that 20 years is a long time for a technology that is rapidly evolving, the risk of obsolescence can never be eliminated and is not a sufficiently strong reason for proposing a shorter contract tenor at the risk of project financeability.

8. Model Standard Contract

Key Question (8) A model of a standard contract, including contract terms and conditions, to be used by the Illinois Power Agency and its procurement administrator for the initial procurement.

Recommendation

An ISC contract structure is recommended for the initial procurement. A model contract is provided as Appendix A-2, for which the commercial terms are summarized in Appendix A-1. The commercial terms have been collaboratively developed with stakeholder input and have been reviewed by stakeholders who are in general agreement of such terms. For avoidance of doubt, the contract will be customized based on whether the project is sited in MISO's LRZ 4 or PJM's ComEd LDA.

9. Analysis of Initial Procurement Size

Key Question (9) An analysis of whether 1,500 megawatts is the appropriate size for the initial procurement and whether additional procurements beyond August 2025 are valuable to Illinois taking into consideration the amount of projects in advanced stages of development and Illinois' need for storage energy systems in order to ensure it can meet its clean energy goals and to prevent or minimize any anticipated resource adequacy shortfalls.

In recommending an appropriate procurement target, we examined the current landscape of storage projects in the pipeline to ensure there would be sufficient competition at the initial procurement,

assessed the resource adequacy need for Illinois in the near term, and evaluated the benefits of a phased approach, taking into consideration stakeholder feedback.

Noting that the legislation caps the size of procurement at a maximum of 1,500 MW, we recommend soliciting 1,038 MW for the initial procurement as well as additional procurements beyond August 2025. This is based on (a) an assessment of the projects in the pipeline to support competition in the initial procurement sized at 1,038 MW, (b) an assessment of the resource adequacy need of up to 3 GW starting in 2030, and (c) additional procurements beyond August 2025 to allow for other benefits in subsequent procurements, such as incorporating any lessons learned from the initial procurement, expanding eligibility to other types of storage (such as hybrid projects), and allowing time to explore how to adapt alternative contract structures such as a tolling agreement for use in Illinois.

Projects in the PJM/MISO Pipeline

In this section, we provide information regarding energy storage projects in PJM and MISO interconnection queues that are assessed for participation in the initial procurement. These projects represent a pool that:

- (a) are standalone projects that are active in the interconnection queue, with proposed power capacities of 20 MW or greater;
- (b) reached sufficient project maturity in planning and the interconnection process to provide a clear understanding of costs and economic viability, which will be reflected in reasonable bids;
- (c) has the potential to reach commercial operation in time to deliver the necessary resource adequacy relief to the grid, specifically by 2030;
- (d) offers sufficient competition to select the least-cost solutions; and
- (e) is of an appropriate scale to provide meaningful lessons learned for future procurements.

For PJM, we focus on projects that are either:

1. “Fastlane” projects expedited in the PJM reformed interconnection queue;
2. Projects in PJM Transition Cycle #1 (TC #1); or
3. Projects in PJM Transition Cycle #2 (TC #2).

There are three (3) Fastlane projects totaling 60 MW, four (4) projects in PJM TC #1 totaling 170 MW, and twelve (12) projects in PJM TC #2 totaling 1,462 MW. Specifically, Decision Point II for TC #1 projects closed on January 21, 2025, and PJM is currently conducting Phase 3 studies for these projects. Fastlane projects should have received their interconnection agreements by the end of 2024, and PJM has initiated Phase I studies for TC #2 projects in Q1 2025. During stakeholder workshops, developers in

PJM noted that Decision Point III for TC #1 projects is expected to open from September to October 2025⁵. This timing aligns well with the August 2025 procurement, as developers will be required to submit non-refundable readiness deposits to PJM if they choose to proceed to the final interconnection agreement process.

For MISO, we adopt a similar approach in identifying projects within MISO’s DPP-2021-Cycle, which includes ten (10) projects totaling 825 MW. This calibration is based on the expectation that projects in the DPP-2021-Cycle will complete all DPP 3 studies by the end of May 2025, as indicated by stakeholders and outlined in the latest DPP Study Schedule updates.⁶ This includes the Final DPP System Impact Study (SIS) and the Network Upgrade Facilities Study, which will provide developers with essential information regarding network upgrade costs, which stakeholders have identified as one of the most challenging costs to estimate. Projects will then be prepared to enter the bidding process for the August 2025 procurement with a clear understanding of their economic viability, making them more likely to perform if awarded an ISC Agreement. Developers will also need to decide whether to enter the GIA process after DPP 3 study and incur the associated costs. The timing of the August 2025 procurement is opportune, as winning bidders will secure ISC Agreements before entering the GIA process.

The summary of projects in the PJM and MISO interconnection queues is shown below in Table 2.

Table 2. Storage Projects in PJM and MISO Interconnection Queues (Standalone, Larger than or Equal to 20 MW)

	Study Cycle	MW
PJM	Fastlane (Expedited)	60
	TC #1	170
	TC #2	1,462
	<i>PJM Total</i>	1,692
MISO	DPP-2021-Cycle	825
Total		2,517

In addition to the projects identified in the publicly available PJM and MISO interconnection queues, stakeholders noted during the workshop discussions that certain other projects may progress quickly

⁵ TC1 Phase III Study Activities, PJM, February 2025.

<https://www.pjm.com/-/media/DotCom/committees-groups/subcommittees/ips/2025/20250227/20250227-item-06---tc1-phase3-study-activities.pdf>

⁶ DPP Study Schedule Updates, MISO Interconnection Process Working Group (IPWG), January 28, 2025.

<https://cdn.misoenergy.org/20240502%20IPWG%20Item%2003b%20DPP%20Study%20Schedule%20Update632664.pdf>

through the interconnection process to become available. These include cases where (a) a capacity resource deactivates and transfers its capacity injection rights to a replacement resource, either through the Capacity Interconnection Rights (CIR) transfer process in PJM or the Generation Facility Replacement Process in MISO, or (b) resources may be able to leverage underused existing interconnection capacity rights through Surplus Interconnection Service. For example, in MISO, over 400 MW of storage capacity is currently under development and going through the Generation Facility Replacement Process.⁷ This capacity, combined with the 825 MW of late-stage projects identified in the MISO queue, brings the total potential capacity in MISO to over 1,200 MW. Furthermore, MISO currently does not allow extensions of the commercial operation date for these projects beyond 2028, reinforcing the consideration of these late-stage capacities as viable candidates that can quickly achieve operation to meet resource adequacy needs.⁸

Based on the assessment above, it is concluded that there are sufficient projects in the pipeline to adequately support competition at the initial procurement sized at 1,038 MW. While we utilize interconnection queue data to assess whether we will have sufficient competition, we are not limiting participation solely based on these identified advanced-stage projects and their criterion. For minimum participation requirements, please refer to our response to Key Question 12.

Resource Adequacy Need in Illinois

During the workshop process, both the Natural Resources Defense Council (NRDC)⁹ and the Union of Concerned Scientists (UCS)¹⁰ shared their analyses on the resource adequacy need of Illinois in the near term (by 2030) and mid-term (2030-2035). Both entities estimated that up to 3 GW of energy storage capacity will be necessary by 2030 to mitigate the resource adequacy shortfall in Illinois. This suggests that beyond the initial procurement, subsequent procurements would be beneficial to meet the resource adequacy needs of Illinois.

⁷ Generator Replacement Requests, MISO, updated March 26, 2025.

https://www.misoenergy.org/planning/resource-utilization/GI_Queue/

⁸ CIR transfer requests are part of the PJM interconnection queue data, therefore are already being considered.

⁹ Illinois Deactivations: Maintaining Reliability with Energy Storage, NRDC and Astrapé Consulting, August 2024.

https://www.astrape.com/wp-content/uploads/2024/08/NRDC_2024_Illinois-Deactivations_Maintaining-Reliability-with-Energy-Storage.pdf

¹⁰ Storing the Future: A Modeling Analysis of Illinois Energy Storage Needs, UCS, November 2024.

https://www.ucs.org/sites/default/files/2024-11/Summary-Storing-Future_0.pdf

Stakeholder Discussion

Active discussions took place surrounding the development of the initial procurement target and potential subsequent procurements during the workshop.

Some stakeholders supported soliciting the full 1,500 MW during the initial procurement. They cited studies indicating a need for approximately 3 GW of storage in Illinois by 2030 and stressed the urgency of meeting this goal through the storage procurement. Many projects in the interconnection queue are anticipating a state-run program, and some stakeholders predict that if such a program does not materialize, many projects may withdraw from the queue to avoid incurring commercial readiness payments to the RTOs. Therefore, it is important to recognize the substantial need for an established storage program over the planning horizon.

Other stakeholders supported a smaller procurement size emphasizing that the 1,500 MW figure is an upper limit set by the legislature, rather than a requirement. They argued that pursuing the full 1,500 MW for the initial procurement poses a significant financial risk to Illinois ratepayers and suggested smaller targets of as little as 300 MW. Some questioned the value of committing to large contracts now to meet future goals, given the rapid evolution of storage technology, suggesting that long-term contracts could expose ratepayers to unnecessary financial burden for a technology that may become obsolete. Taking into consideration that this is an initial procurement, it would be prudent to take a phased approach, starting with a smaller target to understand the process and ensure a successful event and having additional procurements up to 1,500 MW in late 2025 or early 2026. Parties cited successful precedents in California that adopted a phased procurement approach with growth over time aimed at catalyzing the market. This approach allows projects to participate in incremental procurement events, discover pricing, and demonstrate project economic value, ultimately striving to create a well-functioning storage market.

Additional discussion related to how the recommended size of the initial procurement is split between projects in PJM's ComEd LDA and MISO LRZ 4 is provided in our response to Key Question 11(a).

Recommendation

The recommendation for the total size of initial procurement to be held no later than August 26, 2025 pursuant to the underlying statute, is 1,038 MW with consideration of a soft cap. The soft cap, recognizing that the sizes of storage projects are lumpy, allows for the target to be exceeded in certain circumstances if accepting the project with the marginal bid would cause the target to be exceeded but not selecting such project would leave the target unfilled.

This recommendation of 1,038 MW for the initial procurement with an ability to exceed based on a soft cap considers 1) the diversity of stakeholder opinions with proposals between 300 MW and 1,500 MW,

2) sufficient competition considering the interconnection queue data as well as potential capacity from alternative interconnection processes, 3) a split of the initial procurement targets between projects in MISO LRZ4 and ComEd LDA taking into account the size of projects in the interconnection queue, 4) that initial procurement will allow learning for subsequent procurements, and 5) allowing for diversity of storage eligibility (such as hybrid projects) and contracting structure (allowing additional time to explore how to adapt the tolling agreement for use in Illinois) in subsequent procurements.

The initial procurement will serve as a pilot, providing valuable insights and lessons learned, which will be essential in determining the size and scope of later procurement. Regarding additional procurements beyond August 2025, the recommendation is to conduct up to three additional subsequent procurements in each of the ComEd LDA and MISO LRZ 4 through 2027. The IPA shall select the number, timing, size, and type of contract for such procurements, in consultation with the Staff and the procurement monitor, considering, among other things, the impact of the timing of information releases of PJM and MISO through their interconnection queue processes on the cost and competitiveness of the procurements.

It is recommended that the cumulative sum of such procurements, including the initial procurement, should be designed to attain a minimum of 3 GW of installed storage capacity, in aggregate, by 2030. Staff is committed to work with stakeholders to develop a tolling agreement model contract by the end of 2025 for potential use in one or more procurements through 2027.

It is also recommended for the IPA to develop a long-term energy storage resources procurement plan by 2027 for 2028/2029 procurements to meet the resource adequacy need beyond 2030 and submit such procurement plan for Commission approval. This energy storage resources procurement plan would be similar in nature to and could be submitted in conjunction with the IPA's long term renewable resources procurement plan required pursuant to Section 16-111.5 of the Public Utilities Act to the extent practicable to minimize administrative expense and review every two years.

In addition, consideration should be given to adopting a second statutory minimum procurement target beyond the initial 3GW of storage capacity by 2030, to ensure sufficient storage capacity is operational by 2035. The time it takes to develop the long-term storage procurement plan, attain approval of the plan through the regulatory process and ultimately implement the plan, including conducting the procurements, may very well exceed project development timelines necessary to achieve sufficient additional storage online by 2035 necessary to support Illinois' decarbonization schedule and address potential resource adequacy challenges.

By establishing a sequence of future procurement events, Illinois can create a sustainable storage pipeline that not only addresses resource adequacy shortfalls in the immediate term but also fosters a

competitive and well-functioning energy storage program. This approach will ultimately support the state's clean energy goals and ensure a reliable energy future.

10. Cost Recovery and Allocation Structure

Key Question (10) An assessment of the appropriate cost recovery and allocation structure that ensures electric utilities can recover all of the costs associated with the procurement of energy storage resources and any other costs associated with proposed utility participation.

Stakeholders emphasized the necessity for transparent and stable cost recovery mechanisms and an equitable cost allocation structure.

For the cost recovery structure, a key recommendation emerging from the discussions is the adoption of a statutory authorized pass-through mechanism, which would allow utilities to recover costs directly from consumers through a dedicated line item on customer bills. This approach would enable timely recovery of expenses and provide the financial certainty needed for developers to invest in energy storage projects.

One approach that would accomplish these objectives is one currently used by ComEd to recover carbon mitigation credit (CMC) costs. A rider process similar to the one used for CMCs allows the utility companies to recover all costs incurred and to provide bill credits associated with the procurement of ISCs. While the details associated with such recovery mechanism can be addressed through existing tariff filing and Commission review processes, the recommended framework is one where the utility establishes customer charges based upon forecasts of expected ISC costs for the delivery year and then makes a reconciliation filing annually to true up differences between revenues recovered and actual ISC costs during the reconciliation year. For avoidance of doubt, the cost-recovery mechanism would be approved once and not annually; once the cost-recovery mechanism is approved, the annual reconciliation filings would simply be to true up differences between revenues recovered and actual ISC costs during a year. This approach allows the utilities to charge different rates over the course of the delivery year in order to, for example, account for expected seasonal differences in ISC cost forecasts. While reconciliation filings are annual, this process also allows for adjustments following each month to ensure that actual aggregate recoveries and actual aggregate costs differences are reconciled over the course of each delivery year and do not compound through the end of the delivery year.

Further, the stakeholders stressed the need for fair cost allocation among ratepayers, ensuring that those who benefit from enhanced grid reliability contribute appropriately to the incurred costs. Generally speaking, the three options are to recover costs proportionally based on peak load contribution (PLC), monthly peak usage (kW), or based on total usage (kWh). Most stakeholders agreed that enhanced resource adequacy was the primary benefit of the procurement, which would suggest

recovery based on PLC or peak usage (kW). As utility companies are capable of monitoring the energy consumption patterns during peak hours and assigning PLC levels to customers, they could enable differentiated pricing for the consumers based on their PLC or actual peak usage each month measured in kilowatts. This allows for higher charges to be applied to those consumers who utilize more energy during the peak periods, thereby facilitating cost recovery associated with increased demand. Nevertheless, the choice of recovery based on PLC/peak usage (kW) or based on total usage (kWh) does not affect the ability of electric utilities to recover their costs associated with this procurement – utilities can effectively recover costs under both approaches. We do not officially endorse recovery based on kW or kWh in this report, and recommend this as a decision, supported by statutory authorization for utilities to recover their procurement costs, to be made through the existing tariff filing and Commission review processes.

Recommendation

It is recommended that utilities recover all costs of this procurement with a mechanism similar to the CMC procurement recovery mechanism and incorporating any lessons learned, given the benefit of consistency with the existing regulatory framework, which should foster stakeholder confidence and acceptance. By adopting these recommendations, Illinois can create a robust framework that promotes the integration of energy storage resources into the state's energy portfolio, enhancing overall grid resilience and reliability while ensuring that utilities can operate within a financially sustainable model. Further, we are not recommending a budget cap for this initial procurement.

As discussed in Key Question 3, it is recommended that legislative action provide funding certainty and authorize utility cost recovery for their procurement costs, regardless of its final form, for the program.

11. Geographic Location Assessment

Key Question (11) An assessment of the appropriate geographic location for the battery storage systems, including, but not limited to:

- a. the geographic split of the megawatts of capacity of the energy storage resources procured pursuant to this initial procurement between those interconnected to the Midcontinent ISO, Inc. and PJM Interconnection, LLC; and*
- b. the potential benefits of procuring one or more projects within an area designated as an area of the State certified by the Department of Commerce and Economic Opportunity as an Enterprise zone or Energy Transition Grant Community.*

Response to Key Question 11(a)

Regarding Key Question 11(a), the recommendation for the size of the initial procurement in August 2025 is 1,038 MW, with separate targets for projects interconnected with PJM (588 MW) in the ComEd LDA and with MISO (450 MW) in MISO LRZ 4.¹¹ Winning projects sited in the ComEd LDA shall execute the ISC Agreement with ComEd, and winning projects sited in the MISO LRZ 4 shall execute the ISC Agreement with AIC. We emphasize that we are recommending limiting project locations to either within MISO LRZ 4 or PJM ComEd LDA. This geographical restriction ensures that AIC ratepayers pay for resource adequacy in the AIC service territory, while ComEd ratepayers pay for resource adequacy in the ComEd service territory. In particular, while projects sited in MISO LRZ 1 or MISO LRZ 3 may be located in Illinois, we do not recommend their eligibility for participation in the initial procurement to ensure that AIC and ComEd ratepayers are not charged for resources that are not providing local resource adequacy in their service areas.

Table 3. Initial Procurement Targets

Location of Project	Procurement Target (MW)
PJM ComEd LDA	588 MW (57%)
MISO LRZ 4	450 MW (43%)

Stakeholders provided a diversity of opinions on the geographical split. Some suggested a 50%/50% split, while others suggested a 70% MISO versus 30% PJM split based on resource adequacy need. Stakeholders argue that MISO has a higher resource adequacy need and should have a higher target compared to PJM.

However, there was also a concern that having a higher target, incurring higher costs, spread over a smaller customer base (for MISO LRZ 4) could be burdensome for the customers. Stakeholders noted that the information compiled in the workshop process indicates that cost increases from adding 2,000 MW of storage capacity would be \$1.13 per month for AIC residential ratepayers and could be lower;

¹¹ In our initial assessment, we had proposed for stakeholder consideration an overall procurement size of 840 MW, consisting of a procurement target of 588 MW for projects in PJM ComEd LDA and 252 MW for projects in MISO LRZ 4 reflecting a 70% / 30% ComEd versus AIC customer loads split. Based on stakeholder feedback, the initial procurement target recommendation for MISO LRZ 4 is now increased from 252 MW to 450 MW. Stakeholders noted that MISO LRZ4, a current net importer of electricity, faces significant reliability challenges due to fossil retirements and tightening reserve margins. By increasing the MISO target to 450 MW, we acknowledge the critical need for additional capacity resources in this region, which is projected to experience shortfalls in the coming years. Also, there are several large projects in the MISO pipeline, including projects sized at 250MW. Having a procurement target at 252MW risks a single project fulfilling the entire MISO allocated target. The proposed procurement targets reflect a 57%/43%, which coincides with projects in the interconnection queues in PJM and MISO, after accounting for both standalone and grid-charging hybrid projects as a measure of market readiness and market activity.

and these levels of ratepayer bill impacts should not be a reason for not conducting a modestly larger initial procurement for MISO LRZ4 as proposed herein.

Beyond PJM and MISO, some suggested a carve-out for the city of Chicago and others suggested consideration of projects in locations qualified as energy communities under the Inflation Reduction Act, or to prioritize projects located at sites of retired fossil fuel power generation facilities, or to specifically target locations close to load centers, or to target closeness to renewables. Generally, we view that too much granularity risks complicating the initial procurement and even potentially harming competition by limiting the resources that can compete, since the potential participants presumably will already be locked into their currently proposed site (otherwise they could lose their queue position).

Recommendation

The recommended initial procurement target for August 2025 is a total of 1,038 MW, with separate allocations of 588 MW for projects interconnected with PJM in the ComEd LDA and 450 MW for those interconnected with MISO in MISO LRZ 4. This allocation takes into account stakeholder feedback and is based on a holistic approach that examines the interconnection queue to identify late-stage storage projects that are most likely to participate, while ensuring that AIC and ComEd ratepayers benefit from storage resources located within their respective service territories.

We do not recommend any locational carve outs or preferences for the initial procurement (beyond the separate targets for ComEd LDA and MISO LRZ 4). However, we acknowledge that future procurements may consider the potential advantages of additional carve-outs or locational preferences for Illinois ratepayers.

We stress that this recommendation pertains solely to the initial procurement. Subsequent procurements will allow for a recalibration of the procurement targets based on stakeholder feedback and evolving market conditions. The proposed procurement target serves as a significant first step, with the understanding that further analysis and adjustments can be made in future procurement cycles or through the IPA procurement plans.

Response to Key Question 11(b)

Regarding Key Question 11(b), Section 1-75(c)(1)(P) of the IPA Act requires the IPA to develop “a method to optimize procurement of renewable energy credits from proposed utility-scale projects that are located in communities eligible to receive Energy Transition Community Grants pursuant to Section 10-20 of the Energy Community Reinvestment Act.” Under the Energy Community Reinvestment Act, the Illinois Department of Commerce and Economic Opportunity (DCEO) is the agency responsible for administering the Energy Transition Community Grant Program.

In practice, the DCEO considers the communities eligible to receive grants under the Energy Transition Community Grant Program as the area covered by a 30-mile radius around qualifying fossil fuel facilities, nuclear facilities, and coal mines. In indexed REC procurement events conducted by the IPA, if a project is a utility-scale solar project or a utility-scale wind project and the project site is located within an eligible area for Energy Transition Community Grants, the project qualifies for a downward strike price adjustment of 10% of the lowest strike price received for use in ranking bids, thus making those bids more competitive in the selection process.

Section 5 of the Illinois Enterprise Zone Act (20 ILCS 655) establishes the framework for the designation and administration of Enterprise Zones in Illinois. The Act empowers the DCEO to designate specific areas as Enterprise Zones, which are intended to promote economic development and investment in economically distressed communities. These zones provide various incentives, including tax benefits and regulatory relief, to encourage businesses to locate or expand their operations within these designated areas.

The potential benefits of procuring and incentivizing energy storage projects within areas certified by the DCEO as Enterprise Zones or areas eligible to receive Energy Transition Community Grants are recognized and supported by stakeholders.

For future procurements, a preferential treatment, bid adjustment in the evaluation process, for all projects from Enterprise Zones or areas eligible to receive Energy Transition Community Grants similar to that adopted under the indexed REC procurement events could be implemented to provide an advantage to projects located in these designated areas. However, it is recommended not to include this bid adjustment for the initial procurement specifically, but instead to consider whether a project is proposed to be located within Enterprise Zones or an eligible area for Energy Transition Community Grants as a tiebreaker during the evaluation and selection procedure, to be further refined in the RFP rules development.

The rationale is as follows: The August 2025 procurement will be the first for energy storage projects in Illinois, and the participating projects will have already reached a mature level of development, with siting and site control already established. Including bid adjustments in the August 2025 procurement could create a “free rider” problem, where projects located in designated areas gain a competitive advantage without having made a conscious decision in site selection or taken intentional steps to promote local economic activities. However, if there is an instance of tie bids in the evaluation procedure for the last marginal project to be selected, if one of the tied projects is proposed to be located within Enterprise Zones or an eligible area for Energy Transition Community Grants (and the other is not), such project would be selected over the other tied project.

Recommendation

It is not advantageous to include bid evaluation adjustments to accommodate Enterprise Zones or eligible areas for Energy Transition Community Grants in the first procurement as the sites of the bidding projects are already fixed. As such, we recommend for the IPA to evaluate the appropriateness of including such accommodations in the energy storage procurement plan for subsequent procurements, as suggested in our response to Key Question 9. Considering this accommodation for later procurements and proactively communicating the benefits of locating storage projects within these areas in advance would incentivize developers to invest in Enterprise Zones or areas eligible for Energy Transition Community Grants, thereby achieving the policy goals of encouraging investments and economic activities in such areas in subsequent procurements. For the initial procurement, preferential selection in the instance of tie bids could be used as a tool so as to align with the policy goals.

12. Minimum Application Requirements

Key Question (12) An assessment of minimum application requirements, such as having achieved interconnection milestones, including, but not limited to;

a. projects that have applied for approval for surplus interconnection service or to transfer existing capacity interconnection rights to the relevant regional transmission organization and have received a completeness determination following completion of the initial review process and whether it is beneficial if such projects are also colocated with a renewable energy resource;

b. for projects interconnected to MISO, projects that have signed an interconnection agreement, or are in the MISO Generating Facility Replacement Process, or have provided the most current deposit in the MISO definitive planning phase (DPP) cycle 2021 or an earlier definitive planning phase cycle; or

c. for projects interconnected to PJM Interconnection, LLC, projects that have received a Phase 2 study.

Regarding Key Question 12, we will assess two general topics. The first topic is whether the initial procurement should be limited to only standalone energy storage resources or be expanded to include co-located and hybrid storage projects as well. The second topic is regarding minimum application requirements.

Assessment of Co-located and Hybrid Projects

In considering whether to allow co-located or hybrid projects to participate in the procurement process, it is important to distinguish between energy storage systems that operate independently from the co-

located generating assets and energy storage systems that may have operational constraints due to co-located generation units.

For our purpose, our definition of “**standalone**” energy storage resources refers to those systems that: (a) are separately metered by a revenue-quality meter that satisfies the requirements of the RTO; (b) operate independently, without constraints or hindrances from other generation units; and (c) demonstrate the ability to charge and discharge independent of any generation unit output. This definition focuses on the operational independence of the energy storage system and focuses on whether such energy storage system provides the same value to the grid on behalf of ratepayers as a system that is not co-located with a generation unit. For clarity, we will refer to all other energy storage systems that **do not** meet the aforementioned definition of “standalone” and that are co-located with a generation unit as “**hybrid**” projects.

Having defined “standalone” as well as “hybrid” projects, we consider several factors in determining whether the initial procurement should allow for hybrid projects. These factors include: (a) any guidance provided in legislation; (b) the incentive structure intended under the proposed design; and (c) the comparability of projects to be included in the same competitive category, which will be crucial for achieving a successful procurement.

Considering the above, the recommendation is to limit the initial procurement to standalone projects only, with the potential to include hybrid projects in future procurements, potentially in a separate procurement category with a different payment mechanism. Several reasons support focusing on standalone projects for the initial procurement:

1. **Legislative Intention:** The language in Section 16-135(g) of the Public Utilities Act mandates a workshop process to “develop an effective initial procurement of no more than 1,500 megawatts of utility-scale **standalone** energy storage resources.” (Emphasis added) While the benefits of hybrid storage projects are worth contemplating for inclusion in later procurements, based on the intention of the legislation, the initial procurement should focus on standalone storage projects as a starting point.
2. **Incentive Structure:** The contractual framework of the ISC Agreement is designed for a 4-hour energy arbitrage cycle, which mimics the standard charging and discharging behavior of a 4-hour duration standalone storage system. The offset to the strike price related to energy arbitrage represents the difference between the four highest and four lowest priced hours in the day-ahead energy market, implicitly treating the price of grid-charged energy (the four lowest priced hours) as fuel costs. This structure is designed for standalone, grid-charged projects rather than hybrid projects, which may involve direct charging from a renewable generation unit.

The project economics of a hybrid project is further complicated as developers may seek to cross-subsidize the generation component with the revenue stream from the storage component, or vice versa (hybrid projects as understood at the workshops would combine the output of storage and generation for the purposes of market participation). As such, hybrid projects are not the intended target for the current ISC incentive design.

3. **Comparability:** The cost structure and bid prices of hybrid projects are not directly comparable to those of standalone projects, making them unsuitable to compete in the same procurement category. Moreover, hybrid structures may have limitations on total output to the grid, potentially complicating apples-to-apples comparisons of the resource adequacy benefits.

Therefore, we recommend the initial procurement to be limited to standalone projects.

We note, however, that several stakeholders advocated for the eligibility of hybrid resources, as that expands the pool of eligible storage projects and that such storage projects may offer unique benefits.

We do not challenge the potential benefits of hybrid projects including (as raised at the workshop) enhanced renewables energy management and reduced interconnection costs. Yet, we re-emphasize that for an initial pilot procurement, to focus on a single structure (standalone storage) simplifies procurement and allows for apples-to-apples comparisons thus potentially enhancing the efficiency of the procurement, ensuring substitutable projects compete with one another. Even though including hybrid facilities expands the pool of eligible participants, the material differences of such projects versus standalone projects may lead to an inefficient procurement outcome.

Standalone projects do not face the same limitations that hybrid projects may face in terms of limitation on a) the combined output to the grid of renewable generation plus storage discharge and b) charging given potential dependence on the output of the renewable generation resource. As such, the ISC Agreement incentive structure may not be preferable for hybrid projects. The ISC Agreement incentivizes energy storage projects to follow an economic dispatch schedule that will charge at lowest-priced hours and discharge at highest priced hours. However, a renewable generator under a PPA would have the expectation to generate and dispatch power during the same hours, which creates the conflict between the two incentive structures (i.e., renewables and storage).

Recommendation regarding eligibility of Hybrid projects

Hybrid projects have unique operational attributes and distinct cost structure and cannot be directly compared to standalone projects.

As a result, we recommend that:

- (a) the initial procurement be limited to only utility-scale standalone projects as defined above.

- (b) hybrid projects be considered for inclusion in subsequent procurements, potentially with their own procurement category and contract structure.

Staff pledges to continue to work with stakeholders to explore how to adapt the tolling agreement and/or ISC Agreements to accommodate hybrid projects for use in subsequent energy storage procurements.

Minimum Application Requirements

Regarding the second topic of minimum application requirements, these requirements should ensure the viability of participating projects while considering the needed expediency of deploying energy storage solutions in Illinois.

For instance, if the procurement aims to secure projects that can be rapidly developed and interconnected to the grid, those further along in the interconnection process will be prioritized to meet immediate energization needs. Such projects typically require strong site control, progress in obtaining necessary permits, and may have secured financing and procured major equipment for completion. However, these stringent requirements may limit the pool of eligible projects. Conversely, procurements allowing for a longer development timeline may impose fewer minimum application requirements, as there will be sufficient time for projects to finalize site acquisition, complete interconnection studies, secure financing, and meet the intended resource adequacy timeline.

For the initial procurement, if the goal is for projects to achieve commercial operation by 2030, the minimum requirements should lean towards long-term resource adequacy goals to prioritize sufficient competition. We recommend a straightforward set of criteria: a) the project must be in the PJM or MISO interconnection queue, meaning it needs to provide the procurement administrator with an interconnection queue ID; or b) any project that can demonstrate it is in a late stage of development, even if it is currently in an alternative interconnection process, such as those undergoing the Capacity Interconnection Rights (CIR) transfer process or the Generation Facility Replacement Process.

It is important to clarify that we are not utilizing a particular transition cycle in PJM or a specific DPP study cycle in MISO as minimum application requirements, as these would be overly restrictive. Stakeholders have noted that MISO provides several alternative pathways for interconnection, including the Generation Facility Replacement Process, which are not reflected in the publicly available interconnection queue. Additionally, certain eligible standalone projects may potentially utilize underused existing interconnection capacity rights through Surplus Interconnection Service. Restricting eligibility based on a specific DPP cycle or interconnection queue status risks excluding projects that are otherwise well-positioned to obtain financing if selected through the ISC procurement and are advanced in development, potentially and unnecessarily limiting competition.

The goal is to provide avenues for bidders to demonstrate project maturity and viability without being overly restrictive. Additionally, the ISC mechanism operates as a pay-for-performance instrument, providing sellers with an added incentive to build and commence commercial operation in order to receive the benefits of ISC payments. The risk of forfeiture of collateral requirement under the ISC Agreement should also mitigate speculative bids.

Recommendation regarding eligibility requirements

In summary, it is recommended that we do not restrict the initial procurement to specific projects that can provide certain evidence such as interconnection agreement, MISO's definitive planning phase (DPP) study, or PJM's Phase 2 Study.

Qualifying standalone projects must be (a) in PJM or MISO interconnection queue and provide the interconnection queue ID, or (b) demonstrate that they are in a late stage of development under an alternative interconnection process such as those undergoing the CIR transfer process or the Generation Facility Replacement Process or approval process for surplus interconnection service to the relevant RTO. The minimum criteria are designed to ensure that a sufficient number of standalone storage projects can achieve commercial operation before 2030, thereby providing the needed resource adequacy for the Illinois grid.

13. Impact Assessment on Ratepayers

Key Question (13) An assessment of the impact of the costs and benefits to Illinois ratepayers of these issues related to this initial procurement.

The assessment of costs and benefits to Illinois ratepayers is fundamentally a comparative analysis of the diverse benefits provided by energy storage projects against the overall costs of the subsidy required for the procurement program, as well as potential impacts on wholesale market costs and overall carbon emissions.¹² Given that these costs will initially be borne by utility customers to ensure the successful implementation of the procurement, it is crucial to ensure that the long-term benefits outweigh these initial costs and are allocated appropriately to Illinois ratepayers.

The potential benefits that energy storage projects can bring to Illinois include: 1. price suppression effects in the RTO's capacity market and energy market; 2. enhanced generation reliability, resource adequacy, transmission reliability, and grid resilience; 3. the potential deferment of costly grid upgrades

¹² Both wholesale market costs and potential increases in carbon emissions are due to the fact that batteries discharge less than 100 percent of the energy they consume, thus requiring additional electricity to be generated, i.e., they are net energy users. Given that charging for stand-alone projects is with power from the wholesale market, particularly at times when renewable energy may be limited (i.e., at night), it is impossible to limit the additional usage of stand-alone storage facilities to only carbon-free sources.

and construction of new generation assets; 4. benefits associated with an expedited transition to renewable energy in on-peak periods facilitated by the deployment of energy storage; and 5. additional macroeconomic benefits, such as job creation and increased investment in local infrastructure.

It is essential to emphasize that the cost-benefit analysis for ratepayers informs the entire design process of contractual terms and procurement strategies as discussed in other sections of this report. Our primary objective throughout is to maximize the net benefits of the storage procurement program for Illinois ratepayers. Consequently, this section will focus on discussing the overall estimated economic benefits of the storage program that is quantifiable, compared to the estimated financial costs incurred by ratepayers.

The IPA completed a policy study in March 2024,¹³ which assessed the impacts of various energy storage proposals on decarbonization goals, environmental factors, grid reliability, and economic outcomes. The study estimated direct ratepayer costs for 7,500 MW of storage at approximately \$239.1 million per year, with significant avoided emissions benefits and wholesale energy market cost reductions. A subsequent refresh in November 2024 provided updated cost estimates for energy storage deployment, narrowing the scope to 1 GW, 2 GW, or 3 GW through an indexed energy storage procurement process, split evenly across RTOs. This refreshed cost estimate is particularly informative for the initial procurement, as it outlines the overall economic costs to Illinois ratepayers over time based on different procurement sizes. Table 4 below shows the estimated monthly costs to an average residential customer of AIC or ComEd under the 1 GW, 2 GW, and 3 GW targets, as well as under high and low capacity price assumptions. These estimates assume that recovery is based on kWh charges that are the same for every customer type and across RTOs.

Table 4. Estimated Cost to Average Residential Customer (per Month) of Energy Storage

Storage Target	AIC (High Capacity Price Forecast)	AIC (Low Capacity Price Forecast)	ComEd (High Capacity Price Forecast)	ComEd (Low Capacity Price Forecast)
1 GW	\$0.19	\$0.56	\$0.13	\$0.39
2 GW	\$0.37	\$1.13	\$0.26	\$0.78
3 GW	\$0.56	\$1.69	\$0.39	\$1.17

Table 5 below shows the estimated total cost of the procurement program, scaled to 1 GW, under both high and low capacity price scenarios. The overall costs associated with the 1 GW procurement target

¹³ Illinois Power Agency 2024 Policy Study, March 1 2024.

<https://ipa.illinois.gov/content/dam/soi/en/web/ipa/documents/ipa-policy-study-1-march-2024.pdf>

are informative and comparable to the initial procurement target of 1,038 MW. Consequently, the 1 GW cost estimates are utilized in the comparative analysis of the overall benefits versus costs.

Table 5. Estimated Total Cost of 1 GW Energy Storage

	1 GW High Capacity Price	1 GW Low Capacity Price
2030	\$33,002,868.37	\$37,887,900.80
2031	\$45,274,380.07	\$51,357,935.99
2032	\$46,612,043.30	\$54,291,543.49
2033	\$46,576,050.64	\$55,881,430.74
2034	\$47,016,098.52	\$58,616,490.69
2035	\$29,514,468.93	\$59,852,498.63
2036	\$19,976,497.53	\$58,415,989.98
2037	\$8,744,854.97	\$56,867,813.53
2038	\$1,572,613.19	\$55,550,749.23
2039	\$2,991,571.90	\$55,171,325.69
2040	\$3,322,344.54	\$53,693,223.08
2041	\$2,964,078.29	\$51,515,435.30
2042	\$3,700,996.63	\$50,422,030.30
2043	\$8,109,520.85	\$52,989,271.57
2044	\$10,201,135.99	\$53,228,484.04
2045	\$10,158,258.54	\$51,321,921.78
2046	\$11,969,216.91	\$51,257,748.33
2047	\$12,973,119.43	\$50,374,904.82
2048	\$14,039,210.07	\$49,542,465.50
2049	\$14,568,360.89	\$48,161,130.28
Total	\$373,287,689.55	\$1,056,400,293.78

The Power Bureau conducted a separate cost-benefit analysis of procuring 8.5 GW of energy storage in Illinois¹⁴, using cost estimate inputs informed by the IPA policy study. The analysis projects that an 8.5 GW deployment of battery storage yields average net cost savings of approximately \$1.00 per month for AIC customers and about \$0.60 per month for ComEd customers over a 20-year period. Additionally, the study identifies macroeconomic benefits, including enhanced grid reliability, reduced emissions, and increased economic activity. Conversely, the analysis reveals the steep opportunity costs of failing to

¹⁴ Cost and Benefit Analysis of Energy Storage Resource Deployment in Illinois, The Power Bureau, 2024.

https://uploads-ssl.webflow.com/665e6f7e8f49ea56f1d1fe37/66b63a37475811860f0718a8_Energy%20Study_FINAL_3.0.pdf

deploy sufficient battery storage capacity to meet resource adequacy needs, which can hinder economic growth. In particular, during the discussion of this study in the workshop, it was highlighted that losing out on 1 GW of data centers due to capacity shortfalls in Illinois could result in an estimated loss of approximately \$12 billion in direct development investments, along with an additional \$60 billion in hardware and systems investments. This situation underscores the necessity of addressing resource adequacy issues through the procurement of storage capacities to foster economic development in the state.

ComEd conducted a cost-benefit analysis of procuring 750 MW of 4-hour battery systems in the ComEd Zone of PJM through the ISC structure. The analysis focuses on modelling energy arbitrage opportunities for battery storage and projecting capacity payment revenues from the RTOs to estimate the total subsidy needed from utility customers to bridge the gap between the estimated revenues and the development costs of the storage systems. The middle-cost scenario in this analysis suggests that the deployment of 750 MW storage systems may lead to an increase in the average bill for ComEd residential customers ranging from \$0.26 to \$0.85 per month.

In terms of benefits to ratepayers, the ComEd analysis indicates that a 750 MW deployment could yield a capacity price suppression benefit of approximately \$195 million to \$280 million for ComEd customers, translating to about \$2.00 per month on the average residential customer bill. However, the analysis also underscores the uncertainty in capacity markets, noting that the benefits of price suppression depend on market conditions and the ability of the capacity market to clear below maximum prices. Overall, the analysis finds a net bill savings of \$1.43 per month for ComEd residential customers in the base-case scenario, highlighting the overall economic benefit of the storage program.

On the other hand, AIC performed a cost-benefit analysis without assessment of capacity price suppression, emphasizing that the direct costs to customers of the initial procurement could either be positive or negative (reduced costs), depending on market conditions. The higher the market prices, the greater the offsets to the strike prices, and the greater potential for the sellers to pay the buyers instead of the other way around. AIC argues that for the direct cost of the storage procurement program to go negative (a direct reduction to ratepayer bills), several key factors must align: installed capital expenditure (CapEx) costs need to decrease, capacity accreditation values must remain stable or increase, and capacity prices need to remain high. Aside from these conditions, the storage procurement program is expected to result in payments from the utility buyers to developers/sellers, where that cost would be recovered from ratepayers as an increase on their bills.

We stress again that the ComEd and AIC analyses are not directly comparable, as the ComEd analysis includes the benefit from capacity price suppression while the AIC analysis does not. Further, we stress that it is not a surprise that each of the IPA, Power Bureau, ComEd and AIC found that under base or middle-scenario conditions the result is that the procurement will result in utilities on net paying to the

owner-developers over the lifetime of the ISC Agreement, payments which would be recovered from ratepayers. It is important to emphasize that offsetting the cost of those payments provides several benefits. ComEd has quantified one potential benefit to ratepayers, capacity price suppression. Additional benefits were introduced at the beginning of this section, including the benefits to resource adequacy (this benefit is to some extent quantified through capacity price suppression), renewables integration and decarbonization, direct economic benefits through the economic activity of building and maintaining the storage, and potential knock-on benefits of economic development from having a more reliable grid in Illinois and from kick-starting the storage industry in Illinois.

As discussed above, multiple cost-benefit analyses compare the long-term economic benefits of the proposed storage program against the initial costs borne by utility customers in the procurement process. Most studies arrive at similar conclusions, indicating that the benefits of energy storage, including through price suppression in the RTO capacity market, can compensate for the initial costs incurred by Illinois ratepayers. Additionally, these analyses highlight the potential for enhanced grid reliability and macroeconomic benefits for the state of Illinois.

Recommendation

Given Key Question 13 relates to an assessment of the impact of the costs and benefits to Illinois ratepayers of these issues related to this initial procurement, no recommendation is contemplated or provided in our response here. It is important to note that a confidential benchmark developed by the IPA will be applied to remove unreasonable bid offers from consideration. Further, no payments are made under ISC Agreements and no costs will be incurred until the selected projects are commercially operational.

14. Recommendations for Labor and Equity Standards

Key Question (14) Recommendations for the inclusion, or adaptation, of minimum equity standards and an equity accountability system to the procurement process.

For the initial procurement event, we recommend that energy storage projects must meet all equity and labor requirements applied to renewable competitive procurements. This includes Minimum Equity Standard (MES), Project Labor Agreement, and prevailing wage requirements.

Our recommendation is based on stakeholder feedback and an evaluation of the implications of including MES and Equity Accountability System (EAS) in the procurement process. Several stakeholders expressed strong support for the inclusion of MES and EAS, emphasizing that energy storage procurements should align with the goals set forth in the CEJA. They highlighted the importance of ensuring equitable and inclusive jobs in clean energy, as these requirements are already utilized in other IPA programs.

During discussions, the IPA presented how MES and EAS are implemented in other programs. Renewable developers receiving REC contracts through IPA procurement are subject to a MES requirement, which will be set at 14% for 2025/2026 program year for utility-scale renewable projects and is scheduled to increase to 30% by 2030. Stakeholders argued that including MES in energy storage projects could help increase the number of registered equity-eligible persons (EEPs) in Illinois.

Concerns were raised regarding 1) fire hazards associated with energy storage batteries¹⁵ and 2) the timeline for implementation of labor and equity requirements by August 2025, given there are no set requirements and standards in place for the equity standards for energy storage development. However, stakeholders noted that the construction of energy storage systems is similar to that of renewable projects. They argued that expertise is required for both types of construction, suggesting that there is no reason to exclude MES for energy storage. Stakeholders emphasized that the benefits of including MES and EAS outweigh the potential drawbacks, particularly in promoting a more equitable workforce. Additionally, stakeholders requested the inclusion of Project Labor Agreements, which are required for all utility-scale renewable projects, arguing that there should not be different labor and equity requirements for utility-scale renewables and utility-scale storage development.

In light of this feedback and analysis, we believe that adopting these recommendations will enhance the equity and labor standards of the procurement process while supporting the overall goals of the CEJA.

Recommendation

Given the discussion above, it is recommended that the Minimum Equity Standard, Project Labor Agreement and prevailing wage requirements be applied consistently with those in utility-scale renewable procurements for the initial energy storage procurement event.

As we gain insights into the standards and best practices for energy storage projects through the gradual deployment of battery storage systems in Illinois, the labor and equity standards, including MES, can be refined and adapted to better suit the unique characteristics of energy storage development. It is recommended that platforms such as EAS and waiver process be utilized to help implement the requirements in the procurement so that it does not overly limit the bidder participation. If applicable, the labor and equity requirements can be revisited and discussed in the IPA's storage procurement plan for future procurement events. By taking these steps, we can ensure that the implementation of equity and labor standards not only supports the goals of the CEJA, but also fosters a safe and effective transition to energy storage solutions in Illinois.

¹⁵ In New York, an inter-agency Fire Safety Working Group was formed in 2023 to ensure the safety and security of energy storage systems across the State. Fire code recommendations published by the Fire Safety Working Group emphasized the importance of qualified personnel and representatives of the site owner/operator with knowledge of the BESS installation should be deployed on-site to support local emergency responders.

Appendix A. Indexed Storage Credit Agreement

Appendix A-1: Key Terms of the ISC Agreement

The key commercial terms of the ISC Agreement are summarized below. These summaries are for informational purposes only and are qualified by reference to the full ISC Agreement as provided in Appendix A-2:

Counterparty	<ul style="list-style-type: none"> Ameren Illinois Company ("AIC") for Projects located in MISO LRZ 4; <i>or</i> Commonwealth Edison Company ("ComEd") for Projects in PJM ComEd LDA
Project	<ul style="list-style-type: none"> A standalone energy storage system selected through the RFP. Standalone energy storage system is an energy storage resource that is <ul style="list-style-type: none"> (a) separately metered by a revenue quality meter that satisfies the requirements of RTO; (b) normal operations of the storage system are not constrained or hindered by other generation units; and (c) the storage system can demonstrate the ability to charge and discharge independent of any generation unit output Located in PJM ComEd LDA or MISO LRZ 4.
Product	<ul style="list-style-type: none"> ISCs generated from the Project. ISC: virtual unit of measurement of Availability of the Project.
ISC Generation	<ul style="list-style-type: none"> If ISC Daily Value is negative in a day, Seller is credited four (4) ISCs per MW of Contract Capacity unless excused by Planned Outages. If ISC Daily Value is positive in a day, Seller is credited four (4) ISCs per MW of Contract Capacity, prorated based on the available MW of the Project. Planned Outages approved by the RTO shall be informed.
Payment Mechanism	<ul style="list-style-type: none"> Contract is based on Indexed price structure ISC Monthly Payment = Summation across all days of the Vintage Month: {(number of ISCs credited for a given day of the Vintage Month) * (Strike Price – ISC Index Reference Price of such day of the Vintage Month)} If ISC Monthly Payment <0, Seller will pay Buyer the amount If ISC Monthly Payment >0, Buyer will pay Seller the amount
ISC Index Reference Price	<p><i>ISC Index Reference Price =</i></p> <p><i>a) ISC Reference Energy Arbitrage Price + b) ISC Reference Capacity Price</i></p> <p>a) <u>ISC Reference Energy Arbitrage Price</u> in \$/MWh for a given day <i>d</i> is equal to:</p>

	$\frac{\sum_{n=1}^4 \max (T_n - (\frac{B_n}{0.85}), 0)}{4}$ <p>T_n: Locational Marginal Price for nth top-priced hour in day d B_n: Locational Marginal Price for nth bottom-priced hour in day d</p> <p>b) <u>ISC Reference Capacity Price</u> is the multiplicative product of (i) the ELCC and (ii) [MISO’s planning resource auction clearing price applicable to the ISC Delivery Point in \$/MW-day divided by 4 hours <u>or</u> PJM’s base residual auction resource clearing price applicable to the ISC Delivery Point in \$/MW-day divided by 4 hours].</p>
Settlement	<ul style="list-style-type: none"> • Invoicing and Payments are on monthly basis for ISCs generated
Commercial Operation Date	<ul style="list-style-type: none"> • Commercial Operation Date occurs on or after June 1, 2026 • Commercial Operations Deadline: December 31, 2029 Deadline may be extended but not beyond May 31, 2035
Term	<ul style="list-style-type: none"> • 20 years from the Earliest Vintage Month
Earliest Vintage Month	<ul style="list-style-type: none"> • Month following when Project achieves Commercial Operations and meets minimum operational requirements
Minimum Operational Requirements	<ul style="list-style-type: none"> • Minimum Contract Capacity of 20 MW; • Ability to operate for a duration of four (4) hours of continuous discharge of the Contract Capacity per hour; • Minimum RTE of seventy percent (70%) provided that RTE shall be at least eighty-five (85%) for the first Delivery Year; and • Minimum Availability of 4,320 hours of the Contract Capacity per Delivery Year.
Collateral Requirement	<ul style="list-style-type: none"> • Prior to COD, \$100,000 times the Proposed Contract Capacity • On or after COD, \$100,000 times the Initial Contract Capacity
Other Requirements	<ul style="list-style-type: none"> • Prevailing Wage requirements • Project Labor Agreements • Minimum Equity Standards • Cybersecurity Requirements

Appendix A-2: Model ISC Agreement

(attached)

**Indexed
Storage
Credit
Agreement**

INDEXED STORAGE CREDIT AGREEMENT

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May 1, 2025

INDEXED STORAGE CREDIT AGREEMENT

THIS INDEXED STORAGE CREDIT AGREEMENT (the “Agreement”) is entered into as of this ____ day of _____, 20__ (the “Effective Date”), by and between _____ (“Seller” or “Party A”) and [Ameren Illinois Company d/b/a Ameren Illinois / Commonwealth Edison Company] (“Buyer” or “Party B”). Each of Seller and Buyer is sometimes referred to herein as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, the Illinois Power Agency (“IPA”) issued a Request for Proposals (the “RFP”) for the payment of Indexed Storage Credits (“ISCs”) by Illinois electric utilities, for which bid results were approved by the Illinois Commerce Commission (“ICC”) on _____, 20__ (“Commission Bid Approval Date”);

WHEREAS, Seller was a winning bidder with respect to the Project selected through the RFP;

WHEREAS, pursuant to the RFP, Buyer and Seller agreed to enter into this Agreement to set forth the terms and conditions of the Transaction entered into by the Parties; and

WHEREAS, each of Buyer and Seller believes it is in its best interest to enter into this Agreement.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual agreements contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE 1: DEFINITIONS

1.1 “AAA” is defined in Section 15.2.

1.2 “Acceptable Vintage Period” means the period in which an ISC must be generated for such ISC to be eligible for payment and shall be the period starting on the first day of the Earliest Vintage Month and ending on the last day of the Latest Vintage Month.

1.3 “Affiliate” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person, with “control” meaning the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies, or activities of a person, whether through ownership or voting securities, by contract or otherwise.

1.4 “Agreement” means this Indexed Storage Credit Agreement.

1.5 “Applicable Program” means the [-]¹ Standard, as established under 20 Ill. Comp. Stat. 3855/1-75, or successor.

1.6 “Available” or “Availability” means, with respect to the Project, on or after the COD, the Project is (i) interconnected into the transmission system of RTO and (ii) available for dispatch, consistent with RTO rules.

¹ To be inserted or modified based on legislation, as applicable.

1.7 “Bankrupt” means an entity that has (i) filed a petition or otherwise commenced, authorized or acquiesced in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, (ii) had any such petition filed or commenced against it and not dismissed within 60 days, (iii) made an assignment or any general arrangement for the benefit of creditors, (iv) otherwise become bankrupt or insolvent, however evidenced, (v) had a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (vi) become generally unable to pay its debts as they fall due.

1.8 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day opens at 8:00 a.m. and closes at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, is the Party from whom the notice, payment or delivery is sent and by whom the notice or payment or delivery is received.

1.9 “Buyer” means the buyer of the Product under this Agreement.

1.10 “Claiming Party” is defined in Section 10.1.

1.11 “Collateral Requirement” means, with respect to the Project prior to COD, an amount equal to one hundred thousand dollars (\$100,000) times the Proposed Contract Capacity; and with respect to a Project on or after COD, an amount equal to one hundred thousand dollars (\$100,000) times the Initial Contract Capacity.

1.12 “Collateral Threshold” is defined in Section 7.1.

1.13 “Commercially Reasonable Threshold” means, the amount equal to the multiplicative product of (a) Strike Price, (b) Proposed Contract Capacity (if prior to COD) or Initial Contract Capacity (if COD has occurred), (c) 4 hours and (d) 365 days; provided that in any case the Commercially Reasonable Threshold shall be subject to a minimum of \$2,500,000 and a maximum of \$6,000,000.

1.14 “Contract Capacity” means the power output capability of the Project for a Delivery Year as recognized by RTO, expressed in megawatts (MW), which amount is specified in the Product Order as may be updated pursuant to Section 2.7. For avoidance of doubt, building a Project with a larger power capacity than the Proposed Contract Capacity and selling the residual capacity under a different arrangement is not permitted.

1.15 “Construction Activities” means activities related to the Project that includes not only construction, but also any maintenance, repair, assembly, or disassembly work performed on equipment whether owned, leased, or rented and all construction work performed by Seller, including its contractors and subcontractors, relating to construction, maintenance, repair, assembly, or disassembly work in relation to the Project.

1.16 “Commercial Operation Date” or “COD” means the date on which the Project first achieved Commercial Operations as recognized by RTO.

1.17 “Commercial Operations” means the Project is Available for dispatch by RTO into the wholesale day-ahead or real-time markets, excluding dispatch for purposes of completing testing and commissioning of all components of the Project to ensure the Project is mechanically, electrically and structurally capable of performing under the Agreement, which includes completion of end-to-end systems controls test and verification.

1.18 “Commercial Operations Deadline” means the date on which the Project must achieve

Commercial Operations, unless extended pursuant to Section 2.3 or Section 10.1.

1.19 “Credit Rating” means, with respect to the Seller or Seller’s Guarantor, as applicable, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (excluding, however, any debt obligations that are supported by specific third party credit enhancement that would not apply to payment obligations under this Agreement) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer default rating by Fitch, or the issuer rating by Moody’s, or the corporate issuer rating or corporate credit rating by S&P; provided, however, that in the event Seller (or Seller’s Guarantor, if applicable) is rated by only one rating agency, that rating will be used. If Seller, or its Guarantor, is rated by only two rating agencies, and the ratings are split, the lower rating will be used. If Seller, or its Guarantor, is rated by three rating agencies, and the ratings are split, the lower of the two highest ratings will be used; provided that in the event that the two highest ratings are common, such common rating will be used.

1.20 “Defaulting Party” is defined in Section 9.1 and Section 9.2.

1.21 “Default Rate” means a rate per annum equal to four percentage points (4%) over the per annum prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates.”

1.22 “Delivery Year” means each consecutive twelve (12) calendar month period during the Acceptable Vintage Period beginning with June 1 of each calendar year through and including May 31 of the following calendar year; provided that if the Earliest Vintage Month is not June, (i) the period commencing on the first day of the Earliest Vintage Month through and including the immediately following May 31st and (ii) the period commencing on June 1 immediately prior to the end of the Acceptable Vintage Period through and including the last day of the Latest Vintage Month shall, in each case, be a Delivery Year. For avoidance of doubt, unless the term “Delivery Year” is used, the uncapitalized term “delivery year” shall refer generally to each consecutive twelve (12) calendar month period beginning with June 1 of each calendar year through and including May 31 of the following calendar year, regardless of whether or not such period is in the Acceptable Vintage Period.

1.23 “Delivery Year Maximum Quantity” means, with respect to a Delivery Year, an amount equal to the multiplicative product of (a) the Contract Capacity for such Delivery Year, (b) four (4) hours and (c) the number of days in such Delivery Year within the Acceptable Vintage Period.

1.24 “Earliest Commercial Operation Date” means the earliest date on which the Project may achieve Commercial Operations, which date is specified in the Product Order.

1.25 “Earliest Vintage Month” means the earliest Vintage associated with the ISCs generated by the Project; which shall not be earlier than June 2026. Unless delayed pursuant to Section 2.5, this shall be the month in which the Project achieved Commercial Operations as recognized by RTO if the COD is on the first of the month; otherwise, this shall be the month following the date the Project achieves Commercial Operations.

1.26 “Early Termination Date” is defined in Section 9.3.

1.27 “Effective Date” means the date this Agreement became effective as written above.

1.28 “ELCC” means the project-specific effective load carrying capability rating in percentage recognized by RTO for the Project for a Delivery Year as provided by Seller pursuant to Section 2.5 or Section 2.7. If a project specific ELCC is not available for a Delivery Year, then the prevailing effective load carrying capability class rating for 4-hour duration energy storage resources (with, if relevant for

determining which class rating is applicable, RTE of 85%) applicable to the ISC Delivery Point shall be used for such Delivery Year. If RTO uses a different percentage metric than ELCC for the purposes of determining the capacity value of energy storage systems that offer into the capacity market, then ELCC in this Agreement will be understood to mean this different percentage metric used by RTO.

1.29 “Equity Eligible Contractor” means a business that is majority-owned by Equity Eligible Persons, or a nonprofit or cooperative that is majority-governed by Equity Eligible Persons or is a natural person that is an Equity Eligible Person offering personal services as an independent contractor as defined in Section 1-10 of the IPA Act as further clarified in the IPA’s long term renewable resources procurement plan as approved by the Illinois Commerce Commission in ICC Docket No. 23-0714.

1.30 “Equity Eligible Persons” means persons who would most benefit from equitable investments by Illinois State designed to combat discrimination, specifically: (a) persons who graduate from or are current or former participants in the Clean Jobs Workforce Network Program, the Clean Energy Contractor Incubator Program, the Illinois Climate Works Pre-apprenticeship Program, Returning Residents Clean Jobs Training Program, or the Clean Energy Primes Contractor Accelerator Program, and the solar training pipeline and multi-cultural jobs program created in paragraphs (a)(1) and (a)(3) of Section 16-108.12 of the Public Utilities Act; (b) persons who are graduates of or currently enrolled in the foster care system; (c) persons who were formerly incarcerated; (d) persons whose primary residence is in an Equity Investment Eligible Community as defined in Section 1-10 of the IPA Act as further clarified in the IPA’s long term renewable resources procurement plan as approved by the Illinois Commerce Commission in ICC Docket No. 23-0714.²

1.31 “Event of Default” is defined in Section 9.1 and Section 9.2.

1.32 “External Event” is defined in Section 10.1.

1.33 “Fitch” means Fitch Ratings Ltd.

1.34 “Force Majeure” is defined in Section 10.1.

1.35 “General Contractor” means the entity or organization with main responsibility for the building of a construction project and who is the party signing the prime construction contract for the Project.

1.36 “Government Action” means action by a Governmental Authority to change the eligibility of a Product for an Applicable Program or substantially change the requirements for compliance by persons obligated to comply with the Applicable Program which in either case has a material adverse effect on the value of a Product under this Agreement.

1.37 “Governmental Authority” means any international, national, federal, provincial, state, municipal, county, regional or local government, administrative, judicial or regulatory entity operating under any applicable laws and includes any department, commission, bureau, board, administrative agency or regulatory body of any government.

1.38 “Guarantor” means the party named as the Guarantor in the Guaranty.

1.39 “Guaranty” means an irrevocable and unconditional guaranty made by Seller’s Guarantor,

² For avoidance of doubt, “persons who were formerly incarcerated” means any individual who (i) was sentenced to a term of imprisonment, not including juvenile detention, after the disposition of one or more misdemeanor or felony charges; and (ii) has completed their sentence. For avoidance of doubt, “persons who are graduates of or currently enrolled in the foster care system” means any individual who is currently or was formerly a youth in care of the Illinois Department of Children and Family Services, or the equivalent agency in another state.

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in the form attached hereto as Exhibit E-2, with such options as elected therefrom.

1.40 “ICC” means the Illinois Commerce Commission.

1.41 “Indexed Storage Credit” or “ISC” means a virtual unit of measurement of Availability that is generated from the Project pursuant to Section 4.1.

1.42 “Initial Contract Capacity” means the Contract Capacity of the Project as recognized by RTO as of the Earliest Vintage Month, which amount shall be specified in the Product Order.

1.43 “IPA” means the Illinois Power Agency.

1.44 “ISC Daily Payment Amount” means, with respect to a given day of a Vintage Month, the multiplicative product of (a) the number of ISC credited for such day pursuant to Section 4.1 and (b) the ISC Daily Value for such day.

1.45 “ISC Daily Value” means, with respect to a given day of a Vintage Month, the result obtained by subtracting the ISC Index Reference Price from the Strike Price.

1.46 “ISC Delivery Point” means [MISO CP Node AMIL.BGS6 or ComEd Residual Aggregate, Pnode ID 116472935 (COMED_RESID_AGG)], or successor.

1.47 “ISC Generation Date” means a date within the Acceptable Vintage Period in which ISCs were generated by the Project and eligible for payment.

1.48 “ISC Index Reference Price” means, with respect to a given day of a Vintage Month, the sum of the ISC Reference Energy Arbitrage Price and the ISC Reference Capacity Price.

1.49 “ISC Reference Capacity Price” means the multiplicative product of (a) the ELCC and (b) [MISO’s planning resource auction clearing price (or successor) applicable to the ISC Delivery Point and applicable to the Vintage Month divided by 4 hours / PJM’s base residual auction resource clearing price (or successor) applicable to the ISC Delivery Point and applicable to the Vintage Month divided by 4 hours]

1.50 “ISC Reference Energy Arbitrage Price” means, with respect to a given day of a Vintage Month, an amount in \$/MWh obtained by the formula below.

ISC Reference Energy Arbitrage Price in \$/MWh for a given day d :

$$\left[\sum_{n=1}^4 \max \left(T_n - \left(\frac{B_n}{0.85} \right), 0 \right) \right] / 4$$

T_n : Locational Marginal Price for n th top-priced hour in day d

B_n : Locational Marginal Price for n th bottom-priced hour in day d

1.51 “ISC Monthly Payment Amount” means, with respect to a Vintage Month, the sum of the ISC Daily Payment Amounts associated with such Vintage Month.

1.52 “ISC Monthly Price” means, with respect to a Vintage Month, the ISC Monthly Payment Amount divided by the quantity of ISCs generated during such Vintage Month. If the quantity of ISCs generated during such Vintage Month is zero (0), then the ISC Monthly Price with respect to such Vintage Month is “N/A” (not applicable).

1.53 “Increased Collateral Requirement” means, an amount equal to two hundred thousand dollars (\$200,000) times the Proposed Contract Capacity. The Increased Collateral Requirement shall be equal to one hundred thousand dollars (\$100,000) upon the Project having achieved Commercial Operations by the extended Commercial Operations Deadline.

1.54 “Invoice Due Date” is defined in Section 5.1.

1.55 “IPA Act” means the Illinois Power Agency Act, 20 ILCS 3855.

1.56 “Latest Vintage Month” means the last month of the Acceptable Vintage Period, which shall be the 240th month since the start of the Earliest Vintage Month, unless extended pursuant to Section 10.1 or Section 11.1. For example, if the Earliest Vintage Month is January 2028, then the Latest Vintage Month shall be December 2047, unless extended pursuant to Section 10.1 or Section 11.1 for any Suspension Period up to a maximum extension of seven hundred thirty (730) days.

1.57 “Letter of Credit” means an irrevocable standby letter of credit issued by a major U.S. commercial bank or the U.S. branch office or U.S. agency office of a foreign bank utilizing either of the forms attached as Exhibit E-1 to the Agreement or utilizing such forms with minor modifications that are acceptable to Buyer in its reasonable discretion.

1.58 “Locational Marginal Price” means, with respect to a given hour, the day-ahead hourly locational marginal price associated with the ISC Delivery Point.

1.59 “Maximum Contract Quantity” means an amount equal to the multiplicative product of (a) the Initial Contract Capacity, (b) four (4) hours (c) the number of days in the Acceptable Vintage Period.

1.60 “Megawatt” or “MW” means a unit of electrical power, equal to one million watts, and unless otherwise specified shall be in alternating current (AC) voltage.

1.61 “Minimum Equity Standards” or “Minimum Equity Standard” means specific requirements provided in Section 1-75(c-10) of the IPA Act applicable to renewable energy credit procurements, which the Parties expressly agree to adopt for the Transaction under this Agreement, for which a minimum percentage of the Project Workforce must consist of Equity Eligible Persons or Equity Eligible Contractors; where such minimum percentage requirement, if applicable, is indicated in the Product Order.

1.62 “Minimum Equity Standard Compliance Plan” or “MES Compliance Plan” means, with respect to a Project that is subject to the requirements of the Minimum Equity Standard as indicated in the Product Order, a compliance plan filed by Seller to the IPA to demonstrate how Seller will achieve compliance with the Minimum Equity Standard requirements in a given delivery year. The requirements of the MES Compliance Plan are more specifically described in Section 6.3(b).

1.63 “Minimum Equity Standard Report” or “MES Report” means, with respect to a Project that is subject to the requirements of the Minimum Equity Standard as indicated in the Product Order, a year-end report submitted by Seller to IPA that demonstrates compliance to the Minimum Equity Standard for a delivery year in which Construction Activities have been carried out. The requirements of the MES Report are more specifically described in Section 6.3(b).

1.64 “MISO” means Midcontinent Independent System Operator, Inc. or its successor.

1.65 “Moody’s” means Moody’s Investors Service, Inc.

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1.66 “Non-Defaulting Party” is defined in Section 9.3.

1.67 “Performance Assurance” means collateral in the form of cash or letters of credit, or other security acceptable to Buyer.

1.68 “Performance Assurance Amount” is defined in Section 7.1.

1.69 “PJM” means PJM Interconnection LLC or its successor.

1.70 “Planned Outage” means the unavailability of the Project or a portion of the Project due to a scheduled planned outage approved by RTO. For avoidance of doubt, unavailability of the Project for economic reasons shall not constitute as Planned Outage.

1.71 “Potential Event of Default” means an event which, with notice or passage of time or both, would constitute an Event of Default.

1.72 “Potentially Defaulting Party” means a Party that, but for a cure of a Potential Event of Default or failure of performance, would be a Defaulting Party.

1.73 “Potentially Non-Defaulting Party” means a Party that, but for a cure of a Potential Event of Default or failure of performance by the Potentially Defaulting Party, would be a Non-Defaulting Party.

1.74 “Prevailing Wage Act” means the Illinois Prevailing Wage Act, 820 ILCS 130.

1.75 “Product” means the ISCs to be generated under this Agreement.

1.76 “Product Order” is the form used by the Parties to effect a Transaction substantially in the form of Exhibit A specifying the terms of such Transaction.

1.77 “Project” means the standalone energy storage system identified under “Project Information” in the Product Order of the Agreement that was selected through the RFP and from which the Product is sourced; where a standalone energy storage system refers to an energy storage resource that is (a) separately metered by a revenue quality meter that satisfies the requirements of RTO, (b) normal operations of the storage system are not constrained or hindered by other generation units, and (c) the storage system can demonstrate ability to charge and discharge independent of any generation unit output.

1.78 “Project Labor Agreement” means pre-hire collective bargaining agreement that covers all terms and conditions of employment on a specific construction project and must include the following: (a) provisions establishing the minimum hourly wage for each class of labor organization employee; (b) provisions establishing the benefits and other compensation for each class of labor organization employee; (c) provisions establishing that no strike or disputes will be engaged in by the labor organization employees; (d) provisions establishing that no lockout or disputes will be engaged in by the General Contractor building the Project; (e) provisions for minorities and women, as defined under the Business Enterprise for Minorities, Women, and Persons with Disabilities Act, setting forth goals for apprenticeship hours to be performed by minorities and women and setting forth goals for total hours to be performed by underrepresented minorities and women; and (f) the efforts that Seller will take or has taken to achieve such goals, including recruitment of minorities and women into apprenticeship roles. A labor organization and the General Contractor building the Project shall have the authority to include other terms and conditions as they deem necessary.

1.79 “Project Labor Agreements Act” means the Illinois Project Labor Agreements Act, 30 ILCS 571.

1.80 “Project Workforce” means employees, contractors and their employees, and subcontractors and their employees whose job duties are directly required by or substantially related to the development, construction, and operation of the Project. This shall include both project installation workforce and workforce in administrative, sales, marketing, and technical roles where those workers’ duties are directly related to the Project. For workforce in administrative, sales, marketing and technical roles, this shall apply only if those workers are located in Illinois.

1.81 “Proposed Contract Capacity” means the Contract Capacity of the Project as proposed by Seller in the RFP, which amount is specified in the Product Order.

1.82 “Public Utilities Act” means the Illinois Public Utilities Act, 220 ILCS 5.

1.83 “RTO” means the regional transmission organization of [MISO/PJM] or successor.

1.84 “RTO Resource Zone” means a [Local Resource Zone (“LRZ”) of MISO or Locational Deliverability Area (“LDA”) of PJM] or successor, as such term is defined by RTO. For purposes of this Agreement, the applicable RTO Resource Zone that is applicable to the ISC Delivery Point is [LRZ 4 or ComEd LDA] or successor.

1.85 “Regulatorily Continuing” means, with respect to the Transaction, the Product shall comply with the requirements of the Applicable Program, as of each ISC Generation Date, and Seller will do what is necessary to cause the Product that is generated to comply with such requirements; except as otherwise provided in Section 11.1.

1.86 “RTE” means the round-trip efficiency of an energy storage resource. For the avoidance of doubt, RTE excludes auxiliary load consumption.

1.87 “S&P” means S&P Global Ratings.

1.88 “Seller” means the seller of the Product.

1.89 “Settlement Amount” means an amount that the Non-Defaulting Party is entitled to and that is to be paid by the Defaulting Party calculated pursuant to Sections 9.3 and 9.4.

1.90 “Strike Price” means the bid price as offered by Seller through the RFP and as indicated in the Product Order.

1.91 “Suspension Period” means the period of time during which the obligations of the Parties under this Agreement are suspended in accordance with Section 10.1 or Section 11.1.

1.92 “Technical Curtailment” is defined in Section 4.3.

1.93 “Term” is defined in Section 3.2.

1.94 “Terminated Transaction” is defined in Section 9.3.

1.95 “Trade Date” means the Effective Date of this Agreement.

1.96 “Transaction” means a transaction as memorialized in a Product Order under this Agreement.

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1.97 “Vintage” means, with respect to each ISC, the month it is generated.

1.98 “Vintage Month” means any of calendar monthly periods within the Acceptable Vintage Period for which ISCs were generated by the Project and eligible for payment.

1.99 “WHO” means the World Health Organization or successor.

1.100 Rules of Interpretation. Unless otherwise required by the context in which any term appears, (a) the singular includes the plural and vice versa; (b) references to “Articles,” “Sections,” “Schedules,” “Annexes,” or “Exhibits” are to articles, sections, schedules, annexes, or exhibits hereof; (c) all references to a particular entity or market price index include a reference to such entity’s or index’s successors and (if applicable) permitted assigns; (d) the words “hereto,” “herein,” “hereof” and “hereunder” refer to this Agreement as a whole and not to any particular Article, Section or subsection hereof; (e) all accounting terms not specifically defined herein will be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied; (f) references to this Agreement include a reference to all appendices, annexes, schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time; (g) the masculine includes the feminine and neuter and vice versa; (h) “including” is construed in its broadest sense to mean “including without limitation” or “including, but not limited to”; (i) references to agreements and other legal instruments include all subsequent amendments thereto, and changes to, and restatements or replacements of, such agreements or instruments that are duly entered into and effective against the parties thereto or their permitted successors and assigns; (j) a reference to a statute or to a regulation issued by a Governmental Authority includes the statute or regulation in force as of the Trade Date or ISC Generation Date with respect to a Product that is Regulatorily Continuing, together with all amendments and supplements thereto and any statute or regulation substituted for such statute or regulations; and (k) the word “or” is not necessarily exclusive.

ARTICLE 2: PRODUCT AND FACILITY REQUIREMENTS

2.1 Product.

(a) Indexed Storage Credits (“ISCs”). The Product to be sold by Seller and purchased by Buyer under this Agreement is ISCs generated from the Project, for which summary information is specified in the Product Order. Seller may not substitute ISCs generated from a generator or energy storage resource other than the Project. For avoidance of doubt, Buyer is not purchasing Seller’s Project and Buyer shall have no ownership interest in, or responsibility for, the Project. Further, for avoidance of doubt, nothing in this Agreement prohibits Seller from participating in wholesale markets for energy, capacity or ancillary services and receiving revenues from RTO for its participation in such wholesale markets.

(b) No payment shall be due for any ISC(s) that are generated outside the Acceptable Vintage Period.

2.2 Project Information.

The Product is unit specific and ISCs generated and processed for payment under this Agreement must be from the Project specified in the Product Order. The following requirements shall apply to the Project and Seller represents as of each ISC Generation Date hereunder that:

(a) The Project is a new project such that the COD of the Project has not occurred before the Earliest Commercial Operation Date.

(b) The Project is located in the RTO Resource Zone applicable to the ISC Delivery Point.

(c) The Project is the same project as proposed during the RFP such that the RTO queue ID as indicated during the RFP remains the same as recognized by RTO on COD, unless amended for such project by RTO.

(d) Construction Activities related to the Project are compliant with the prevailing wage requirements included in the Prevailing Wage Act. These requirements apply to the wages of laborers, mechanics, and other workers employed in Construction Activities related to the Project. Applicable activities related to Construction Activities of the Project include not only construction, but also any maintenance, repair, assembly, or disassembly work performed on equipment whether owned, leased, or rented. All construction work performed by Seller, including its contractors and subcontractors, relating to construction, maintenance, repair, assembly, or disassembly work in relation to the Project has been or will be performed by employees receiving an amount equal to or greater than the “general prevailing rate of hourly wages”, as defined in Section 3 of the Prevailing Wage Act. Seller, including its contractors and subcontractors, has provided express notice of these requirements to all laborers, mechanics and other workers employed to perform such work.

(e) The Project is built by General Contractors that have entered into a Project Labor Agreement prior to construction.

(f) If the Project is reasonably determined by the IPA not to be in compliance with any of the provisions of Section 2.2(a) through Section 2.2(e) (inclusive), then an Event of Default shall be deemed to have occurred. Upon the occurrence of such Event of Default, Buyer shall terminate this Agreement twenty (20) Business Days after written notice by Buyer to Seller unless Seller demonstrates, within such twenty (20) Business Day period and to the satisfaction of Buyer in its reasonable discretion, that such Event of Default has not occurred or that such Event of Default has been cured by Seller. For an Event of Default due to Section 2.2(a) through Section 2.2(e) (inclusive), Buyer shall be entitled to payment by Seller in the amount of the sum of: (i) the Collateral Requirement (or Increased Collateral Requirement, if applicable) and (ii) 100% of the total payments Seller has received from Buyer. The Parties acknowledge that (A) Buyer shall be damaged by the failure of Seller to comply with one or more of Section 2.2(a) through Section 2.2(e) (inclusive), (B) it would be impracticable or extremely difficult to determine the actual damages resulting therefrom, (C) the remedies specified herein are fair and reasonable and do not constitute a penalty, and (D) the remedies specified in this Section 2.2 shall be Buyer’s sole and exclusive remedy in the event that Seller fails to comply with one or more of Section 2.2(a) through Section 2.2(e) (inclusive) and, for the avoidance of doubt, neither Buyer nor Seller shall be entitled to any Settlement Amount calculated pursuant to Section 9.4 under such circumstance.

2.3 Commercial Operations Deadline and Extensions

(a) Seller must achieve Commercial Operation of the Project by December 31, 2029 (the “Commercial Operations Deadline”). This deadline may be extended one or more times as follows:

- (i) Provided that (A) an extension request is made in writing by Seller to Buyer and the IPA prior to December 31, 2029 and (B) Seller has posted Performance Assurance to satisfy the Increased Collateral Requirement by December 31, 2029, the Commercial Operations Deadline shall be deemed automatically extended to May 31, 2031.
- (ii) Provided that the Commercial Operations Deadline has been extended to May 31, 2031 pursuant to Section 2.3(a)(i) above, Seller may request for the Commercial Operations Deadline to be further extended provided that the extension request is made in writing by Seller to Buyer and the IPA prior to May 31, 2031. Such extension may be granted by the IPA on a case by case basis upon a demonstration of good cause by Seller to the

satisfaction of the IPA at its reasonable discretion if the approval of such extension is communicated in writing by the IPA to Buyer and Seller in accordance with Section 2.3(b). For the avoidance of doubt, Buyer and Seller agree that the IPA has authority to make such a determination on good cause and to issue notices extending the prevailing Commercial Operations Deadline, as appropriate. Good cause may include delays outside of Seller's control such as delays in finalizing interconnection agreements, installation of interconnection facilities, and delays in obtaining other necessary governmental permits and approvals; provided such delays are not primarily attributable to Seller such as Seller's failure to make in a timely manner permitting requests or a formal request for interconnection to such transmission provider or to provide in a timely manner the information or payment required by such transmission provider. An extension pursuant to this Section 2.3(a)(ii) may be granted one (1) or more times. Each such extension shall be for a period specified by the IPA at its reasonable discretion, which shall be no longer than one (1) year at a time.

(b) If an extension is granted to the Commercial Operations Deadline, the IPA shall issue a notice to Buyer and Seller and the extended Commercial Operations Deadline shall be specified in such written notice issued by the IPA; the IPA shall endeavor on a commercially reasonable basis to issue such written notice prior to the Commercial Operations Deadline that prevailed prior to the extension, but failure by the IPA to issue such notice on a timely basis does not nullify the approval of the Commercial Operations Deadline extension.

(c) In the event that extensions to the Commercial Operations Deadline have been granted multiple times and COD has not occurred by May 31, 2034, then Seller may request for the Agreement to be terminated and its Performance Assurance to be returned. Such request will be subject to the approval of the IPA in its reasonable discretion. In the event that extensions to the Commercial Operations Deadline have been granted multiple times and COD has not occurred by May 31, 2035, then Buyer shall return Seller's Performance Assurance and terminate this Agreement with written notice to Seller. No Settlement Amount shall be due from or to either Party as a result of any such termination pursuant to this Section 2.3.

(d) In no event shall any extension under this Section 2.3 extend beyond May 31, 2035.

(e) If the COD has not occurred by November 1 in a delivery year, Seller shall provide to Buyer and the IPA a status report by November 1 of such delivery year indicating its non-binding estimate of the COD, and the ISCs expected to be generated, if any, for the next delivery year.

2.4 Failure to Achieve Commercial Operations

(a) Prior to the Commercial Operations Deadline (or extended Commercial Operations Deadline, as applicable), if the Seller determines that it will not construct the Project to achieve Commercial Operations by the Commercial Operations Deadline or extended deadline pursuant to Section 2.3, it shall provide a written notice of that determination to Buyer. In such a case, Buyer shall be entitled to payment by Seller in the amount of the Collateral Requirement or Increased Collateral Requirement, as applicable. Buyer shall terminate this Agreement within twenty (20) Business Days of the later of: (i) Buyer's receipt of written notice from Seller; or (ii) Buyer's receipt of payment in the amount of the Collateral Requirement or Increased Collateral Requirement, as applicable. For avoidance of doubt, the actions taken under this section are not an Event of Default and upon termination of the Agreement, neither Buyer nor Seller shall be entitled to any Settlement Amount under such circumstance.

(b) If Seller has not provided a written notice to Buyer pursuant to Section 2.4(a), Seller's failure to achieve Commercial Operations of the Project by the Commercial Operations Deadline or extended deadline pursuant to Section 2.3 or Section 10.1 shall constitute an Event of Default. Upon the occurrence of

such Event of Default, Buyer shall terminate this Agreement twenty (20) Business Days after written notice by Buyer to Seller unless Seller demonstrates, within such twenty (20) Business Day period and to the satisfaction of Buyer in its reasonable discretion, that Seller has posted Seller's Performance Assurance to satisfy the Increased Collateral Requirement required for an extension pursuant to Section 2.3 or the Project has achieved Commercial Operations by the deadline or the extended deadline, as applicable. For such Events of Default, Buyer shall be entitled to payment by Seller (i) in the amount of the Collateral Requirement if there has been no extension; or (ii) in the amount of the Increased Collateral Requirement if an extension is granted and Seller fails to achieve Commercial Operations of the Project by the extended deadline pursuant to Section 2.3. The Parties acknowledge that (i) Buyer shall be damaged by the failure of Seller to achieve Commercial Operations of the Project by the deadline or extended deadline, as applicable, (ii) it would be impracticable or extremely difficult to determine the actual damages resulting therefrom, (iii) the remedies specified herein are fair and reasonable and do not constitute a penalty, and (iv) the remedy specified in this Section 2.4(b) shall be Buyer's sole and exclusive remedy in such Events of Default and, for the avoidance of doubt, neither Buyer nor Seller shall be entitled to any Settlement Amount under such circumstance.

2.5 Initial Contract Capacity and Operational Characteristics

(a) Seller shall inform Buyer (and the IPA) of the Project's operational characteristics, including without limitation the Initial Contract Capacity, duration and RTE, within ten (10) Business Days after COD.

(b) As of COD, (i) the Initial Contract Capacity shall be at least 20 MW and cannot exceed the Proposed Contract Capacity; (ii) the Project shall be able to operate for a duration of 4 hours of continuous discharge of the Initial Contract Capacity per hour; and (iii) the RTE shall be at least 85%. If the Initial Contract Capacity, duration, or RTE does not meet these requirements at COD, Seller shall be granted a cure period of 90 days from COD to rectify any deficiencies in these three items; provided that Seller indicates any such deficiencies and requests for a cure period in its notice to the Buyer (and the IPA) pursuant to Section 2.5(a). The Earliest Vintage Month shall be delayed until all three requirements are confirmed by Buyer to be met and the Seller notifies the Buyer (and the IPA) of such accordingly. In such case, the Earliest Vintage Month shall be the month following Buyer's confirmation of the requirements, and the Acceptable Vintage Period shall commence on the first of such Earliest Vintage Month.

(c) Upon Buyer's acceptance of supporting documentation and confirmation of Project's initial operational characteristics for a Delivery Year, following any deficiency cures pursuant to Section 2.5(b), if applicable, Buyer shall send to Seller (and copy IPA) a partially executed Product Order to confirm the Project's operational characteristics for purposes of calculating payment for the initial Delivery Year. Seller shall fully execute and return the Product Order to Buyer (and copy IPA) within five (5) Business Days of Seller's receipt of such Product Order.

(d) If the Project has not met the above requirements set forth in Section 2.5(b) and (i) Seller does not intend to cure the deficiency; or (ii) does not notify Buyer (and the IPA) in its written notice pursuant to Section 2.5(a) of its intention to cure the deficiency; or (iii) fail to meet the requirements within the 90 days of COD, then an Event of Default is deemed to have occurred. Upon the occurrence of such Event of Default, Buyer shall terminate this Agreement twenty (20) Business Days after written notice by Buyer to Seller unless Seller demonstrates, within such twenty (20) Business Day period and to the satisfaction of Buyer in its reasonable discretion, that such Event of Default has not occurred or that such Event of Default has been cured by Seller. For an Event of Default due to this Section 2.5(b), Buyer shall be entitled to payment by Seller in the amount of the Collateral Requirement. The Parties acknowledge that (A) Buyer shall be damaged by the failure of Seller to comply with this section, (B) it would be impracticable or extremely difficult to determine the actual damages resulting therefrom, (C) the remedies specified herein are fair and reasonable and do not constitute a penalty, and (D) the remedies specified in this Section 2.5(d) shall be Buyer's sole and exclusive remedy for an Event of Default pursuant to this

May 1, 2025

Section 2.5(d).

(e) In the event the Initial Contract Capacity is less than the Proposed Contract Capacity, then Buyer shall be entitled to payment by Seller in the amount of \$100,000 per MW for each MW (rounded to the third decimal place) that the Project falls short of the Proposed Contract Capacity. Unless payment is made by Seller within ten (10) Business Days of Buyer's written notice, Buyer shall draw on Seller's Performance Assurance for this purpose. The Parties acknowledge that (A) Buyer shall be damaged by the failure of Seller if the Initial Contract Capacity is less than the Proposed Contract Capacity, (B) it would be impracticable or extremely difficult to determine the actual damages resulting therefrom, (C) the remedies specified herein are fair and reasonable and do not constitute a penalty, and (D) the remedies specified in this Section 2.5(e) shall be Buyer's sole and exclusive remedy in such event.

2.6 Minimum Operational Requirements

(a) Following COD, the Project shall maintain the following through the remainder of the Term of the Agreement.

- (i) minimum Contract Capacity of 20 MW;
- (ii) ability to operate for a duration of four (4) hours of continuous discharge of the Contract Capacity per hour;
- (iii) minimum RTE of seventy percent (70%) provided that the RTE shall be at least eighty-five (85%) for the first Delivery Year; and
- (iv) minimum Availability of four thousand three hundred twenty hours (4,320) hours per Delivery Year of the Contract Capacity for such Delivery Year.

In meeting the requirement in Section 2.6(a)(iv), hours with partial Availability of the Project count in proportion to that partial Availability. For example, any event that results in the Project being Available for less than a full hour will count as an equivalent percentage of the applicable hour for this calculation. Additionally, if during any applicable hour the Project is Available, but is Available at a power capacity less than the Contract Capacity, this hour will count as an equivalent percentage of the applicable hour for this calculation.³ If the Project is not Available in an hour due to an event of Force Majeure or due to Technical Curtailment, that hour will count as meeting the minimum Availability requirement for the Delivery Year. The total hours counted as Available for the purpose of meeting the minimum Availability for the Delivery Year shall be calculated using the Seller's monthly hourly availability report. As such, for the purposes of meeting the minimum Availability for the Delivery Year, each hour in the Delivery Year shall count as the number equal to the Available power capacity (in MW) of the Project as reported for that hour in the hourly availability report divided by the Contract Capacity (in MW) of the Project as applicable in that same hour, with adjustments as discussed in this clause to count hours where the Project is not Available due to an event of Force Majeure or due to Technical Curtailment.

(b) If Seller becomes aware the Project has failed to maintain the minimum operational requirements set forth in Section 2.6(a), Seller shall report the information to Buyer and the IPA as soon as practicable, which shall be no later than four (4) Business Days after Seller is first aware of such failure. Seller's failure to maintain the minimum operational requirements set forth in Section 2.6(a), whether informed by Seller or independently determined by Buyer or the IPA, shall constitute an Event of Default. Upon the occurrence of such Event of Default, Buyer shall terminate this Agreement twenty (20) Business Days after written notice by Buyer to Seller unless Seller demonstrates, within such twenty (20) Business Day period and to the satisfaction of Buyer in its reasonable discretion, that such Event of Default has not

³ For example, if a Project is Available at Contract Capacity for thirty-six (36) minutes and not Available for twenty-four (24) minutes in a given hour, this shall count as 0.6 hours and if a Project were Available at sixty percent (60%) of Contract Capacity for an hour this shall count as 0.6 hours for the purposes of meeting minimum Availability for a Delivery Year.

occurred or that such Event of Default has been cured by Seller or such failure has been excused by the IPA pursuant to Section 9.2(j). The cure period may be extended pursuant to Section 9.2 if Seller demonstrates good cause for the delay. For avoidance of doubt, a cure period shall only be afforded for an Event of Default due to Sections 2.6(a)(i) - 2.6(a)(iii), and no cure period shall be afforded for an Event of Default due to Section 2.6(a)(iv). No ISCs shall be generated during the period in which the minimum operational requirements set forth in Section 2.6(a) are not maintained. For avoidance of doubt, unless due to Force Majeure, the period in which the minimum operational requirements set forth in Section 2.6(a) are not maintained shall not cause the Acceptable Vintage Period to be extended regardless of whether such deficiencies were cured by Seller. For an Event of Default due to this Section 2.6 after allowing for any cures, Buyer shall be entitled to payment by Seller in the amount of the Collateral Requirement. The Parties acknowledge that (A) Buyer shall be damaged by the failure of Seller to comply with this section, (B) it would be impracticable or extremely difficult to determine the actual damages resulting therefrom, (C) the remedies specified herein are fair and reasonable and do not constitute a penalty, and (D) the remedies specified in this Section 2.6 shall be Buyer's sole and exclusive remedy in the event that Seller fails to comply with this Section 2.6 and, for the avoidance of doubt, neither Buyer nor Seller shall be entitled to any Settlement Amount calculated pursuant to Section 9.4 under such circumstance.

2.7 Post-COD Obligations

(a) After the Project has achieved Commercial Operations, Seller shall submit the following operational characteristics along with supporting documents to Buyer and the IPA by May 1 annually for the immediately upcoming Delivery Year. For avoidance of doubt, if the Project has an expected COD in May, the following operational characteristics along with supporting documents shall still be submitted by May 1.

- (i) Contract Capacity (i.e., the power rating of the Project in MW);
- (ii) the project specific ELCC;
- (iii) the duration of the Project (i.e., the number of hours of continuous discharge of the Contract Capacity in each hour); and
- (iv) the RTE of the Project.

(b) If information and supporting documentation is submitted pursuant to Section 2.7(a) on a timely basis, Buyer shall confirm by written notice to Seller the acceptability or rejection of the information and supporting documentation by May 15 following such submission. Once accepted, the operational characteristics shall be used for purposes of calculating payments for the upcoming Delivery Year, and Seller must maintain such operational characteristics throughout the specified Delivery Year.

(c) If at any time during a Delivery Year, the Project fails to maintain the operational characteristics for such Delivery Year as confirmed by Buyer pursuant to Section 2.7(b), Seller shall inform Buyer of such failure and provide to Buyer the updated operational characteristics along with supporting documentation for Buyer's consideration. The updated operational characteristics may be used by Buyer to update the payment calculations for such Delivery Year starting from the point in time when the revised operational characteristics are deemed to be effective by Buyer in its reasonable discretion. Notwithstanding the foregoing, Buyer may update the operational characteristics of the Project for purposes of calculating payment based on information Buyer may obtain from RTO; and if so, Buyer shall provide to Seller such operational characteristics and supporting information from RTO. To the extent that the Project improves its operational characteristics during a Delivery Year as recognized by the RTO, Seller shall inform Buyer of such improvement. If any improvement exceeds the operational characteristics for such Delivery Year as confirmed by Buyer pursuant to Section 2.7(b), then the operational characteristics for such Delivery Year as confirmed by Buyer pursuant to Section 2.7(b) shall prevail starting on the first of the month following Buyer's confirmation of the improved operational characteristics through the end of such Delivery Year for purposes of payment calculations under this Agreement. For avoidance of doubt, in no event shall Contract Capacity exceed the Initial Contract Capacity.

(d) Upon acceptance of supporting documentation and confirmation of Project's operational characteristics by Buyer for a Delivery Year, Buyer shall send to Seller (and copy IPA) a partially executed Product Order to confirm the Project's updated operational characteristics for purposes of calculating payment for the specified Delivery Year. Seller shall fully execute and return the Product Order to Buyer (and copy IPA) within five (5) Business Days of Seller's receipt of such Product Order.

(e) If Seller fails to submit the information required pursuant to Section 2.7(a), or respond to Buyer's request for information to cure any deficiencies in its submission, or to fully execute the Product Order to confirm the Project's updated operational characteristics pursuant to Section 2.7(d), then an Event of Default shall be deemed to have occurred. Upon the occurrence of such Event of Default, Buyer shall terminate this Agreement twenty (20) Business Days after written notice by Buyer to Seller unless Seller demonstrates, within such twenty (20) Business Day period and to the satisfaction of Buyer in its reasonable discretion, that such Event of Default has not occurred or that such Event of Default has been cured by Seller. For an Event of Default due to this Section 2.7, Buyer shall be entitled to payment by Seller in the amount of the Collateral Requirement. The Parties acknowledge that (A) Buyer shall be damaged by the failure of Seller to comply with this section, (B) it would be impracticable or extremely difficult to determine the actual damages resulting therefrom, (C) the remedies specified herein are fair and reasonable and do not constitute a penalty, and (D) the remedies specified in this Section 2.7 shall be Buyer's sole and exclusive remedy in the event that Seller fails to comply with this Section 2.7 and, for the avoidance of doubt, neither Buyer nor Seller shall be entitled to any Settlement Amount calculated pursuant to Section 9.4 under such circumstance.

2.8 Cybersecurity Requirements

(a) Seller shall ensure that Project complies with *Cybersecurity Baselines for Electric Distribution Systems and Distributed Energy Resources* as developed by National Association of Regulatory Utility Commissioners (NARUC) and U.S. Department of Energy, and as set forth in Exhibit G. If Seller becomes aware of any hardware and/or firmware vulnerabilities of Project or becomes aware of Project's non-compliance with the requirements set forth in Exhibit G, Seller shall report the information to Buyer and the IPA as soon as practicable, which shall be no later than four (4) Business Days after Seller is made aware of such vulnerabilities. In the event that IPA determines that Project failed to meet the cybersecurity requirements herein, IPA shall provide notice to Seller and shall provide Seller an opportunity to remedy such vulnerabilities within the timeframe set forth in such notice. If Seller does not remedy or cure such deficiency to the satisfaction of IPA on a timely basis, IPA shall provide notice to Buyer and Seller of such non-compliance, and an Event of Default shall be deemed to have occurred. Upon the occurrence of such Event of Default, Buyer shall terminate this Agreement within twenty (20) Business Days after receiving such notice from the IPA unless Seller demonstrates, within such twenty (20) Business Day period and to the satisfaction of IPA in its reasonable discretion, that such Event of Default has not occurred or that such Event of Default has been cured by Seller. For an Event of Default due to Section 2.8, Buyer shall be entitled to payment by Seller in the amount of the Collateral Requirement (or Increased Collateral Requirement, if applicable). The Parties acknowledge that (A) Buyer shall be damaged by the failure of Seller to comply with Section 2.8, (B) it would be impracticable or extremely difficult to determine the actual damages resulting therefrom, (C) the remedies specified herein are fair and reasonable and do not constitute a penalty, and (D) the remedies specified in this Section 2.8 shall be Buyer's sole and exclusive remedy in the event that Seller fails to comply with Section 2.8, and for the avoidance of doubt, neither Buyer nor Seller shall be entitled to any Settlement Amount calculated pursuant to Section 9.4 under such circumstance.

2.9 Information from RTO

(a) Supporting documents submitted pursuant to Sections 2.5, 2.6 and 2.7 must allow Buyer to verify and confirm the operational characteristics of the Project. For avoidance of doubt, documentation from RTO that confirms the Project's operational characteristics for the relevant specified period pursuant to Seller's participation in RTO's capacity market shall be deemed acceptable to Buyer. If Seller did not participate in RTO's capacity market for the upcoming delivery year, Seller may provide supporting documents that Seller would have provided to RTO for participation in the capacity market for Buyer's consideration to verify and confirm the Project's operational characteristics. If Buyer, in its reasonable discretion, determines that the information submitted by Seller is deficient, insufficient or inadequate to verify and confirm the Project's operational characteristics, Buyer shall provide written notice to Seller and IPA of such determination, and Seller must respond to Buyer's request for information within ten (10) Business Days (or extended deadline as may be agreed by Buyer). All information submitted by Seller shall be reviewed by Buyer as soon as practicable on a commercially reasonable basis. If the Parties disagree on the acceptability of the alternative sources of information, then the acceptability of alternative sources of information shall be at IPA's reasonable discretion.

(b) If the supporting documentation submitted by Seller pursuant to Sections 2.5, 2.6 or 2.7 is deficient, insufficient, or inadequate to verify and confirm the operational characteristics of the Project, Buyer may suspend payments to Seller related to ISCs of Vintage Month(s) which operational characteristics cannot be confirmed. Payments shall resume upon Seller's cure of any deficiencies and, if applicable, return of a fully executed Product Order.

ARTICLE 3: PRODUCT ORDER; TERM OF AGREEMENT

3.1 Incorporation of Product Order

The terms of the Transaction are as specified in this Agreement and in the Product Order. Buyer and Seller shall execute a Product Order substantially in the form of Exhibit A to this Agreement to confirm the terms of the Transaction. The Effective Date of this Agreement shall constitute the "Trade Date" indicated in the Product Order.

If the Parties have entered into another agreement that governs transactions other than the Transaction set forth in this Agreement, such other agreement shall not apply for the purposes of the Transaction confirmed under this Agreement, and this Agreement shall be treated as separate and stand-alone from all other transactions between the Parties. This Agreement shall apply solely for purposes of the Transaction specified herein and shall not apply for the purposes of any other transactions between the Parties.

3.2 Term of Agreement

Unless earlier terminated pursuant to the terms of this Agreement, the "Term" of this Agreement shall be from the Effective Date until the last day of the month immediately following the end of the Acceptable Vintage Period. The Parties acknowledge that the Agreement allows for the generation and settlement of ISCs from an Acceptable Vintage Period of a maximum total period of 240 months (excluding any Suspension Periods or suspension periods during which the Parties' obligations are suspended as provided herein).

ARTICLE 4: ISC GENERATION

4.1 ISC Generation.

(a) For each day in which the ISC Daily Value is negative, Seller is credited four (4) ISCs per MW of Contract Capacity unless excused by Planned Outages. For purposes of calculating the quantity of ISCs generated pursuant to this Section 4.1, Technical Curtailment shall be deemed as Planned Outage. On a day on which a Planned Outage occurred, the number of ISCs credited shall be prorated based on the MW of Contract Capacity not affected by the Planned Outage and number of hours not affected by the Planned Outage using the following formula:

$$ISC_d = 4 * \frac{\sum_{n=1}^{NumHrs} (Contract Capacity - Planned Outage_n)}{NumHrs}$$

NumHrs: twenty-four (24), except in days affected by transitions to or from daylight savings, where *NumHrs* is twenty-three (23) or twenty-five (25), as appropriate.

Planned Outage_n: The size in MW of Planned Outage applicable in hour *n* in day *d*; in cases where the MW size of the Planned Outage is not uniform within hour *n*, the average MW size of the Planned Outage during hour *n* shall be used in this formula; rounded to the third decimal place. Seller will report *Planned Outage_n* in Seller’s hourly availability report; in no case shall *Planned Outage_n* exceed Contract Capacity; *Planned Outage_n* equals zero (0) for any hours not part of a Planned Outage.

ISC_d shall be rounded to 3 decimal places.

(b) For each day in which the ISC Daily Value is positive, Seller is credited four (4) ISCs per MW of Contract Capacity, which shall be prorated based on the available MW of the Project (the amount of available MW is the MW power capacity of the Project that is Available, or in the case of partial availability the MW power capacity of the portion of the Project that is Available), and number of hours the Project is Available, using the following formula:

$$ISC_d = 4 * \frac{\sum_{n=1}^{NumHrs} (Available Capacity_n)}{NumHrs}$$

Available Capacity_n: The amount in MW of power capacity of the Project that is Available in hour *n* in day *d*; in cases where the MW size of available power capacity is not uniform within hour *n*, the average MW size of available power capacity during hour *n* shall be used in this formula; rounded to the third decimal place. Seller will report *Available Capacity_n* in Seller’s hourly availability report; in no case shall *Available Capacity_n* exceed Contract Capacity.

ISC_d shall be rounded to 3 decimal places.

4.2 Planned Outages.

(a) Seller shall inform Buyer of any Planned Outages as approved by RTO with details around the MW of Contract Capacity and number of hours the Project is scheduled to be taken offline; Seller shall submit such information concurrent with the submission of Seller’s hourly availability report pursuant to Section 6.1.

4.3 Curtailment.

(a) In the event that the Project is curtailed or otherwise restricted by the RTO on a day within the Acceptable Vintage Period due to technical constraints, reliability concerns, or system stability, or other non-economic reasons (a "Technical Curtailment") that is not in the control of Seller and not due to technical issues related to the Project and to the extent Seller determines that the operations of the Project is adversely impacted by such Technical Curtailment, the obligations of Seller may be suspended and no ISCs may be generated for such day and the Acceptable Vintage Period shall be extended day for day for each day of such Suspension Period. If so, Seller shall submit to Buyer a written notice indicating such determination concurrent with the submission of Seller's hourly availability report pursuant to Section 6.1; such written notice must be substantiated by reasonable documentation or confirmation from the RTO evidencing the nature of the Technical Curtailment. For avoidance of doubt, Technical Curtailment excludes the Project not being dispatched by the RTO due to negative pricing, market-based congestion management, or other financial/economic conditions. In the event that transmission constraints or transmission congestion contributes to the Project being restricted by the RTO, the effects of those transmission constraints or that transmission congestion is considered market-based congestion management.

4.4 Maximum ISC Quantity.

(a) In a given Delivery Year, the maximum number of ISC that can be processed for payment shall not exceed the Delivery Year Maximum Quantity.

(b) Under this Agreement, the maximum number of ISC that can be processed for payment shall not exceed the Maximum Contract Quantity.

ARTICLE 5: PAYMENT AND INVOICING

5.1 Invoicing.

During the Term of this Agreement, Seller shall render to Buyer an invoice for ISCs by electronic mail on or before the tenth (10th) day of the month immediately following each Vintage Month ("Invoice Due Date") in which ISCs are generated, as may be extended pursuant to Section 5.2 below. For avoidance of doubt, Seller shall invoice Buyer regardless of whether the ISC Monthly Payment is positive or negative. Notwithstanding, and subject to the foregoing, Seller may request that Buyer issue an invoice to Seller if the ISC Monthly Payment is negative for documentary purposes.

If Seller fails to render an invoice for a Vintage Month by the Invoice Due Date, no payment will be processed for that Vintage Month if payment is due to Seller from Buyer, provided that if the invoice for the last Vintage Month under this Agreement is delivered after the Invoice Due Date, but prior to that date that is six (6) months after such Invoice Due Date, such invoice will be processed within thirty (30) calendar days after receipt by Buyer. For any amounts included in late invoices, those amounts shall be eligible to be submitted by including such amounts as additional line items in the following Vintage Month's invoice for subsequent payment. The invoice shall specify the following, separately for each Vintage Month:

- (a) the Vintage Month in which ISCs were generated;
- (b) the applicable ISC Monthly Payment(s);
- (c) the quantity of ISCs generated, by day;

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- (d) the ISC Daily Value, by day;
- (e) the ISC Monthly Price; and
- (f) the invoice amount to be paid.

Buyer shall not be obligated to pay any invoice that is delivered more than six (6) months after the end of the Term of this Agreement.

5.2 Payment.

(a) Payment for timely submitted invoices under this Agreement shall be due and payable on the last Business Day of the month in which the invoice is rendered or the last Business Day of the following month if the invoice is rendered late and cannot be processed by the last Business Day of the month in which the invoice is rendered. No more than one (1) invoice will be processed for payment for each Vintage Month.

(b) The ISC Monthly Payment may be either positive or negative. Payment shall be made from Seller to Buyer if the ISC Monthly Payment is negative and payment shall be made from Buyer to Seller if the ISC Monthly Payment is positive. In instances in which a Party disputes the ISC Monthly Payment, the Party has until the end of ten (10) calendar days following issuance of the invoice to request review of the payment and pricing calculations.

(c) Payment shall be made only for ISCs that have been generated of Vintages that are in the Acceptable Vintage Period.

(d) The Parties will discharge mutual debts and payment obligations due and owing to each other through netting, in which case all amounts owed by each Party to the other Party under this Agreement, including any interest, and payments or credits, will be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

(e) With respect to all payments due hereunder, the Party owing payments shall make payments by electronic funds transfer, or by other mutually agreed methods, to the account designated in Exhibit B or other such account as may be updated by written notice from Seller to Buyer or from Buyer to Seller, as applicable.

(f) In no event shall payment be processed for a quantity of ISCs that will (i) cumulatively cause the quantity of ISCs associated with the Vintage Months of a Delivery Year to exceed the Delivery Year Maximum Quantity for such Delivery Year; or (ii) cumulatively cause the quantity of ISCs associated with Vintages in the Acceptable Vintage Period to exceed the Maximum Contract Quantity. For avoidance of doubt, this paragraph relates to the quantity of ISCs only and payment amounts shall be subject to the provisions in Section 5, including but not limited to, the calculation of any interest on late payments pursuant to Section 5.3.

5.3 Disputes on Invoices.

If the invoice amount is in dispute and such dispute is unresolved within five (5) Business Days following the Invoice Due Date, then the undisputed amount will be paid on or before the last Business Day of the month in which the invoice is rendered.

Each Party may, in good faith, dispute the correctness of any invoice issued by the other Party under this Article 5 within twelve (12) months after receipt of such invoice. Any such dispute must be in writing and

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state the basis for the dispute, which must be made in good faith. Subject to Section 9.5, a Party may withhold payment of the disputed amount until two (2) Business Days following the resolution of the dispute, and any amounts not paid when originally due and subsequently determined to be due and payable will bear interest at the Default Rate from the original due date.

Any undisputed amounts not paid by the applicable due date are delinquent and will accrue interest at the Default Rate. Inadvertent overpayments will be returned upon request or credited by the Party receiving such overpayment against amounts subsequently due from the other Party. Any dispute with respect to an invoice is waived unless the disputing Party notifies the other Party in accordance with this Section 5.3 within twelve (12) months after the invoice is rendered. If final resolution of the dispute is not completed within sixty (60) days after notification of the dispute, the Parties shall resolve such dispute pursuant to the dispute resolution procedures set forth in Section 15.2.

Except as provided in this Section 5.3, in no event will Buyer be liable whatsoever to Seller for any payments of invoices issued more than six (6) months after the end of the Term of this Agreement.

5.4 Cost Recovery through Tariffs.⁴

Buyer is allowed to recover all costs and other amounts incurred under the Agreement from its customers that is authorized by [-] of the Illinois Public Utilities Act and approved by the ICC. If, for whatever reason, Buyer is not allowed to or cannot recover such costs from its customers or under any other mechanism approved by the ICC pursuant to [statutory authorization], then, notwithstanding anything to the contrary in the Agreement, the obligations of both Seller and Buyer shall be suspended upon written notice from Buyer to Seller until Buyer provides written notice to Seller that Buyer is able to recover all of its costs under this Agreement, whereupon the respective rights and obligations of the Parties under the Agreement shall resume as of the effective date indicated in such notice (pro-rated, as applicable, based on the duration of such suspension). During any such Suspension Period, Seller shall have no obligations to Buyer with respect to ISCs from the Project. If the Suspension Period continues for more than three hundred sixty-five (365) consecutive days, then Seller may terminate this Agreement and if the Suspension Period continues for more than seven hundred thirty (730) consecutive days, then Buyer may terminate this Agreement. No Settlement Amount shall be due from or to either Party as a result of any such termination pursuant to this Section 5.4.

5.5 Taxes and Fees.

Seller will be responsible for any taxes imposed on the creation, ownership, or transfer of Product, if applicable under this Agreement. Each Party will be responsible for the payment of any fees incurred by it in connection with this Transaction hereunder.

ARTICLE 6: REPORTING REQUIREMENTS

6.1 Hourly Availability Report

Seller shall, on a monthly basis, provide to Buyer (i) hourly data applicable to the Project's Availability, (ii) where the Project or a portion of the Project is not Available for a period during the Vintage Month, whether the MW of Contract Capacity and hours in which the Project is not Available is due to Planned Outage or not, and (iii) the dates, if any, in which Technical Curtailment has adversely impacted the operations of the Project as determined by Seller and no ISCs are deemed generated for such day(s) pursuant

⁴ This section is subject to any forthcoming legislation authorizing cost recovery.

to Section 4.3(a). Seller shall provide such information for each calendar month of the Acceptable Vintage Period within five (5) Business Days after the conclusion of such Vintage Month. This information provided shall be rounded to the third decimal place and shall be provided in Microsoft Excel format following the form provided in Exhibit C. For purposes of verification, Buyer shall be granted read-only access of information for the Project by Seller within [PJM Power Meter system or MISO Market Portal], or successor, within thirty (30) days of COD; such data shall be treated and maintained as confidential and proprietary by Buyer. Should access within [PJM Power Meter system or MISO Market Portal] be unavailable, or if the relevant information cannot be verified by Buyer, the Parties shall work together to allow Buyer to be granted access to equivalent information that may be obtained from another source for purposes of independent verification. If the Parties disagree on the acceptability of the alternative sources of information, then the acceptability of alternative sources of information shall be at IPA's reasonable discretion. The Parties agree that payment under this Agreement may be delayed due to delays in granting Buyer access to such information.

6.2 Prevailing Wage Act Requirements

Seller, including its contractors and subcontractors, rendering services under this Agreement must comply with the requirements of the Prevailing Wage Act, including but not limited to, all wage requirements and notice and record keeping duties. The Prevailing Wage Act requires Seller, including its contractors and subcontractors, to pay laborers, mechanics and other workers employed in Construction Activities related to the Project an amount equal to or greater than the current "general prevailing rate of hourly wages", as defined in Section 3 of the Prevailing Wage Act. The Parties acknowledge that the IPA has provided the Parties with the Illinois Department of Labor's website address (<http://labor.illinois.gov/>) as a source of information for the general prevailing rate of hourly wages. The Illinois Department of Labor regularly revises the general prevailing rate of hourly wages available on its website.

Seller shall provide to the IPA documentation and verification demonstrating that all construction work performed by Seller, including its contractors and subcontractors, relating to construction, maintenance, repair, assembly, or disassembly work in relation to the Project has been performed by employees who received an amount equal to or greater than the "general prevailing rate of hourly wages," as defined in Section 3 of the Prevailing Wage Act. Such documentation and verification may include, but is not limited to, the certified transcripts of payroll required to be filed with the Illinois Department of Labor.

Such documentation and verification must be provided to the IPA within five (5) Business Days of COD. Seller is responsible and shall provide such documentation and verification throughout the Term of this Agreement to the IPA for any applicable work performed in a Delivery Year subsequent to Seller's initial submission of documentation and verification, which shall be provided no later than August 1 following the end of such Delivery Year. Seller's failure to provide such documentation or verification in a timely manner shall be deemed non-compliant with Section 2.2(d) and subject to the provisions in Section 2.2 for such non-compliance.

6.3 Labor and Equity Standards

(a) Project Labor Agreements Requirements

Project Labor Agreements requirements, as required by Section 1-75(c)(1)(Q)(2) of the IPA Act and the Project Labor Agreements Act that apply to utility-scale renewable projects awarded pursuant to the IPA's long-term renewable resources procurement plan as approved by the Illinois Commerce Commission in ICC Docket No. 23-0714, shall apply and in the same manner to the extent practicable, to the Project under this Agreement.

The Project is built by General Contractors that have entered into a Project Labor Agreement prior to

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construction. That Project Labor Agreement shall be filed with the Director of the IPA, who shall determine whether the Project Labor Agreement is completed to the satisfaction of IPA in its reasonable discretion.

The Project Labor Agreement shall provide the names, addresses, and occupations of the owner of the Project and the individuals representing the labor organization employees participating in the Project Labor Agreement.

Unless instructed by the IPA otherwise, each Project Labor Agreement and any amendments thereto shall be filed with the Director of the IPA via email at the email address provided in Exhibit B within the later of: (a) sixty (60) days prior to the start of the Project's construction, (b) thirty (30) days of the execution of such Project Labor Agreement or amendment; or (c) thirty (30) days of the Commission Bid Approval Date. Seller shall inform the IPA of the start date of the Project's construction as soon as practicable, but no later than the Project Labor Agreement submission deadline set forth in the aforementioned sentence. Seller shall work constructively with the IPA to file such Project Labor Agreements in accordance with procedures established by the IPA. For avoidance of doubt, compliance with the requirements of this section shall be the sole responsibility of Seller and not Buyer or the IPA; and Seller shall hold Buyer and the IPA harmless of any non-compliance thereof.

Seller's failure to provide such Project Labor Agreements and amendments in a timely manner or Seller's material violation of the terms of such Project Labor Agreements and amendments shall be deemed non-compliant with Section 2.2(e) and subject to the provisions in Section 2.2 for such non-compliance.

(b) **Minimum Equity Standards**

Minimum Equity Standards as provided in Section 1-75(c-10) of the IPA Act that apply to utility-scale renewable projects awarded pursuant to the IPA's long-term renewable resources procurement plan as approved by the Illinois Commerce Commission in ICC Docket No. 23-0714 shall apply, and in the same manner to the extent practicable, to the Project under this Agreement.

Requests for waivers may be submitted to the IPA during the Term of this Agreement and no later than COD, which approval shall be at the sole discretion of the IPA. Unless a waiver has been granted by the IPA, during a delivery year in which Construction Activities are carried out, the Project Workforce shall consist of Equity Eligible Persons or Equity Eligible Contractors such that these Equity Eligible Persons or Equity Eligible Contractors comprise at least the minimum percentage of the Project Workforce indicated in the Product Order for the Minimum Equity Standard. For avoidance of doubt, the minimum percentage indicated in the Product Order for the Minimum Equity Standard shall not change during the Term of this Agreement.

Seller shall demonstrate compliance with the Minimum Equity Standard by submitting the below reports to the IPA in accordance with procedures established by the IPA, if applicable:

- (i) **MES Compliance Plan.** The first MES Compliance Plan shall be submitted to the IPA within thirty (30) days of the Commission Bid Approval Date regardless of whether Construction Activities have been performed or will be performed in that delivery year. Subsequently, by June 1 of each delivery year, Seller shall submit to the IPA an MES Compliance Plan demonstrating how Seller will achieve compliance with the Minimum Equity Standard in such delivery year. The MES Compliance Plan shall include: (a) a narrative description of how Seller will meet the Minimum Equity Standard and a statement of intent to comply with equity accountability standards for the applicable delivery year and to hire a diverse Project Workforce including Equity Eligible Persons and Equity Eligible Contractors; (b) projected number of workers and the demographic breakdown by race, gender, and participation in job training or workforce development programs, or other means of compliance with the standard for Equity Eligible Persons; (c) plans for the use of Equity Eligible Contractors, if applicable; (d) Seller classification (i.e., Minority-owned,

Woman-owned, Disabled-owned, Veteran-owned, Small Business, etc.), if applicable; (e) communication plan for local outreach to increase the utilization of Equity Eligible Persons and Equity Eligible Contractors; and (f) status of any corrective actions or adjustments from the prior delivery year's MES Compliance Plan.

- (ii) **Mid-Year MES Confirmation.** No later than December 1 of each delivery year, Seller shall provide to the IPA a statement confirming that Seller is on track to meet the Minimum Equity Standard and that there exist no impediments for Seller to meet the Minimum Equity Standard for such delivery year. If Seller is unable to provide such confirmation, Seller shall explain why it is unable to meet the Minimum Equity Standard for such delivery year. The Mid-Year MES Confirmation shall be submitted to IPA via email at the email address provided in Exhibit B or submitted in accordance with procedures established by the IPA.
- (iii) **MES Report.** After the conclusion of a delivery year regardless of whether Construction Activities have been performed, and no later than July 15 immediately succeeding such delivery year, Seller shall submit to the IPA an MES Report. The MES Report shall include data on actual performance compared to the information previously submitted as well as any major differences from the previously submitted MES Compliance Plan for such delivery year. These differences could include information such as new and innovative ways to provide employment opportunities to low-income participants and residents within the environmental justice communities.

The IPA is the entity responsible for evaluating the submissions of Seller related to the Minimum Equity Standard and for confirming Seller's compliance with the Minimum Equity Standard requirements, and the Parties acknowledge and agree that the IPA shall have the right to request more information from Seller related to the Minimum Equity Standard requirements and to grant waivers or impose remedies should Seller fail to comply with the Minimum Equity Standard or the reporting requirements in this Section 6.3(b). Unless instructed by the IPA, no other remedies are contemplated under this Agreement for Seller's failure to comply with the Minimum Equity Standard requirements as set forth in this Section 6.3(b). For avoidance of doubt, if Seller is an Equity Eligible Contractor, then Seller shall be deemed to have met the minimum percentage of the Project Workforce indicated in the Product Order for the Minimum Equity Standard. The foregoing shall apply only if Seller is an Equity Eligible Contractor and this does not apply if Seller relies on a subcontractor that is an Equity Eligible Contractor, but itself is not an Equity Eligible Contractor. Further, if Seller's subcontractor is an Equity Eligible Contractor, then each Equity Eligible Person of Seller's subcontractor shall be counted 1.5 times toward meeting the Minimum Equity Standard.

ARTICLE 7: CREDIT AND COLLATERAL REQUIREMENTS; PERFORMANCE ASSURANCE

7.1 Performance Assurance.

(a) **Seller's Performance Assurance.** Performance Assurance requirement is applicable with respect to Seller, but not with respect to Buyer.

For purposes of this Agreement, the Increased Collateral Requirement is applicable if the Project has not achieved Commercial Operations by the Commercial Operations Deadline and such deadline has been extended pursuant to Section 2.3.

If at any time Seller's (or Seller's Guarantor's, if applicable) Collateral Threshold is lower than the Collateral Requirement (or Increased Collateral Requirement, if applicable), then Seller, upon request from Buyer, shall be required, within eight (8) Business Days of notice from Buyer, to post "Seller's Performance

Assurance” through either the: (i) posting of a Letter of Credit; or (ii) posting of cash collateral with Buyer. “Collateral Threshold” means, with respect to Seller or Seller’s Guarantor, if applicable, the amount determined in accordance with Table A below. The amount of such Seller’s Performance Assurance shall be equal to the positive difference, if any, between: (a) the Collateral Requirement (or Increased Collateral Requirement, if applicable); and (b) the Collateral Threshold, rounded up to the nearest \$10,000, as estimated by Buyer (“Performance Assurance Amount”). In the event that Seller fails to provide such Seller’s Performance Assurance within eight (8) Business Days of notice from Buyer subject to 7.1(b), then an Event of Default shall be deemed to have occurred pursuant to Section 9.2(d) and Buyer shall be entitled to the remedies set forth under Section 9.3, as the Non-Defaulting Party.

If Seller is relying on its own creditworthiness and Seller is a party to one or more additional agreements with Buyer pursuant to the conduct of the procurements by the IPA for energy storage resources, then Seller will be granted a single Collateral Threshold to be applied to all such agreements.

If Seller is relying on a Guarantor and Seller’s Guarantor has provided a Guaranty, the Collateral Threshold shall be the lesser of the Collateral Threshold as determined by (i) the table below or (ii) the amount of such Guaranty; provided, that Seller’s Guarantor will be granted a single Collateral Threshold to be applied to all agreements entered into with Buyer pursuant to the conduct of the procurements by the IPA for energy storage resources for which it guarantees payment obligations on behalf of one or more parties to such agreements.

<i>TABLE A</i>			
Credit Rating			Collateral Threshold
S&P	Moody's	Fitch	
BBB- or above	Baa3 or above	BBB- or above	\$2,500,000
Below BBB-	Below Baa3	Below BBB-	\$0

(b) For purposes of the initial posting of Seller’s Performance Assurance subsequent to the Commission Bid Approval Date, if Seller has posted cash in the RFP for purposes of bid assurance collateral and has requested for such cash to be retained by Buyer as Seller’s Performance Assurance, then such cash shall be deemed to be Seller’s Performance Assurance on the eighth (8th) Business Day after the Commission Bid Approval Date provided that all of the drawing conditions under the bid assurance collateral are no longer applicable. For avoidance of doubt, Seller is responsible to ensure that the amounts retained are sufficient to meet the creditworthiness requirements under this Article 7 and shall be responsible for posting additional collateral on a timely basis should the bid assurance collateral to be retained is insufficient to meet such creditworthiness requirements.

On the eighth (8th) Business Day after the Commission Bid Approval Date, Buyer shall notify Seller to confirm either that its bid assurance collateral has been deemed to be Seller’s Performance Assurance or notify Seller that Buyer is unable to verify that all of the drawing conditions under the bid assurance collateral are no longer applicable; and if so, Seller shall post alternative Seller’s Performance Assurance in an amount equal to the required Performance Assurance Amount or demonstrate that all of the drawing conditions under the bid assurance collateral are no longer applicable within three (3) Business Days of notice from Buyer. In the event that Seller fails to provide such Seller’s Performance Assurance on a timely basis under this Section 7.1(b), then an Event of Default shall be deemed to have occurred pursuant to Section 9.2(d) and Buyer shall be entitled to the remedies set forth under Section 9.3, as the Non-Defaulting Party.

(c) Upon the completion of final ISC generation and payment obligations under this Agreement, Seller may request for the return of Seller’s Performance Assurance. Any such request (along with any Letter of Credit amendment if applicable) shall be honored by Buyer as soon as practicable.

7.2 Guaranty.

If Seller is relying on a Guarantor for purposes of its Collateral Threshold in accordance with Section 7.1, then Seller will provide, concurrently with the execution and delivery of the Agreement, a Guaranty.

ARTICLE 8: REPRESENTATIONS AND WARRANTIES

8.1 Mutual Representations and Warranties.

On the Trade Date, each Party represents and warrants to the other that:

(a) it is duly organized and validly existing under the laws of the jurisdiction of its incorporation or organization;

(b) it has the power and authority to enter into this Agreement and to perform its obligations hereunder;

(c) its execution and performance do not violate or conflict with applicable law, any provision of its constituent documents, or any contract binding on or affecting it or any of its assets or any order or judgment of any Governmental Authority applicable to it or its assets;

(d) all governmental and other authorizations, approvals, consents, notices and filings that are required to have been obtained or submitted by it with respect to entering into this Agreement have been obtained or submitted and are in full force and effect and all conditions thereof have been complied with;

(e) its obligations hereunder are legal, valid and binding, enforceable in accordance with their respective terms, subject to applicable bankruptcy or similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application regardless of whether enforcement is sought in a proceeding in equity or at law;

(f) no Event of Default, or Potential Event of Default, has occurred and is continuing, and none will occur as a result of its entering into or performing this Agreement;

(g) it is not relying upon any representations of the other Party other than those expressly set forth herein, and it is acting for its own account, and not as agent or in any other capacity, fiduciary or otherwise;

(h) it has entered hereinto with a full understanding of the material terms and risks of the same, and it is capable of assuming those risks;

(i) it is not relying on any communication (written or oral) of the other Party as investment advice or as a recommendation to enter into a Transaction, and understands that information and explanations related to the terms and conditions of any Transaction will not be considered investment advice or a recommendation to enter into that Transaction;

(j) it has made its own independent trading and investment decisions to enter into each Transaction and as to whether such Transaction is appropriate or proper for it based upon its own judgment and any advice from such advisors as it has deemed necessary and not in reliance upon any view expressed by the other Party;

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(k) it has not received from the other Party any assurance, guarantee or promise as to the expected or projected success, profitability, return, performance, result, effect, consequence or benefit (either economic, legal, regulatory, tax, financial, accounting or otherwise) hereunder;

(l) to its knowledge there is no pending or threatened litigation, arbitration or administrative proceeding before any Governmental Authority or any arbitrator that is likely to materially adversely affect the ability of either Party to perform its obligations hereunder;

(m) it is a “forward contract merchant” within the meaning of United States Bankruptcy Code §101(26), and this Agreement and all Transactions hereunder constitute “forward contracts” within the meaning of United States Bankruptcy Code §101(25);

(n) it is an “eligible commercial entity”, and an “eligible contract participant” within the meaning of United States Commodity Exchange Act §§1a(17) and 1a(18), respectively, and all Transactions hereunder have been subject to individual negotiation by the Parties; and

(o) all applicable information, documents or statements that have been furnished in writing by or on behalf of it to the other Party in connection with this Agreement are true, accurate and complete in every material respect and do not omit a material fact that would otherwise make the information, document or statement misleading.

8.2 Additional Warranties of Seller.

Seller represents and warrants to Buyer upon the COD through the expiry of the Acceptable Vintage Period that all governmental and other authorizations, approvals, consents, notices and filings that are required to have been obtained or submitted by it with respect to performing this Agreement have been obtained or submitted and are in full force and effect and all conditions thereof have been complied with, and that the Product is Regulatorily Continuing and complies with the Applicable Program.

8.3 Limitation of Warranties.

All other representations or warranties, written or oral, express or implied, including any representation or warranty of merchantability or of fitness for any particular purpose or with respect to conformity with any model or samples, are disclaimed. Without limiting the generality of the foregoing, except with respect to the Product stated to be Regulatorily Continuing, and in that case only to the extent set forth herein, neither Party makes any representation or warranty hereunder with respect to any future action or failure to act or approval or failure to approve by any Governmental Authority.

ARTICLE 9: EVENTS OF DEFAULT; REMEDIES

9.1 Events of Default in Respect of Buyer

An “Event of Default” means, with respect to Buyer (as the “Defaulting Party”), the occurrence of any of the following:

(a) any representation or warranty made by Buyer that is false or misleading in any material respect when made or repeatedly made unless Buyer as the Potentially Defaulting Party demonstrates, within a twenty (20) Business Day period from the time of notice by Seller as the Potentially Non-Defaulting Party, that such Potential Event of Default has not occurred or has occurred and is remedied;

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- (b) the failure of Buyer to make, when due, any payment required pursuant hereto if such failure is not remedied within twenty (20) Business Days after written notice;
- (c) the failure of Buyer to perform any other material covenant or obligation set forth herein if such failure is not remedied within twenty (20) Business Days after written notice; and
- (d) such Party becomes Bankrupt.

9.2 Events of Default in Respect of Seller

An “Event of Default” means, with respect to Seller (as the “Defaulting Party”), the occurrence of any of the following:

- (a) any representation or warranty made by Seller that is false or misleading in any material respect when made or repeatedly made unless Seller as the Potentially Defaulting Party demonstrates, within a twenty (20) Business Day period from the time of notice by Buyer as the Potentially Non-Defaulting Party, that such Potential Event of Default has not occurred or has occurred and is remedied;
- (b) the failure of Seller to make, when due, any payment required pursuant hereto if such failure is not remedied within twenty (20) Business Days after written notice;
- (c) such Party becomes Bankrupt;
- (d) the failure of such Party to satisfy the creditworthiness and collateral requirements agreed to pursuant to Article 7 or the failure of the issuer of the Letter of Credit to maintain during the Term the credit rating required under the Letter of Credit as of the Date of Issuance (as that term is used in the Letter of Credit) provided that Seller does not post alternative Seller’s Performance Assurance in an amount equal to the required Performance Assurance Amount within eight (8) Business Days of notice from Buyer;
- (e) Seller’s failure to perform any other material covenant or obligation set forth herein if such failure is not remedied within twenty (20) Business Days after written notice;
- (f) with respect to Seller’s Guarantor, if any, the occurrence of any of the following (provided that Seller does not post Seller’s Performance Assurance in an amount equal to the Performance Assurance Amount within eight (8) Business Days):
 - (i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;
 - (ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure is not remedied within three Business Days after written notice;
 - (iii) a Guarantor becomes Bankrupt;
 - (iv) the failure of a Guarantor’s guaranty to be in full force and effect for purposes hereof (other than in accordance with its terms) prior to the satisfaction of all obligations of Seller under each Transaction to which such guaranty relates without the written consent of Buyer; or

(v) a Guarantor repudiates, disaffirms, disclaims, or rejects or challenges, in whole or in part, the validity of any guaranty.

(g) failure of Seller to achieve Commercial Operations by the Commercial Operations Deadline or extended deadline, as applicable pursuant to Section 2.3, in which case Buyer shall terminate the Agreement twenty (20) Business Days after written notice by Buyer to Seller unless Seller demonstrates, within such twenty (20) Business Day period and to the satisfaction of Buyer in its reasonable discretion, that such Event of Default has not occurred. For such Event of Default, Buyer shall be, as Buyer's sole and exclusive remedy, entitled to payment by Seller in the amount of the Collateral Requirement (or Increased Collateral Requirement, if applicable);

(h) Seller's Project fails to comply with the requirements set forth in Sections 2.2(a), 2.2(b), 2.3(c), 2.2(d), or 2.2(e), in which case, Buyer shall terminate the Agreement twenty (20) Business Days after written notice by Buyer to Seller unless Seller demonstrates, within such twenty (20) Business Day period and to the satisfaction of Buyer in its reasonable discretion, that such Event of Default has not occurred or has been cured. For such Event of Default, Buyer shall be, as Buyer's sole and exclusive remedy, entitled to payment by Seller in the amount of the sum of: (i) the Collateral Requirement (or Increased Collateral Requirement, if applicable) and (ii) 100% of the total payments Seller has received from Buyer under this Agreement;

(i) Seller fails to meet the requirements pursuant to pursuant to Section 2.5(b) and an Event of Default has occurred pursuant to Section 2.5(d), in which case, Buyer shall terminate the Agreement twenty (20) Business Days after written notice by IPA to Buyer and Seller unless (i) Seller demonstrates, within such twenty (20) Business Day period and to the satisfaction of IPA in its reasonable discretion, that such Event of Default has not occurred or has been cured. For such Event of Default, Buyer shall be entitled to payment by Seller in the amount of the Collateral Requirement as Buyer's sole and exclusive remedy.

(j) Seller fails to maintain the minimum operational requirements set forth in Section 2.6(a) and an Event of Default has occurred pursuant to Section 2.6(b), in which case, Buyer shall terminate the Agreement twenty (20) Business Days after written notice by Buyer to Seller unless (i) Seller demonstrates, within such twenty (20) Business Day period and to the satisfaction of Buyer in its reasonable discretion, that such Event of Default has not occurred or has been cured or (ii) the IPA has provided written notice to Buyer and Seller granting a waiver excusing such failure by Seller. For avoidance of doubt, a cure period shall only be afforded for an Event of Default due to Sections 2.6(a)(i) - 2.6(a)(iii), and no cure period shall be afforded for an Event of Default due to Section 2.6(a)(iv). Upon Seller's receipt of such Buyer's written notice, Seller may provide a written request along with supporting documentation to the IPA requesting that Seller's failure to maintain the minimum operational requirements set forth in Section 2.6(a) be excused; such written request shall be provided to the IPA no later than five (5) Business Days from the date of Buyer's written notice to Seller. Approval of waivers may be granted by the IPA on a case-by-case basis upon a demonstration of good cause by Seller to the satisfaction of the IPA at its sole discretion. For the avoidance of doubt, Buyer and Seller agree that the IPA has authority to make such a determination on good cause and to grant a waiver excusing Seller's failure to maintain the minimum operational requirements set forth in Section 2.6(a). The approval of any such requests shall be at the IPA's sole discretion. If approved, the IPA shall provide to Buyer and Seller a written notice indicating its approval of the Seller's request and any corrective action to be taken; such IPA's written notice shall be provided within the twenty (20) Business Day period from the date of Buyer's initial written notice to Seller indicated above in this section. Notwithstanding the foregoing, the IPA may extend the twenty (20) Business Day period by written notice to Buyer and Seller; provided that such written notice indicates the date which the IPA shall confirm whether it approves or rejects Seller's written request to waive Seller's failure to maintain the minimum operational requirements set forth in Section 2.6(a). If the IPA does not provide a written notice to Buyer and Seller indicating its approval or rejection of the waiver request within the twenty (20) Business Day period or extended deadline, Seller's request shall be deemed rejected. For such Event of Default,

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Buyer shall be entitled to payment by Seller in the amount of the Collateral Requirement as Buyer's sole and exclusive remedy.

(k) Seller fails to submit the information required pursuant to Section 2.7(a), or respond to Buyer's request for information to cure any deficiencies in its submission, or to fully execute the Product Order to confirm the Project's updated operational characteristics pursuant to Section 2.7(d), in which case, Buyer shall terminate the Agreement twenty (20) Business Days after written notice by IPA to Buyer and Seller unless (i) Seller demonstrates, within such twenty (20) Business Day period and to the satisfaction of IPA in its reasonable discretion, that such Event of Default has not occurred or has been cured. For such Event of Default, Buyer shall be entitled to payment by Seller in the amount of the Collateral Requirement as Buyer's sole and exclusive remedy.

(l) Seller fails to comply with the cybersecurity requirements pursuant to Section 2.8, in which case, Buyer shall terminate the Agreement twenty (20) Business Days after written notice by IPA to Buyer and Seller unless (i) Seller demonstrates, within such twenty (20) Business Day period and to the satisfaction of IPA in its reasonable discretion, that such Event of Default has not occurred or has been cured. For such Event of Default, Buyer shall be entitled to payment by Seller in the amount of the Collateral Requirement (or Increased Collateral Requirement as applicable) as Buyer's sole and exclusive remedy.

Extension of Demonstration Periods and Cure Periods

Notwithstanding the foregoing, the IPA may extend any of the time periods in this Section 9.2 at its reasonable discretion by written notice to Buyer and Seller to allow additional time for Seller to demonstrate that the Event of Default has not occurred or that the failure has been remedied, as applicable. It is expected that any extension granted by the IPA pursuant to this Section 9.2 shall be no longer than twenty (20) Business Days.

9.3 Declaration of Early Termination Date

Except as otherwise set forth in this Agreement, if an Event of Default with respect to a Defaulting Party occurs and is continuing, the other Party (the "Non-Defaulting Party") will have the right to (i) designate a day, no earlier than the day such notice is effective and no later than twenty (20) days after such notice is effective, as an early termination date ("Early Termination Date") to liquidate and terminate this Agreement, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party will calculate a Settlement Amount with respect to this Agreement pursuant to Section 9.4 as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party such Terminated Transaction is commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law by the Early Termination Date, as soon thereafter as is reasonably practicable). The calculation of the Settlement Amount indicated in this Section 9.3 shall not apply to an Event of Default described in Sections 9.2(g), 9.2(h), 9.2(i), 9.2(j), 9.2(k) or 9.2(l). For any such Event of Default, unless Seller pays the payment amount specified in the respective section in full, Seller's Performance Assurance held by Buyer shall be applied to the payment amount, with any excess Performance Assurance Amount returned to Seller. Notwithstanding anything in this Section 9.3 to the contrary, in the event of an Early Termination Date prior to the COD due to a Seller's Event of Default, Seller shall pay to Buyer a Settlement Amount in an amount equal to the Collateral Requirement (or Increased Collateral Requirement, if applicable).

9.4 Calculation of Settlement Amount.

(a) Except as otherwise set forth in this Agreement, in the Event of Default with respect to Buyer as the "Defaulting Party", the following shall occur:

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- (i) Buyer shall return Seller's Performance Assurance held by Buyer by the date the Settlement Amount is due;
 - (ii) Seller shall calculate a Settlement Amount as a single amount by subtracting: (a) any or all other amounts due to Buyer under this Agreement from (b) any or all other amounts due to Seller under this Agreement, so that all such amounts will be netted out to a single liquidated amount (the "Settlement Amount");
 - (iii) if the Settlement Amount is a positive amount that is due to Seller, Buyer shall pay the Settlement Amount to Seller;
 - (iv) if the Settlement Amount is a negative amount, there shall not be a Settlement Amount and Seller shall not owe any amount to Buyer; and
 - (v) the Settlement Amount, if any, is due to Seller as the Non-Defaulting Party within two (2) Business Days following notice by Seller to Buyer pursuant to Section 9.3.
- (b) Except as otherwise set forth in this Agreement, in the Event of Default with respect to Seller as the "Defaulting Party", the following shall occur:
- (i) Buyer shall calculate a Settlement Amount as the sum of the Collateral Requirement and the result obtained by subtracting: (a) any or all other amounts due to Seller under this Agreement from (b) any or all other amounts due to Buyer under this Agreement, so that all such amounts will be netted out to a single liquidated amount (the "Settlement Amount");
 - (ii) if the Settlement Amount is a positive amount that is due to Buyer, Seller shall pay the Settlement Amount to Buyer;
 - (iii) if the Settlement Amount is a negative amount, there shall not be a Settlement Amount and Buyer shall not owe any amount to Seller; and
 - (iv) the Settlement Amount, if any, is due to Buyer as the Non-Defaulting Party within two (2) Business Days following notice by Buyer to Seller pursuant to Section 9.3. Unless Seller pays the Settlement Amount in full during this two (2) Business Day period, Seller's Performance Assurance held by Buyer shall be applied to the Settlement Amount, with any excess Performance Assurance Amount returned to Seller.
- (c) For avoidance of doubt, the Non-Defaulting Party shall not owe any amount as Settlement Amount to the Defaulting Party and payment of the Settlement Amount shall only be from the Defaulting Party to the Non-Defaulting Party.

9.5 Calculation Disputes.

If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Settlement Amount, in whole or in part, the Defaulting Party will, within two (2) Business Days of receipt of Non-Defaulting Party's calculation, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that the Defaulting Party must first transfer to the Non-Defaulting Party the undisputed portion of the Settlement Amount. All disputes related to the Settlement Amount shall be settled in accordance with Section 5.3. References to Defaulting Party and Non-Defaulting Party in this Section 9.5 include the Potentially Defaulting Party and Potentially Non-Defaulting Party, as applicable.

9.6 Suspension of Performance.

Notwithstanding any other provision hereof, if an Event of Default has occurred and is continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, has the right to suspend performance under this Agreement.

9.7 Not a Penalty.

The Parties acknowledge that (a) the Non-Defaulting Party shall be damaged by the Defaulting Party, (b) it would be impracticable or extremely difficult to determine the actual damages resulting therefrom, (c) the remedies specified herein are fair and reasonable and do not constitute a penalty and (d) the remedies specified in Section 9.2 and Section 9.4 shall be the Non-Defaulting Party's sole and exclusive remedy in the Event of Default.

ARTICLE 10: FORCE MAJEURE

10.1 Force Majeure.

If either Party is rendered unable, wholly or in part, by Force Majeure to carry out its obligations with respect to this Agreement, that upon such Party's (the "Claiming Party") giving notice and full particulars, along with supporting documentation, of such Force Majeure as soon as reasonably possible after the occurrence of the cause relied upon, confirmed in writing, then the obligations of the Claiming Party will, to the extent it is affected by such Force Majeure, be suspended during the continuance of said inability, but for no longer a period than the continuance of said inability, and the Claiming Party will not be in breach hereof or liable to the other Party for, or on account of, any loss, damage, injury or expense resulting from, or arising out of such event of Force Majeure during such Suspension Period. The Party receiving such notice of Force Majeure will have until the end of the twentieth (20th) Business Day following such receipt to notify the Claiming Party that it objects to or disputes the existence of Force Majeure. If Seller is the Claiming Party, then such notification must be made to both Buyer and the IPA, and a determination of whether to object to or dispute the existence of Force Majeure may be made by Buyer. Any determination to object to or dispute the existence of Force Majeure by Buyer shall be subject to the concurrence of the IPA (who, upon receipt, shall promptly confer to consider the Force Majeure notice).

"Force Majeure" means an event or circumstance which materially adversely affects the ability of a Party to perform its obligations under this Agreement, which event or circumstance was not reasonably anticipated as of the date such Transaction was entered into and which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which the Claiming Party is unable to overcome or avoid or cause to be avoided, by the exercise of due diligence. Force Majeure includes acts of God (such as tornadoes, fires, earthquakes and floods), pandemics as declared by the WHO, explosions, war, hostilities, riots and acts or threats of terrorism (any such event, an "External Event") that disrupt the development or operation of the Project. In the case of a Party's obligation to make payments hereunder, Force Majeure will only be an event or act of a Governmental Authority that on any day disables the banking system through which a Party makes such payments.

If Force Majeure adversely affects the ability of Seller to achieve Commercial Operations by the Commercial Operations Deadline or extended deadline, then the Commercial Operations Deadline shall be extended day for day for each day of any Suspension Period pursuant to this Section 10.1; provided that in no event shall any extension under this Section 10.1 extend beyond May 31, 2035. In the event that the Commercial Operations Deadline has been extended pursuant to a Suspension Period and the COD has not

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occurred by May 31, 2034, then Seller may request for the Agreement to be terminated and its Performance Assurance to be returned. In the event that the Commercial Operations Deadline is extended pursuant to a Suspension Period and the COD has not occurred by May 31, 2035, then Buyer shall return Seller's Performance Assurance and terminate this Agreement with written notice to Seller. If Force Majeure adversely affects the development of the Project such that Seller is unable to complete construction of the Project due to such Force Majeure event, then Seller may provide a written notice to Buyer and the IPA of such determination. Unless such determination is refuted by Buyer within twenty (20) Business Days of Buyer's receipt of Seller's written notice, which shall be subject to the concurrence of the IPA, this Agreement shall terminate and Seller's Performance Assurance shall be returned.

If the COD has occurred by the Commercial Operations Deadline or extended deadline and Force Majeure adversely affects the ability of Seller to maintain the minimum operational requirements set forth in Section 2.6(a), then there shall be a Suspension Period with respect to that Project's obligations under this Agreement, and the Acceptable Vintage Period shall be extended day for day for each day of any Suspension Period. If the Acceptable Vintage Period is extended for a period that exceeds seven hundred thirty (730) days, then this Agreement shall be terminated and Seller's Performance Assurance shall be returned. If Force Majeure adversely affects the operability of the Project and Seller has determined that the damage to the Project is irreparable, then Seller may provide a written notice to Buyer and the IPA of such determination. Unless such determination is refuted by Buyer within twenty (20) Business Days of Buyer's receipt of Seller's written notice, which shall be subject to the concurrence of the IPA, this Agreement shall terminate and Seller's Performance Assurance shall be returned.

Force Majeure may not be based on: (i) the loss or failure of Buyer's markets; (ii) Buyer's inability economically to use or resell the Product purchased hereunder; (iii) Seller's ability to sell the Product to another at a price greater than the Strike Price; (iv) the performance or breakdown of equipment not directly caused by an External Event; or (v) the loss of tax credits, the denial of deductions or the imposition of additional taxes.

ARTICLE 11: GOVERNMENT ACTION

11.1 Government Action.

The Parties acknowledge that the Applicable Program, which among other things establishes the conditions for a market for certain Products, may be the subject of Government Action (including court challenge) that could adversely affect the eligibility of a Product to meet the requirements of an Applicable Program or otherwise alter the requirements of the Applicable Program, make a Product unavailable or dramatically diminished or increased in value, or adversely affects the development of the Project. With respect to the Transaction, Seller represents that the Product complies with the Applicable Program and such representation is made and effective as of each ISC Generation Date, and regardless of any Government Action occurring after the Trade Date, Seller must generate Product that complies with the Applicable Program as of each ISC Generation Date. Government Action that changes in any respect the value of a Product (without rendering the Product out of compliance with the Applicable Program), will have no effect on the obligation of the Parties to purchase and sell such Product at the price and on the terms set forth in this Agreement. For avoidance of doubt, all payment obligations shall be suspended, and any non-compliant ISCs generated in a Delivery Year as a result of such Government Action shall be excused from the date of Government Action through the date the Product again complies with the Applicable Program; such period shall be deemed a Suspension Period provided, that such Suspension Period shall not exceed three hundred sixty-five (365) days, and the Acceptable Vintage Period shall be extended day for day for each day of any Suspension Period.

To the extent that Government Action after the Trade Date (i) renders the generation of ISCs for payment under this Agreement illegal under applicable law or (ii) renders the Product ineligible to comply with the Applicable Program in such a manner that no commercially reasonable modification to the Product or action taken by Seller would allow the Product to comply with the Applicable Program, (a) such Transaction will be terminated, (b) Seller's Performance Assurance shall be returned, (c) that portion of whatever has been paid for non-conforming Products will be refunded by the applicable Party, to the extent it is lawful to do so, and (d) neither Seller nor Buyer will have any liability to the other after such termination. For purposes of the foregoing, Seller shall be deemed to have used "commercially reasonable" efforts if Seller provides to Buyer evidence of expenditures or estimated expenditures in an amount that exceeds the Commercially Reasonable Threshold; provided such evidence of expenditures or estimated expenditures shall be submitted to the IPA and Buyer within 365 days of the Government Action and such evidence be acceptable to Buyer, in its reasonable discretion. Notwithstanding the foregoing, no Transaction will be affected, cancelled, or otherwise impaired by Government Action that is specific to a Party under applicable law taken by a Governmental Authority alleging that Party's violation thereof.

11.2 Risk Allocation.

The Product is Regulatorily Continuing.

11.3 Investment Tax Credit (ITC) or Clean Electricity Investment Credit Contingency

In the event that the federal investment tax credit or clean electricity investment credit for energy storage systems, as available under Section 48 of the Internal Revenue Code (or any successor provision), is eliminated, materially reduced, or otherwise rendered unavailable for the Project prior to COD, Seller may request for the Agreement to be terminated and its Performance Assurance to be returned. Such request must be made in writing to Buyer and the IPA as soon as practicable, but no later than six months of the enactment of government action that eliminates, materially reduce or render unavailable such credit; further, such written request must be substantiated by reasonable documentation evidencing that COD has not occurred. Such request will be subject to the approval of the IPA in its reasonable discretion. If approved by the IPA, Buyer shall return Seller's Performance Assurance and terminate this Agreement with written notice to Seller. No Settlement Amount shall be due from or to either Party as a result of any such termination pursuant to this Section 11.3.

ARTICLE 12: GOVERNING LAW

12.1 Applicable Program.

[-], as established under 20 Ill. Comp. Stat. [-] is the Applicable Program for this Agreement.

12.2 Governing Law.

This Agreement is governed by and construed in accordance with the laws of the State of Illinois. To the full extent permitted under applicable law, if the Parties have agreed on the terms of a Transaction, the Parties agree not to contest, or to enter any defense concerning the validity or enforceability of a Transaction on the grounds that the documentation for such Transaction fails to comply with the requirements of a jurisdiction's Statute of Frauds or other applicable law requiring agreements to be written or signed.

ARTICLE 13: ASSIGNMENT

13.1 Assignment.

Neither Party may assign this Agreement or any Transaction without the prior written consent of the other, which consent will not be unreasonably withheld, conditioned or delayed; provided, however, either Party may, without the consent of the other, (i) pledge, encumber or collaterally assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements (but, in the case of Section 13.1(i) only, without relieving itself from liability hereunder), (ii) transfer or assign this Agreement to an Affiliate of such Party which Affiliate's creditworthiness is equal to or higher than that of such Party on the Effective Date, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party on the Effective Date; provided, however, that in the case of an assignment pursuant to Section 13.1(ii) and (iii), any such assignee must, prior to any assignment, agree in writing to be bound by the terms and conditions hereof and the transferring Party must deliver such enforceability assurance as the non-transferring Party may reasonably request and, in the case of an assignment pursuant to Section 13.1(i), the transferring Party must give notice to the other Party within ten (10) days of any such collateral assignment. This Agreement will bind each Party's successors and permitted assigns. Any attempted assignment in violation of this provision will be void *ab initio*.

ARTICLE 14: LIMITATION OF LIABILITY

14.1 Limitation of Liability.

The express remedies and measures of damages provided herein satisfy the essential purposes hereof. For breach of any provision for which an express remedy or measure of damage is provided, such remedy or measure shall be the sole and exclusive remedy therefor.

If no remedy or measure of damage is expressly provided, the obligor's liability shall be limited to direct actual damages only as the sole and exclusive remedy. Except as specifically set forth herein, no party shall be required to pay or be liable for special, consequential, incidental, punitive, exemplary, or indirect damages, lost profit or business interruption damages, by statute, in tort, contract or otherwise. To the extent any damages required to be paid hereunder are deemed liquidated, the Parties acknowledge that the damages are difficult or impossible to determine, or otherwise obtaining an adequate remedy is inconvenient and the damages calculated hereunder constitute a reasonable approximation of the harm or loss.

Notwithstanding any other provisions of this Agreement, in no event shall Seller be liable to Buyer in an amount that exceeds the sum of the Collateral Requirement and one hundred percent (100%) of the total payments Seller has received from Buyer associated with ISCs from the Project.

Notwithstanding any other provisions of this Agreement, in no event shall Buyer be liable to Seller in an amount that exceeds one hundred percent (100%) of the total payments Seller has received from Buyer associated with ISCs from the Project.

ARTICLE 15: MISCELLANEOUS

15.1 Notices.

All notices, requests, statements or payments will be made as specified in this Agreement. Notices, unless otherwise specified herein, must be in writing and delivered by electronic means. Notice is effective when transmitted, if transmitted before or during business hours on a Business Day, and otherwise will be effective on the next Business Day. A Party may change its addresses by providing notice of such change in accordance herewith and updating the information in Exhibit B.

15.2 Dispute Resolution.

Disputes under this Agreement will be resolved in accordance with the provisions of this Section 15.2.

Waiver of Jury Trial

Waiver of Jury Trial. Each Party knowingly, voluntarily, intentionally and irrevocably waives the right to a trial by jury in respect of any litigation based on this Agreement, or arising out of, under or in connection with this Agreement and any agreement executed or contemplated to be executed in conjunction with this Agreement, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any Party hereto. This provision is a material inducement to each of the Parties for entering hereinto. Each Party hereby waives any right to consolidate any action, proceeding or counterclaim arising out of or in connection with this Agreement or any other agreement executed or contemplated to be executed in conjunction with this Agreement, or any matter arising hereunder or thereunder, in which a jury trial has not or cannot be waived.

Mediation

If any dispute or claim should arise between the Parties that cannot be resolved through negotiation, the Parties shall endeavor to settle the dispute by mediation. Either Party may request in writing that the other Party mediate the dispute; and such notice shall set forth the subject of the dispute and the relief requested (the "Dispute Notice"). The mediation shall be conducted by the IPA unless one or more of the Parties object to mediation with the IPA.

If no party objects to mediation with the IPA, the disputing Party shall provide a written request to the IPA for mediation. Such written request shall include a brief summary of the dispute, with confidential information so marked. The IPA shall undertake mediation procedures developed by the IPA for the purposes of implementing this Section 15.2.

If one or more of the Parties object to mediation with the IPA, the mediation shall be conducted by a mediator affiliated with and under the commercial rules of the American Arbitration Association ("AAA"). The AAA's mediation procedures under the commercial rules are available at https://www.adr.org/sites/default/files/CommercialRules_Web.pdf.

Binding Arbitration

(1) Unless otherwise settled by mediation or directly settled by the Parties, any dispute or claim arising out of or related hereto or any breach thereof or any need for interpretation related to any dispute arising out of or related hereto will be settled by binding arbitration administered by the AAA in Illinois. Either Party will have the right to commence an arbitration by written notice to the other Party after the expiration of ninety (90) calendar days from the Dispute Notice mentioned above, or if nonbinding

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mediation was terminated, ten (10) days after the termination of the mediation. The arbitration will be conducted as follows:

(A) There will be one arbitrator who has not previously been employed by either Party, is qualified by education or experience to decide the matters relating to the questions in dispute, and does not have a direct or indirect interest in either Party or a financial interest in the outcome of the arbitration and who is available within the time frames set forth herein. Such arbitrator will either be selected by mutual agreement by the Parties within thirty (30) days after written notice from the Party requesting arbitration, or failing agreement by such time, the arbitrator will be selected within the following fourteen (14) days by the AAA under the AAA Rules.

(B) Such arbitration will be held at a location within the State of Illinois. Absent agreement, the arbitrator shall set the precise location of the arbitration based on where it is most convenient and cost effective to resolve the dispute, and if it is an international matter, with regard to any special considerations raised by the Parties that may therefore be relevant.

(C) The AAA Rules (including the Optional Rules for Emergency Protection Measures) apply to the extent not inconsistent with the rules herein specified. If the dispute is international in scope as defined in the United Nations Commission on International Trade Law Model Law on International Commercial Arbitration, the AAA's Supplementary Procedures for International Commercial Disputes shall apply.

(D) The hearing will be conducted on a confidential basis and except as required by law, neither the Parties nor the arbitrator may disclose the existence, content or results of any arbitration hereunder without the prior written consent of all the Parties.

(E) At the request of a Party, the arbitrator will have the discretion to order an examination of witnesses to the extent the arbitrator deems such additional discovery relevant and appropriate. Depositions will be limited to a maximum of two depositions for each Party, may be held by video conferencing to reduce travel expenses, and each deposition will be limited to a maximum of three hours. All objections are reserved to the hearing except objections based on privilege and proprietary or confidential information.

(F) The arbitrator will issue a confidential award accompanied by a written statement regarding the reasons for the decision.

(G) The arbitrator and the Parties will make every attempt to complete the arbitration within 90 days of appointment of the arbitrator. Upon the application of a Party and for good cause shown, the arbitrator may extend this time. Under no circumstances will the arbitration take longer than six months from the appointment of the arbitrator. However, failure to conclude the arbitration within the six-month period will not constitute grounds for vacating the award.

(H) Each Party will be responsible for its own filing fees and case service fees in connection with its claim. Other expenses and arbitrator compensation will be borne equally, subject to final apportionment by the arbitrator. Each Party will be responsible for its own expenses and those of its counsel and representatives.

(I) Any offer made or the details of any negotiation regarding the dispute prior to arbitration and the cost to the Parties of their representatives and counsel will not be admissible.

(2) Judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction by the Party in whose favor such award is made.

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(3) Regardless of any procedures or rules of the AAA: (i) the arbitrator will have no authority to award punitive damages, or any other form of damages waived by the Parties pursuant to the Agreement, or attorneys' fees; and (ii) the Parties may by written agreement alter any time deadline, locations for meetings, or procedure outlined in this section or in the AAA Rules, except that the provisions of subsection (1)(G) above will govern with respect to the time frame for the conclusion of the arbitration.

15.3 Waiver of Immunities.

To the extent either Party possesses any immunity on the grounds of sovereignty or other similar grounds, each Party irrevocably waives, to the fullest extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (a) suit, (b) jurisdiction of any court, (c) relief by way of injunction, order for specific performance or for recovery of property, (d) attachment of its assets (whether before or after judgment) and (e) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any suit, action or proceedings relating hereto in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any suit, action or proceedings relating hereto.

15.4 Confidentiality.

Each Party shall hold in confidence and not release or disclose any document or information furnished by the other Party in connection with this Agreement. For clarity, this means each Party shall not disclose or release information received from the other Party to any third-party (other than the Party's employees, Guarantor, lenders, prospective Guarantors, prospective lenders, prospective purchasers, investors, prospective investors, counsel, accountants or advisors who have to know such information and have agreed to keep such terms confidential) without the disclosing Party's written consent; and further, each Party shall restrict access to such information to as few as possible of its employees. The foregoing shall not apply if: (a) compelled to disclose such document or information by judicial, regulatory or administrative process or other provisions of law; (b) such document or information is generally available to the public; (c) such document or information was available to the receiving Party on a non-confidential basis; or (d) such document or information was available to the receiving Party on a non-confidential basis from a third-party, provided that the receiving Party does not know, and, by reasonable effort, could not know that such third-party is prohibited from transmitting the document or information to the receiving Party by a contractual, legal or fiduciary obligation.

The Parties are entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. If a Party is required or requested to disclose any confidential information as provided in (a) above, such Party shall provide the other Party with written notice within five (5) Business Days so that the other Party may seek on its own behalf a protective order or any other appropriate remedy. If such protective order or other remedy is not obtained, the disclosing Party will cooperate with the other Party's counsel to enable such Party to obtain a protective order or other reliable assurance that confidential treatment will be accorded the confidential information. The Parties shall maintain the confidentiality of the terms of the Transaction hereunder in compliance with Section 16-111.5(h) of the Illinois Public Utilities Act (220 ILCS 5/16-111.5(h)). All confidentiality obligations set forth herein shall survive following the expiration or termination of this Agreement, provided, however, that with respect to any confidential information that constitutes a "trade secret" under applicable law, these covenants shall apply for the life of the trade secret.

15.5 Day Conventions.

Unless otherwise specifically provided herein or in a Product Order, (i) "day" means a calendar day and includes Saturdays, Sundays and holidays, and (ii) if a payment falls due on a day that is not a Business

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Day, the payment will be due on the next Business Day thereafter.

15.6 Indemnity.

Each Party will indemnify, defend and hold harmless the other Party from and against any claims or demands made by others arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party as provided herein, except to the extent arising from the indemnified Party's own gross negligence or willful misconduct. Each Party will indemnify, defend and hold harmless the other Party against any taxes for which such Party is responsible under Section 5.5.

15.7 General.

(a) This Agreement constitutes the entire agreement between the Parties relating to its subject matter. Any prior agreement or negotiation between the Parties with respect to the subject hereof is superseded. Any Product Order or any collateral, credit support or margin agreement or similar arrangement between the Parties will, upon designation by the Parties, be deemed part hereof and incorporated herein by reference, with this Agreement controlling in the event of a contradiction.

(b) This Agreement will be considered for all purposes as prepared through the joint efforts of the Parties and not be construed against one Party or the other as a result of the preparation, substitution, organizational membership, submission or other event of negotiation, drafting or execution hereof.

(c) No amendment or modification hereto or to any written Product Order is enforceable unless in writing and executed by both Parties.

(d) Headings used herein are for convenience and reference purposes only.

(e) Nothing herein constitutes any Party a partner, agent or legal representative of the other Party or creates any fiduciary relationship between them.

(f) The waiver by either Party of a default or a breach by the other Party will not operate or be construed to operate as a waiver of any subsequent default or breach. The making or the acceptance of a payment by either Party with knowledge of the existence of a default or breach will not operate as a waiver of any default or breach.

(g) Except as provided in a Product Order or pursuant to Section 11.1, if any provision hereof is, for any reason, determined to be invalid, illegal, or unenforceable in any respect, the Parties will negotiate in good faith and agree to such amendments, modifications, or supplements of or to this Agreement or such other appropriate actions that will, to the maximum extent practicable in light of such determination, implement and give effect to the intentions of the Parties as reflected herein, and the other provisions hereof will, as so amended, modified, or supplemented, or otherwise affected by such action, remain in full force and effect.

(h) This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which taken together will constitute one and the same original instrument. Delivery of an executed counterpart of a signature page to the Agreement by electronic means shall be effective as delivery of a manually executed counterpart of the Agreement. Electronic copies of executed original copies of the Agreement shall be sufficient and admissible evidence of the content and existence of the Agreement to the same extent as the originally executed copy or copies (if executed in counterpart).

(i) Any document generated by the Parties with respect to this Agreement, including this

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Agreement, may be imaged and stored electronically and introduced as evidence in any proceeding as if original business records. Neither Party will object to the admissibility of such images as evidence in any proceeding on account of having been stored electronically.

(j) Exhibits are provided as samples for convenience of Parties and the actual forms and reports issued under this Agreement may reflect differences that are non-material in nature to facilitate the administration of this Agreement, and if necessary to correct typographical errors, cure inconsistencies in the provisions of this Agreement or clarify the intent of the provisions of this Agreement.

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

Party A Name
By:
Name:
Title:

Party B Name
By:
Name:
Title:

LIST: ACCOMPANYING EXHIBITS

Exhibit A – Form of Product Order

Exhibit B – Contact Information for Notices

Exhibit C – Form of Reports and Notices

Exhibit C-1 – Hourly Availability Report

Exhibit D – Form of Invoice

Exhibit E – Form of Security Instruments

Exhibit E-1 – Form of Letter of Credit

[Exhibit E-2 – Form of Guaranty (Ameren Illinois Company)]

[Exhibit E-2 – Form of Guaranty (Commonwealth Edison Company)]

[Exhibit E-2b – Schedule 1: Foreign Guarantor Requirement (Commonwealth Edison Company)]

Exhibit F – Examples

Exhibit F-1 – Example of Payment Calculation

Exhibit F-2 – Example of ISC Reference Energy Arbitrage Price Calculation

Exhibit G – Cybersecurity Baselines for Electric Distribution Systems and Distributed Energy Resources

EXHIBIT A Form of Product Order

(One Product Order to be completed for the Project selected through the RFP)

Trade Date: _____

Amended as of: _____

Project Information	<p><u>Energy Storage System</u></p> <p>Project name: _____</p> <p>Description of Project:</p> <p><u>Duration: 4 hours of continuous discharge at Contract Capacity per hour</u></p> <p>RTE: _____</p> <p>Technology: _____</p> <p>Site Description: (See Site Map)</p>
ELCC	___%
Commercial Operation Date and Acceptable Vintage Period	<p>COD: _____</p> <p>Earliest Vintage Month: ____</p> <p>Latest Vintage Month: ____</p> <p>Acceptable Vintage Period: ____</p>
Contact Capacity (MW, as recognized by RTO).	<p>Proposed Contract Capacity: ____ MW</p> <p>Initial Contract Capacity: ____ MW</p> <p>Contract Capacity: ____ MW</p>
Strike Price (\$ per MWh)	\$ ____ per MWh
ISC Delivery Point / ISC Resource Zone	<p>[MISO CP Node AMIL.BGS6 / MISO LRZ 4 OR</p> <p>ComEd Residual Aggregate, Pnode ID 116472935 (COMED_RESID_AGG) / ComEd LDA]</p>
Project Labor Agreements	[x] Yes, requirements apply to Project
Minimum Equity Standard	[x] Yes, requirements apply to Project MES percentage = <u>14</u> %

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Notes:

Party A or Seller

Party B or Buyer

By:
Name:
Title:

By:
Name:
Title:

EXHIBIT B Contact Information for Notices

All notices (excluding Project Labor Agreements) to the Illinois Power Agency to be sent to:
IPA.Data@illinois.gov

Project Labor Agreements and amendments thereto shall be sent to: IPA.PLA@Illinois.gov

Party A: _____

Party B: _____

All Notices:

Street:
City:
State and ZIP:
Attn:
Phone:
Email:
Federal Tax ID Number:

All Notices:

Street:
City:
State and ZIP:
Attn:
Phone:
Email:
Federal Tax ID Number:

Invoices:

Attn:
Phone:
Email:

Invoices:

Attn:
Phone:
Email:

With a copy to:

Attn:
Email:

With a copy to:

Attn:
Email:

Payments:

Attn:
Phone:
Email:

Payments:

Attn:
Phone:
Email:

Wire Transfer:

BNK:
ABA:
ACCT:

Wire Transfer:

BNK:
ABA:
ACCT:

ACH Transfer:

BNK:
ABA:
ACCT:

ACH Transfer:

BNK:
ABA:
ACCT:

Credit and Collections:

Attn:
Phone:
Email:

Credit and Collections:

Attn:
Phone:
Email:

With additional Notices of an Event of
Default or Potential Event of Default to:

Attn:
Phone:
Email:

With additional Notices of an Event of
Default or Potential Event of Default to:

Attn:
Phone:
Email:

EXHIBIT C
Form of Reports and Notices

Exhibit C-1
Hourly Availability Report⁵

Date: _____
Vintage Month: _____

Table 1. Hourly Data

Date	Hour (1 to 24)	Available Power Capacity (MW)	Planned Outage (MW)	Notes

Instructions.

- a. Fill in for every date and hour of the Vintage Month.
- b. On daylight savings days, skip Hour 3 or add an additional Hour 2, as appropriate.
- c. For **Available Power Capacity (MW)**, enter the power capacity (in MW) of the Project that is Available (as defined in this Agreement) for the hour in question.
 - If the Project's Available power capacity is not uniform over the course of the hour in question, enter the average Available power capacity over that hour.
 - For example, if a Project is Available at Contract Capacity for only sixty percent (60%) of an hour, enter 0.6 * Contract Capacity for that hour. Also, if the Available power capacity of a Project is sixty percent (60%) of Contract Capacity for a full hour, enter 0.6 * Contract Capacity for that hour. For purposes of calculation, the Available power capacity shall be rounded to the third decimal place.
 - In no case shall the Available power capacity of the Project be above Contract Capacity for the purposes of filling in "Available Power Capacity (MW)" in the above table.
 - To the extent the Project is not Available due to an event of Force Majeure or due to Technical Curtailment, nonetheless, enter the Available power capacity of the Project, but enter in the "Notes" column the circumstance, an event of Force Majeure or Technical Curtailment, as appropriate.
- d. For **Planned Outage (MW)**, enter the power capacity (in MW) of the Project that is not Available (as defined in this Agreement) due to a Planned Outage (as defined in this Agreement) for the hour in question.
 - If the power capacity of the Project not Available due to a Planned Outage is not uniform over the course of the hour in question, enter the average power capacity of the Project not Available due to a Planned Outage over that hour.
 - For example, if a Project is in a Planned Outage at the beginning of an hour but that Planned Outage ends sixty percent (60%) of the way through that hour, enter for that hour: 0.6 * the power

⁵ The report must be submitted in Microsoft Excel format.

capacity of the Project that was not Available due to that Planned Outage. Also, if only sixty percent (60%) of the Contract Capacity of the Project is not Available due to a Planned Outage during an hour, enter 0.6 * Contract Capacity for that hour. For purposes of calculation, the Available power capacity shall be rounded to the third decimal place.

- In no case shall the power capacity of the Project in a Planned Outage be above the Contract Capacity for the purposes of filling in “Planned Outage (MW)” in the above table.

- e. For **Notes**, enter any additional relevant information required to understand the data in the above table.

Table 2. Outage Event Data

Start of Outage Event		End of Outage Event		Size of Outage (MW)	Planned Outage (Y/N)	Notes
Start Date	Start Time	End Date	End Time			

Instructions.

- a. Fill in every outage event in the Vintage Month.
- b. For **Start Time** and **End Time** enter time to the second, in the following format: "hh:mm:ss", using 24 hours instead of AM or PM. For example, 1:04pm and 3 seconds would be entered as: "13:04:03" and 12:02 am and 4 seconds would be entered as "00:02:04".
- c. For **Size of Outage (MW)**, enter the power capacity (in MW) that is not Available due to the outage.
- d. For **Planned Outage**, indicate whether the outage qualifies as a Planned Outage as defined in this Agreement.
- e. For **Notes**, enter any additional relevant information required to understand the data on the above table.

Table 3. Technical Curtailment Days

No.	Date
1	
2	
3	
4	
..	

Instructions.

- a. List days where Technical Curtailment has adversely impacted the operations of the Project as determined by Seller.

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EXHIBIT D
Form of Invoice

During the Term of the Agreement, Seller shall render to Buyer an invoice by electronic mail for the payment obligations of Buyer to Seller on or before the 10th day of the month immediately following each Vintage Month (“Invoice Due Date”) in which ISCs are generated. Payment for timely submitted invoices under this Agreement shall be due and payable on the last Business Day of the month in which the invoice is rendered or the last Business Day of the following month if the invoice is rendered late and cannot be processed by the last Business Day of the month in which the invoice is rendered.

(The Form of Invoice must contain information for the Project in this Agreement)

Invoice Date: _____

Buyer: _____

Buyer Address: _____

Seller name: _____

Seller address: _____

Payment Due Date: _____

Vintage Month: _____

Quantity of ISCs generated, by Day:

[add as needed]

ISCs Daily Value, by Day:

[add as needed]

ISC Monthly Payment: \$_____

ISC Monthly Price: \$_____

Invoice Amount: \$_____

REMIT PAYMENT TO:

Wire Transfer: _____

ACH Transfer: _____

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EXHIBIT E
Form of Security Instruments

Exhibit E-1
Form of Letter of Credit

OPTION 1

IRREVOCABLE STANDBY LETTER OF CREDIT FORM
DATE OF ISSUANCE: _____

[Address]

Re: Credit No. _____

We, _____ (the "Issuing Bank"), hereby establish our Irrevocable Transferable Standby Letter of Credit (the "Letter of Credit") in favor of _____ (you, the "Beneficiary") for the account of _____ (the "Account Party"), for the aggregate amount not exceeding _____ United States Dollars (\$ _____), available to you at sight upon demand at our counters at _____ [designate Issuing Bank's location for presentments] on or before the expiration hereof against presentation to us of one or more of the following statements, dated and signed by an Authorized Officer of the Beneficiary:

1. "An Event of Default (as defined in the Indexed Storage Credit Agreement dated as of _____ between [Beneficiary Name] ("Beneficiary") and [Account Party's Name] ("Account Party"), as the same may be amended (the "ISC Contract")) has occurred and is continuing with respect to Account Party under the ISC Contract and no Event of Default has occurred and is continuing with respect to the Beneficiary of this Letter of Credit. Wherefore, the undersigned does hereby demand payment of _____ United States Dollars (\$ _____) [or the entire undrawn amount of the Letter of Credit]";
2. "An Early Termination Date (as defined in the Indexed Storage Credit Agreement dated as of _____ between [Beneficiary Name] ("Beneficiary") and [Account Party's Name] ("Account Party"), as the same may be amended (the "ISC Contract")) has occurred and is continuing with respect to Account Party under the ISC Contract and no Event of Default has occurred and is continuing with respect to the Beneficiary of this Letter of Credit. Wherefore, the undersigned does hereby demand payment of _____ United States Dollars (\$ _____) [or the entire undrawn amount of the Letter of Credit]"; or
3. "The expiration date of your Letter of Credit is less than twenty (20) days from the date of this statement, and Account Party under such Letter of Credit is required, but has failed, to provide a replacement letter of credit or other collateral beyond such expiration date in accordance with, and to assure performance of, its obligations under the Indexed Storage Credit Agreement dated as of _____ between [Beneficiary Name] ("Beneficiary") and [Account Party's Name] ("Account Party"), as the same may be amended (the "ISC Contract"). No event of default has occurred and is continuing under the ISC Contract with respect to the Beneficiary. Wherefore, the undersigned does hereby demand payment of _____ United States Dollars (\$ _____) [or the entire undrawn amount of the Letter of Credit]".

This Letter of Credit shall expire on _____. It is a condition of this Letter of Credit that it will be automatically extended for one year periods (to the immediately following anniversary of its then current expiration date) following its then current expiration date, unless at least sixty (60) days before its then current expiration date, we notify you, by electronic means to _____ Attn: _____ that we do not intend to extend this Letter of Credit; provided that the original notice shall be simultaneously forwarded by overnight courier service to you at the above address; provided further that the failure of the courier service to timely deliver shall

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not affect the efficacy of the notice.

The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid by the Issuing Bank. Partial drawings and multiple presentations are permitted hereunder.

We hereby agree with you that documents drawn under and in compliance with the terms and conditions of this Letter of Credit shall be duly honored upon presentation as specified. Drafts, document(s) and other communications hereunder may be presented or delivered to us by facsimile transmission or electronic means. Presentation of documents to effect a draw by facsimile must be made to the following facsimile number: _____, and confirmed by telephone to us at the following number: _____. Presentation of documents to effect a draw by electronic means must be made to the following email address: _____, and confirmed by telephone to us at the following number: _____. In the event of a presentation via facsimile transmission, no mail confirmation is necessary and the facsimile transmission will constitute the operative drawing documents.

This Letter of Credit shall be governed by the Uniform Customs and Practice for Documentary Credits, 2007 Revision, International Chamber of Commerce Publication No. 600, or any successor publication thereto (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b), 16(d) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. Matters not covered by the UCP shall be governed and construed in accordance with the laws of the State of New York.

With respect to Article 14(b) of the UCP, the Issuing Bank shall have a reasonable amount of time, not to exceed three (3) Business Days, following the date of its receipt of documents from the Beneficiary, to examine the documents and determine whether to take up or refuse the documents and shall inform the Beneficiary accordingly. With respect to Article 16(d) of the UCP, the notice required in sub-article 16C must be given no later than the banks' close of business on the third Business Day following the date of presentation.

Article 36 of the UCP as it applies to this Irrevocable Standby Letter of Credit is hereby modified to provide that in the event of an Act of God, riot, civil commotion, insurrection, war or any other cause beyond our control that interrupts our business (collectively, an "Interruption Event") and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, the expiry date of this Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business. Article 36 of the UCP as it applies to this Irrevocable Standby Letter of Credit is hereby further modified to provide that any alternate place for presentation that we designate must be located in the United States.

We, the Issuing Bank, hereby certify that as of the Date of Issuance of this Irrevocable Standby Letter of Credit our senior unsecured debt is rated "A-" or better by S&P Global Ratings ("S&P") if rated by S&P, "A3" or better from Moody's Investors Service ("Moody's") if rated by Moody's, and "A-" or better by Fitch Ratings ("Fitch") if rated by Fitch. We hereby certify that our senior unsecured debt is rated by at least two of S&P, Moody's, and Fitch. If affiliated with a foreign bank, we further certify we are a U.S. branch office of such foreign bank and that as of the Date of Issuance of this Letter of Credit, our senior unsecured debt meets the ratings requirement of this paragraph.

As used herein, the term "Business Day" means any day on which Federal Reserve Banks and Branches are open for business, such that payments can be effected on the Fedwire system and the term "Authorized Officer" means President, Treasurer, any Vice President or any Assistant Treasurer.

This Letter of Credit is transferable in whole but not in part, in accordance with the procedures in UCP 600 through the submission of a Letter of Full Transfer utilizing one of the attached forms of Letter of Full Transfer (Schedules 1-3), accompanied by the original Letter of Credit and original amendments, if any, but otherwise may not be amended, changed or modified without the express written consent of the Beneficiary, the Issuing Bank, and the Account Party.

This Letter of Credit may not be transferred to any person with which U.S. persons are prohibited from doing business under U.S. Foreign Assets Control Regulations or other applicable U.S. Laws and Regulations.

We will not make any payment under this Letter of Credit (1) to any entity or person who is subject to the sanctions issued by the United States Department of Commerce, or to whom payment is prohibited by the foreign asset control regulations of the United States Department of the Treasury, or (2) which otherwise is in contravention of United

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States laws and regulations.

[The Issuing Bank may add specific contact or additional information or administrative- only comments at this point. However, such comments shall not create or alter any rights that vary from the above language].

[BANK SIGNATURE]

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OPTION 2

IRREVOCABLE STANDBY LETTER OF CREDIT FORM
DATE OF ISSUANCE: _____

[Address]

Re: Credit No. _____

We, _____ (the "Issuing Bank"), hereby establish our Irrevocable Transferable Standby Letter of Credit (the "Letter of Credit") in favor of _____ (you, the "Beneficiary") for the account of _____ (the "Account Party"), for the aggregate amount not exceeding _____ United States Dollars (\$____), available to you at sight upon demand at our counters at _____ [designate Issuing Bank's location for presentments] on or before the expiration hereof against presentation to us of one or more of the following statements, dated and signed by an Authorized Officer of the Beneficiary:

1. "An Event of Default (as defined in the Indexed Storage Credit Agreement dated as of _____ between [Beneficiary Name] ("Beneficiary") and [Account Party's Name] ("Account Party"), as the same may be amended (the "ISC Contract")) has occurred and is continuing with respect to Account Party under the ISC Contract and no Event of Default has occurred and is continuing with respect to the Beneficiary of this Letter of Credit. Wherefore, the undersigned does hereby demand payment of _____ United States Dollars (\$ _____) [or the entire undrawn amount of the Letter of Credit]";
2. "An Early Termination Date (as defined in the Indexed Storage Credit Agreement dated as of _____ between [Beneficiary Name] ("Beneficiary") and [Account Party's Name] ("Account Party"), as the same may be amended (the "ISC Contract")) has occurred and is continuing with respect to Account Party under the ISC Contract and no Event of Default has occurred and is continuing with respect to the Beneficiary of this Letter of Credit. Wherefore, the undersigned does hereby demand payment of _____ United States Dollars (\$ _____) [or the entire undrawn amount of the Letter of Credit]"; or
3. "The expiration date of your Letter of Credit is less than twenty (20) days from the date of this statement, and Account Party under such Letter of Credit is required, but has failed, to provide a replacement letter of credit or other collateral beyond such expiration date in accordance with, and to assure performance of, its obligations under the Indexed Storage Credit Agreement dated as of _____ between [Beneficiary Name] ("Beneficiary") and [Account Party's Name] ("Account Party"), as the same may be amended (the "ISC Contract"). No event of default has occurred and is continuing under the ISC Contract with respect to the Beneficiary. Wherefore, the undersigned does hereby demand payment of _____ United States Dollars (\$ _____) [or the entire undrawn amount of the Letter of Credit]".

This Letter of Credit shall expire on _____. It is a condition of this Letter of Credit that it will be automatically extended for one year periods (to the immediately following anniversary of its then current expiration date) following its then current expiration date, unless at least sixty (60) days before its then current expiration date, we notify you, by electronic means to _____ Attn: _____ that we do not intend to extend this Letter of Credit; provided that the original notice shall be simultaneously forwarded by overnight courier service to you at the above address; provided further that the failure of the courier service to timely deliver shall not affect the efficacy of the notice.

The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid by the Issuing Bank. Partial drawings and multiple presentations are permitted hereunder.

We hereby agree with you that documents drawn under and in compliance with the terms and conditions of this Letter of Credit shall be duly honored upon presentation as specified. Drafts, document(s) and other communications hereunder may be presented or delivered to us by facsimile transmission or electronic means. Presentation of documents to effect a draw by facsimile must be made to the following facsimile number: _____, and confirmed by telephone to us at the following number: _____. Presentation of documents to effect a draw by electronic

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means must be made to the following email address: _____, and confirmed by telephone to us at the following number: _____. In the event of a presentation via facsimile transmission, no mail confirmation is necessary and the facsimile transmission will constitute the operative drawing documents.

This Letter of Credit is subject to International Standby Practices (ISP98), International Chamber of Commerce (“ICC”) Publication No. 590, or any successor publication thereto. This Standby Letter of Credit shall be deemed to be made under the laws of the State of New York, including Article 5 of the Uniform Commercial Code, and shall, as to matters not governed by the International Standby Practices (ISP98), be governed by and construed in accordance with the laws of the State of New York, excluding any choice of law provisions or conflict of law principles which would require reference to the laws of any other jurisdiction.

Rule 3.14(a) of the ISP as it applies to this Irrevocable Standby Letter of Credit is hereby modified to provide as follows:

If on the last Business Day for presentation the place for presentation stated in this Letter of Credit is for any reason closed, then the last day for presentation is automatically extended to the day occurring thirty (30) calendar days after the place for presentation reopens for business.

Rule 3.14(b) of the ISP as it applies to this Irrevocable Standby Letter of Credit is hereby further modified to provide that any alternate place for presentation that we designate must be located in the United States.

We, the Issuing Bank, hereby certify that as of the Date of Issuance of this Irrevocable Standby Letter of Credit our senior unsecured debt is rated “A-” or better by S&P Global Ratings (“S&P”) if rated by S&P, “A3” or better from Moody’s Investors Service (“Moody’s”) if rated by Moody’s, and “A-” or better by Fitch Ratings (“Fitch”) if rated by Fitch. We hereby certify that our senior unsecured debt is rated by at least two of S&P, Moody’s, and Fitch. If affiliated with a foreign bank, we further certify we are a U.S. branch office of such foreign bank and that as of the Date of Issuance of this Letter of Credit, our senior unsecured debt meets the ratings requirement of this paragraph.

As used herein, the term “Business Day” means any day on which Federal Reserve Banks and Branches are open for business, such that payments can be effected on the Fedwire system and the term “Authorized Officer” means President, Treasurer, any Vice President or any Assistant Treasurer.

This Letter of Credit, except as expressly stated herein, is transferable in whole but not in part in accordance with the ICC Publication No. 590. Any transfer request must be presented to us utilizing one of the attached forms of Letter of Full Transfer (Schedules 1-3) together with the original Letter of Credit and original amendments, if any. Transfers to designated foreign nationals and/or specially designated nationals are not permitted as being contrary to the U.S. Treasury Department or foreign assets control regulations.

Except for the transfer, this letter of credit otherwise may not be amended, changed or modified without the express written consent of the Beneficiary, the Issuing Bank, and the Account Party.

We will not make any payment under this Letter of Credit (1) to any entity or person who is subject to the sanctions issued by the United States Department of Commerce, or to whom payment is prohibited by the foreign asset control regulations of the United States Department of the Treasury, or (2) which otherwise is in contravention of United States laws and regulations.

[The Issuing Bank may add specific contact or additional information or administrative-only comments at this point. However, such comments shall not create or alter any rights that vary from the above language].

[BANK SIGNATURE]

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Schedule 1 to Exhibit E-1

LETTER OF FULL TRANSFER

_____, 20____

To:
Bank Address

Ladies/Gentlemen:

RE: Credit Issued By _____

For value received, the undersigned beneficiary hereby irrevocably transfers to:

(Name of Transferee)

(Address)

all rights of the undersigned beneficiary to draw under the above Letter of Credit in its entirety.

By this transfer, all rights of the undersigned beneficiary in such Letter of Credit are transferred to the transferee and the transferee shall have the sole rights as beneficiary thereof, including sole rights relating to any amendments whether increases or extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised directly to the transferee without necessity of any consent of or notice to the undersigned beneficiary.

The original of such Letter of Credit and original amendments, if any, are returned herewith, and we ask you to endorse the Letter of Credit and amendments on the reverse thereof, and forward these direct to the transferee with your customary notice of transfer.

Enclosed is remittance of \$_____ in payment of your transfer commission and in addition thereto we agree to pay to you on demand any expenses which may be incurred by you in connection with this transfer.

Transfer Commission Charges

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SIGNATURE AUTHENTICATED

Yours very truly,

The signatory/ies of this concern is/are authorized to withdraw corporate funds.

(BANK)

Signature of Beneficiary

(Authorized Signature)

SIGNATURE AUTHENTICATED

The signatory/ies of this concern is/are authorized to withdraw corporate funds.

(BANK)

Signature of Transferee

(Authorized Signature)

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Schedule 2 to Exhibit E-1

LETTER OF FULL TRANSFER

Request for a Full Transfer of the below
referenced Standby Letter of Credit

[Name of the Issuing Bank]

Date: _____

Reference: _____

(Issuing Bank’s Letter of Credit Number)

To: _____

“Transferring Bank”

(Advising Bank’s Reference Number, if applicable)

We, the undersigned “First Beneficiary”, hereby irrevocably transfer all of our rights to draw under the above
referenced Letter of Credit (“Credit”) in its entirety to:

(Print Name and complete address of the Transferee) “Second Beneficiary”

Advise through:

(Print Name/address of the Second Beneficiary’s Bank, if known—
if left blank, the Transferring Bank will select the advising bank)

In accordance with UCP 600 Article 38 or ISP 98, Rule 6 regarding transfer of drawing rights (whichever set
of rules the Credit is subject to), all rights of the undersigned First Beneficiary in such Credit are transferred to the Second
Beneficiary. The Second Beneficiary shall have the sole rights as beneficiary thereof, including sole rights relating to
any amendments whether increases or extensions or other amendments and whether now existing or hereafter made. All
amendments are to be advised directly to the Second Beneficiary without necessity of any consent of or notice to the
undersigned First Beneficiary.

The original Credit, including amendments to this date, is attached and the undersigned First Beneficiary
requests that you endorse an acknowledgment of this transfer on the reverse thereof. The undersigned First Beneficiary
requests that you notify the Second Beneficiary of this Credit in such form and manner as you deem appropriate, and the
terms and conditions of the Credit as transferred.

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Enclosed is remittance of \$[] in payment of your transfer commission and in addition thereto we agree to pay to you on demand any expenses which may be incurred by you in connection with this transfer.

Transfer Commission Charges

First Beneficiary represents and warrants to Transferring Bank that (i) our execution, delivery, and performance of this request to Transfer (a) are within our powers and have been duly authorized (b) constitute our legal, valid, binding and enforceable obligation (c) do not contravene any charter provision, by-law, resolution, contract, or other undertaking binding on or affecting us or any of our properties and (d) do not require any notice, filing or other action to, with, or by any governmental authority (ii) we have not presented any demand or request for payment or transfer under the Credit affecting the rights to be transferred, and (iii) the Second Beneficiary's name and address are correct and complete and the transactions underlying the Credit and the requested Transfer do not violate applicable United States or other law, rule or regulation, including without limitation U.S. Foreign Asset Control regulations.

In the event that we fail to remit to you, following your written demand, any funds paid to us despite the Transfer, we agree to reimburse you for your reasonable costs of collecting those funds from us.

The Effective Date shall be the date hereafter on which Transferring Bank effects the requested transfer by acknowledging this request and giving notice thereof to Second Beneficiary.

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WE WAIVE ANY RIGHT TO TRIAL BY JURY THAT WE MAY HAVE IN ANY ACTION OR PROCEEDING RELATING TO OR ARISING OUT OF THIS TRANSFER.

Sincerely Yours

(Print Name of First Beneficiary)

(Print Authorized Signer's Name and Title)

(Authorized Signature)

(Print Second Authorized Signer's Name and Title, if required)

(Second Authorized Signature, if required)

(Telephone Number)

SIGNATURE GUARANTEED Signature(s) with title(s) conform(s) with that/those on file with us for this individual, entity or company and signer(s) is/are authorized to execute this agreement.

(Print Name of Bank)

(Address of Bank)

(City, State, Zip Code)

(Print Name and Title of Authorized Signer)

(Authorized Signature)

(Telephone Number)

(Date)

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Schedule 3 to Exhibit E-1

LETTER OF FULL TRANSFER

_____, 20__

[TRANSFEROR]

Re: Irrevocable Standby Letter of Credit No. _____

We request you to transfer all of our rights as beneficiary under the Letter of Credit referenced above to the Transferee, named below:

Name of Transferee

Address

By this transfer all our rights as the transferor, including all rights to make drawings under the Letter of Credit, go to the transferee. The transferee shall have sole rights as beneficiary, whether existing now or in the future, including sole rights to agree to any amendments, including increases or extensions or other changes. All amendments will be sent directly to the transferee without the necessity of consent by or notice to us.

We enclose the original letter of credit and any amendments. Please indicate your acceptance of our request for the transfer by endorsing the letter of credit and sending it to the transferee with your customary notice of transfer.

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The signature and title at the right conform with those shown in our files as authorized to sign for the beneficiary. Policies governing signature authorization as required for withdrawals from customer accounts shall also be applied to the authorization of signatures on this form. The authorization of the Beneficiary's signature and title on this form also acts to certify that the authorizing financial institution (i) is regulated by a U.S. federal banking agency; (ii) has implemented anti-money laundering policies and procedures that comply with applicable requirements of law, including a Customer Identification Program (CIP) in accordance with Section 326 of the USA PATRIOT Act; (iii) has approved the Beneficiary under its anti-money laundering compliance program; and (iv) acknowledges that [the Transferor] is relying on the foregoing certifications pursuant to 31 C.F.R. Section 103.121 (b)(6)."

NAME OF BANK _____

AUTHORIZED SIGNATURE AND TITLE

PHONE NUMBER

NAME OF TRANSFEROR

NAME OF AUTHORIZED SIGNER AND TITLE

AUTHORIZED SIGNATURE

May 1, 2025

Exhibit E-2 Form of Guaranty (Ameren Illinois Company)

THIS GUARANTY (this “Guaranty”), dated as of _____, 20__, is made by _____ (the “Guarantor”), a _____ organized and existing under the laws of _____, in favor of **Ameren Illinois Company d/b/a Ameren Illinois** (the “Guaranteed Party”), a corporation organized and existing under the laws of the State of Illinois.

Terms not defined herein shall have the meanings given to them in the [_____] dated _____, 20__ (as amended, modified or extended from time to time, the “Agreement”), between the Guaranteed Party and _____, a _____ organized and existing under the laws of _____ (the “Counterparty”). This Guaranty is made by Guarantor in consideration for, and as an inducement for the Guaranteed Party to enter into, the Agreement with the Counterparty. Guarantor, subject to the terms and conditions hereof, hereby unconditionally, irrevocably and absolutely guarantees to the Guaranteed Party the full and prompt payment and performance when due, subject to any applicable grace period, of all payment obligations of the Counterparty to the Guaranteed Party arising out of the Agreement. Without limiting the generality of the foregoing, Guarantor further agrees as follows:

1. The Guarantor, as primary obligor and not merely as surety, hereby irrevocably and unconditionally guarantees the full and prompt payment when due (whether by acceleration or otherwise) of any sums due and payable by the Counterparty as a result of an Event of Default under the Agreement (including, without limitation, indemnities, damages, fees and interest thereon, pursuant to the terms of the Agreement). Notwithstanding anything to the contrary herein, the maximum aggregate liability of the Guarantor under this Guaranty shall in no event exceed _____ provided, that Guarantor will be responsible for all reasonable legal fees, costs, and expenses incurred by the Guaranteed Party in enforcing the obligations under this Guaranty apart from such liability cap. All such principal, interest, obligations and liabilities, collectively, are the “Guaranteed Obligations.” This Guaranty is a guarantee of payment and not of collection.

2. The Guarantor hereby waives diligence, acceleration, notice of acceptance of this Guaranty and notice of any liability to which it may apply, and waives presentment and all demands whatsoever except as noted herein, notice of protest, notice of dishonor or nonpayment of any such liability, suit or taking of other action by the Guaranteed Party against, and any other notice to, any party liable thereon (including the Guarantor or any other guarantor), filing of claims with a court in the event of the insolvency or bankruptcy of the Counterparty, and any right to require a proceeding first against the Counterparty.

3. The Guaranteed Party may, at any time and from time to time, without notice to or consent of the Guarantor, without incurring responsibility to the Guarantor and without impairing or releasing the obligations of the Guarantor hereunder, upon or without any terms or conditions: (a) take or refrain from taking any and all actions with respect to the Guaranteed Obligations, any document or any person (including the Counterparty) that the Guaranteed Party determines in its sole discretion to be necessary or appropriate; (b) take or refrain from taking any action of any kind in respect of any security for any Guaranteed Obligation(s) or liability of the Counterparty to the Guaranteed Party; or (c) compromise or subordinate any Guaranteed Obligation(s) or liability of the Counterparty to the Guaranteed Party including any security therefor.

4. Subject to the terms and conditions hereof, the obligations of the Guarantor under this Guaranty are absolute, irrevocable and unconditional and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by: (a) any extension, renewal, settlement, compromise, waiver, consent, discharge or release by the Counterparty concerning any provision of the Agreement in respect of any Guaranteed Obligations of the Counterparty; (b) the rendering of any judgment against the Counterparty or any action to enforce the same; (c) the existence, or extent of, any release, exchange, surrender, nonperfection or invalidity of any direct or indirect security for any of the Guaranteed Obligations; (d) any modification, amendment, waiver, extension of or supplement to any of the Agreement or the Guaranteed Obligations agreed to from time to time by the Counterparty and the Guaranteed Party; (e) any change in the corporate existence (including its constitution, laws, rules, regulations or powers), structure or ownership of the Counterparty or the Guarantor, or any insolvency, bankruptcy, reorganization or other similar proceedings affecting the Counterparty or its assets, the Guarantor or any other guarantor of any of the Guaranteed Obligations; (f) the existence

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of any claim, set-off or other rights which the Guarantor may have at any time against the Counterparty, the Guaranteed Party or any other corporation or person, whether in connection herewith or in connection with any unrelated transaction; provided that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim; (g) the invalidity, irregularity or unenforceability in whole or in part of the Agreement or any Guaranteed Obligations or any instrument evidencing any Guaranteed Obligations or the absence of any action to enforce the same, or any provision of applicable law or regulation purporting to prohibit payment by the Counterparty of amounts to be paid by it under the Agreement or any of the Guaranteed Obligations; and (h) except for a failure to comply with any applicable statute of limitations, any other act or omission to act or delay of any kind of the Counterparty, any other guarantor, the Guaranteed Party or any other corporation, entity or person or any other event, occurrence or circumstance whatsoever which might, but for the provisions of this paragraph, constitute a legal or equitable discharge of the Guarantor's obligations hereunder.

5. The Guarantor hereby irrevocably waives (a) any right of reimbursement or contribution, and (b) any right of salvage against the Counterparty or any collateral security or guaranty or right of offset held by the Guaranteed Party therefor until all Guaranteed Obligations to the Guaranteed Party pursuant to the Agreement have been irrevocably paid in full.

6. The Guarantor will not exercise any rights which it may acquire by way of subrogation or any other right to payment until all Guaranteed Obligations to the Guaranteed Party pursuant to the Agreement have been irrevocably paid in full.

7. Subject to the terms and conditions hereof, this Guaranty is a continuing one and all liabilities to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. Except for a failure to comply with any applicable statute of limitations, no failure or delay on the part of the Guaranteed Party in exercising any right, power or privilege hereunder, and no course of dealing between the Guarantor and a Guaranteed Party, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights, powers and remedies herein expressly provided are cumulative and not exclusive of any rights, powers or remedies, which a Guaranteed Party would otherwise have. No notice to or demand on the Guarantor in any case shall entitle the Guarantor to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of a Guaranteed Party to any other or further action in any circumstances without notice or demand.

8. This Guaranty shall be binding upon the Guarantor and upon its successors and assigns and shall inure to the benefit of and be enforceable by the Guaranteed Party and its successors and assigns; provided, however, that the Guarantor may not assign or transfer any of its rights or obligations hereunder without the prior written consent of the Guaranteed Party. The assignment rights of the Guaranteed Party will be in accordance with any applicable terms of the Agreement.

9. Neither this Guaranty nor any provision hereof may be changed, waived, discharged or terminated except upon written agreement of the Guaranteed Party and the Guarantor.

10. The Guarantor's liability as guarantor shall continue and remain in full force and effect in the event that all or any part of any payment made hereunder or any obligation or liability guaranteed hereunder is recovered (as a fraudulent conveyance, preference or otherwise) rescinded or must otherwise be reinstated or returned due to bankruptcy or insolvency laws or otherwise. If claim is ever made upon the Guaranteed Party for repayment or recovery of any amount or amounts received from the Guarantor or the Counterparty in payment or on account of any of the Guaranteed Obligations and the Guaranteed Party repays all or part of such amount by reason of (a) any judgment, decree or order of any court or administrative body having jurisdiction over such payee or any of its property, or (b) any settlement or compromise of any such claim effected by such payee with any such claimant (including the Guarantor), then and in such event the Guarantor agrees that any such judgment, decree, order, settlement or compromise shall be binding upon it, notwithstanding any revocation hereof or the cancellation of the Agreement or other instrument evidencing any liability of the Guarantor, and the Guarantor shall be and remain liable to the Guaranteed Party hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by the Guaranteed Party.

11. Subject to Paragraph 10, this Guaranty shall remain in full force and effect until all Guaranteed Obligations have been fully and finally performed, at which point it will expire. The Guarantor may terminate this Guaranty upon thirty (30) days prior written notice to the Guaranteed Party which termination shall be effective only upon receipt by the Guaranteed Party of alternative means of security or credit support, as specified in the Agreement and in a form

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reasonably acceptable to the Guaranteed Party. Upon the effectiveness of any such expiration or termination, the Guarantor shall have no further liability under this Guaranty, except with respect to the Guaranteed Obligations arising or created prior to the time the expiration or termination is effective, which Guaranteed Obligations shall remain guaranteed pursuant to the terms of this Guaranty until finally and fully performed.

12. All notices and other communications hereunder shall be made at the addresses by hand delivery, by the next day delivery service effective upon receipt, or by certified mail return receipt requested (effective upon scheduled weekday delivery day) or electronic means (effective upon receipt of evidence that the electronic communication was received)

If to the Guarantor:

[To be completed]

If to the Guaranteed Party:

[To be completed]

13. The Guarantor represents and warrants that: (a) it is duly organized and validly existing under the laws of the jurisdiction in which it was organized and has the power and authority to execute, deliver, and perform this Guaranty; (b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over the Guarantor is required on the part of the Guarantor for the execution, delivery and performance of this Guaranty except for those already made or obtained; (c) this Guaranty constitutes a valid and legally binding agreement of the Guarantor, and is enforceable against the Guarantor in accordance with its terms; and (d) the execution, delivery and performance of this Guaranty by the Guarantor have been and remain duly authorized by all necessary corporate or comparable action and do not contravene any provision of its constituent documents or any law, regulation or contractual restriction binding on it or its assets.

14. This Guaranty and the rights and obligations of the Counterparty and the Guarantor hereunder shall be construed in accordance with and governed by the laws of the State of New York. The Guarantor and Guaranteed Party agree and irrevocably submit to the exclusive jurisdiction of state and federal courts located in the Northern District of the State of Illinois over any disputes arising or relating to this Guaranty and waive and agree not to assert as a defense any objections to venue or inconvenient forum. The Guarantor and the Guaranteed Party consent to and grant any such court jurisdiction over the person of such party and over the subject matter of such dispute and agree that summons or other legal process in connection with any such action or proceeding shall be deemed properly and effectively served when sent by certified U.S. mail, return receipt requested, to the address of the other party set forth in Paragraph 12 hereof, or in such other manner as may be permitted by law. The Guarantor and the Guaranteed Party each hereby irrevocably waives any and all rights to trial by jury with respect to any legal proceeding arising out of or relating to this Guaranty.

15. This writing is the complete and exclusive statement of the terms of this Guaranty and supersedes all prior oral or written representations, understandings, and agreements between the Guaranteed Party and the Guarantor with respect to subject matter hereof. The Guaranteed Party and the Guarantor agree that there are no conditions to the full effectiveness of this Guaranty.

16. Every provision of this Guaranty is intended to be severable. If any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

17. If the Guarantor is a trust: no trustee of the Guarantor shall be held to any liability whatsoever for any obligation under this Guaranty, and this Guaranty shall not be enforceable against any such trustee in their or its, his or her individual capacities or capacity; and this Guaranty shall be enforceable against the trustees of the Guarantor only as such, and every person, firm, association, trust or corporation having any claim or demand arising under this Guaranty and relating to the Guarantor or any trustee of the Guarantor shall look solely to the trust estate of the Guarantor for the payment or satisfaction thereof.

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IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed and delivered as of the date first written above to be effective as of the earliest effective date of any of the Agreement.

[GUARANTOR]

By: _____

Title: _____

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EXHIBIT E-2

Form of Guaranty (Commonwealth Edison Company)

THIS GUARANTY (this “Guaranty”), dated as of _____, 20__, is made by _____ (the “Guarantor”), a _____ organized and existing under the laws of _____, in favor of Commonwealth Edison Company (the “Guaranteed Party”), a corporation organized and existing under the laws of the State of Illinois.

Terms not defined herein shall have the meanings given to them in the Indexed Storage Credit Agreement dated _____, 20__ (as amended, modified or extended from time to time, the “Agreement”), between the Guaranteed Party and _____, a _____ organized and existing under the laws of _____ (the “Seller”). This Guaranty is made by Guarantor in consideration for, and as an inducement for the Guaranteed Party to enter into, the Agreement entered into with the Seller pursuant to the RFP. Guarantor, subject to the terms and conditions hereof, hereby unconditionally, irrevocably and absolutely guarantees to the Guaranteed Party, upon written demand, the full and prompt payment when due, subject to any applicable grace period, of all payment obligations of the Seller to the Guaranteed Party arising out of the Agreement. Without limiting the generality of the foregoing, Guarantor further agrees as follows:

1. The Guarantor, as primary obligor and not merely as surety, hereby irrevocably and unconditionally guarantees the full and prompt payment when due (whether by acceleration or otherwise) of any sums due and payable by the Seller as a result of an Event of Default under the Agreement (including, without limitation, indemnities, damages, fees and interest thereon, pursuant to the terms of the Agreement). Notwithstanding anything to the contrary herein, the maximum aggregate liability of the Guarantor under this Guaranty shall

Option 1 [in no event exceed \$____.]

Option 2 [in no event exceed the Collateral Requirement less the value of other liquid securities posted by the Seller under the Agreement.]

All such principal, interest, obligations and liabilities, collectively, are the “Guaranteed Obligations”. This Guaranty is a guarantee of payment and not of collection.

2. The Guarantor hereby waives diligence, acceleration, notice of acceptance of this Guaranty and notice of any liability to which it may apply, and waives presentment and all demands whatsoever except as noted herein, notice of protest, notice of dishonor or nonpayment of any such liability, suit or taking of other action by Guaranteed Party against, and any other notice to, any party liable thereon (including the Guarantor), filing of claims with a court in the event of the insolvency or bankruptcy of the Seller, and any right to require a proceeding first against the Seller.
3. The Guaranteed Party may, at any time and from time to time, without notice to or consent of the Guarantor, without incurring responsibility to the Guarantor and without impairing or releasing the obligations of the Guarantor hereunder, upon or without any terms or conditions: (a) take or refrain from taking any and all actions with respect to the Guaranteed Obligations, the Agreement with respect to the Guaranteed Obligations or any person (including the Seller) that the Guaranteed Party determines in its sole discretion to be necessary or appropriate; (b) take or refrain from taking any action of any kind in respect of any security for any Guaranteed Obligation(s) or liability of the Seller to the Guaranteed Party; or (c) compromise or subordinate any Guaranteed Obligation(s) or liability of the Seller to the Guaranteed Party including any security therefor.
4. Subject to the terms and conditions hereof, the obligations of the Guarantor under this Guaranty are absolute, irrevocable and unconditional and, shall not be released, discharged or otherwise affected by: (a) any extension, renewal, settlement, compromise, waiver, consent, discharge or release by the Seller concerning any provision of the Agreement governing any of the Guaranteed Obligations of the Seller; (b) the rendering of any judgment against the Seller or any action to enforce the same; (c) the existence, or extent of, any release, exchange, surrender, non-perfection or invalidity of any direct or indirect security for any of the Guaranteed Obligations; (d) any modification, amendment, waiver, extension of or supplement to the Agreement or the Guaranteed Obligations agreed to from time to time by the Seller and the Guaranteed Party; (e) any change in the corporate existence (including its

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constitution, laws, rules, regulations or powers), structure or ownership of the Seller or the Guarantor, or any insolvency, bankruptcy, reorganization or other similar proceedings affecting the Seller, its assets or the Guarantor; (f) the existence of any claim, set-off or other rights which the Guarantor may have at any time against the Seller, the Guaranteed Party, whether in connection herewith or in connection with any unrelated transaction; provided that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim; and (g) the invalidity, irregularity or unenforceability in whole or in part of the Agreement or any Guaranteed Obligations or any instrument evidencing any Guaranteed Obligations or the absence of any action to enforce the same.

5. The Guarantor hereby irrevocably waives (a) any right of reimbursement or contribution, and (b) any right of salvage against the Seller or any collateral security or guaranty or right of offset held by the Guaranteed Party therefor until such time as all Guaranteed Obligations are paid in full.
6. The Guarantor will not exercise any rights, which it may acquire by way of subrogation until all Guaranteed Obligations to the Guaranteed Party pursuant to the Agreement have been paid in full.
7. Subject to the terms and conditions hereof, this Guaranty is a continuing Guaranty and all liabilities to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. Except for a failure to comply with any applicable statute of limitations, no failure or delay on the part of the Guaranteed Party in exercising any right, power or privilege hereunder, and no course of dealing between the Guarantor and the Guaranteed Party, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights, powers and remedies herein expressly provided are cumulative and not exclusive of any rights, powers or remedies, which the Guaranteed Party would otherwise have. No notice to or demand on the Guarantor in any case shall entitle the Guarantor to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Guaranteed Party to any other or further action in any circumstances without notice or demand.
8. This Guaranty shall be binding upon the Guarantor and upon its successors and assigns and shall inure to the benefit of and be enforceable by the Guaranteed Party and its successors and assigns; provided, however, that the Guarantor may not assign or transfer any of its rights or obligations hereunder without the prior written consent of the Guaranteed Party, which consent shall not be unreasonably withheld or delayed; and provided further that the Guarantor may, without the prior written consent of the Guaranteed Party, assign all of its rights and obligations under this Guaranty to an entity that has succeeded to the Guarantor by merger or by purchase of all or substantially all of the assets of the Guarantor and, in either case, has expressly assumed in writing all of the obligations of the Guarantor under this Guaranty. The assignment rights of the Guaranteed Party will be in accordance with any applicable terms of the Agreement.
9. Other than as provided in this Guaranty, neither this Guaranty nor any provision hereof may be changed, waived, discharged or terminated except upon written agreement of the Guaranteed Party and the Guarantor.
10. The Guarantor's liability as guarantor shall continue and remain in full force and effect in the event that all or any part of any payment made hereunder or any obligation or liability guaranteed hereunder is recovered (as a fraudulent conveyance, preference or otherwise) rescinded or must otherwise be reinstated or returned due to bankruptcy or insolvency laws or otherwise. If claim is ever made upon the Guaranteed Party for repayment or recovery of any amount or amounts received from the Guarantor or the Seller in payment or on account of any of the Guaranteed Obligations and the Guaranteed Party repays all or part of such amount by reason of (a) any judgment, decree or order of any court or administrative body having jurisdiction over such payee or any of its property, or (b) any settlement or compromise of any such claim effected by such payee with any such claimant (including the Guarantor), then and in such event the Guarantor agrees that any such judgment, decree, order, settlement or compromise shall be binding upon it, notwithstanding any revocation hereof or the cancellation of the Agreement or other instrument evidencing any liability of the Guarantor, and the Guarantor shall be and remain liable to the Guaranteed Party hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by the Guaranteed Party.
11. Subject to Paragraph 10, this Guaranty shall remain in full force and effect until all Guaranteed Obligations have been fully and finally paid, at which point it will expire. The Guarantor may terminate this Guaranty upon thirty (30)

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days prior written notice to the Guaranteed Party which termination shall be effective only upon receipt by the Guaranteed Party of alternative means of security or credit support, as specified in the Agreement and in a form reasonably acceptable to the Guaranteed Party. Upon the effectiveness of any such expiration or termination, the Guarantor shall have no further liability under this Guaranty, except with respect to the Guaranteed Obligations arising or created prior to the time the expiration or termination is effective, which Guaranteed Obligations shall remain guaranteed pursuant to the terms of this Guaranty until finally and fully paid.

12. All notices and other communications hereunder shall be made at the addresses by hand delivery, by next day delivery service effective upon receipt, or by certified mail return receipt requested (effective upon scheduled weekday delivery day) or electronic means (effective upon receipt of evidence that the electronic communication was received)

If to the Guarantor: [To be completed with a U.S. address. If the Guarantor is not domiciled in the U.S., the address for its U.S.-based agent for service of process must be provided.]

If to the Guaranteed Party: [To be completed]

13. The Guarantor represents and warrants that: (a) it is duly organized and validly existing under the laws of the jurisdiction in which it was organized and has the power and authority to execute, deliver, and perform this Guaranty; (b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over the Guarantor is required on the part of the Guarantor for the execution, delivery and performance of this Guaranty except for those already made or obtained; (c) this Guaranty constitutes a valid and legally binding agreement of the Guarantor, and is enforceable against the Guarantor, except as such enforceability may be limited by bankruptcy, insolvency, receivership and other similar laws affecting the rights of creditors generally, or by general principles of equity; and (d) the execution, delivery and performance of this Guaranty by the Guarantor have been and remain duly authorized by all necessary corporate or comparable action and do not contravene any provision of its _____ [insert appropriate corporate organizational document, such as Declaration of Trust, Limited Liability Company Agreement, Articles of Incorporation and by-laws, Certificate of Incorporation and by-laws, or constitutional documents] or any law, regulation or contractual restriction binding on it or its assets.
14. This Guaranty and the rights and obligations of the Seller and the Guarantor hereunder shall be construed in accordance with and governed by the laws of the State of Illinois (without regard to conflict of law principles that would require the application of the substantive law of any other jurisdiction). The Guarantor and Guaranteed Party jointly and severally agree and irrevocably submit to the exclusive jurisdiction of state and federal courts located in the State of Illinois over any disputes arising or relating to this Guaranty and waive and agree not to assert as a defense any objections to venue or inconvenient forum. The Guarantor and the Guaranteed Party consent to and grant any such court jurisdiction over the person of such party and over the subject matter of such dispute and agree that summons or other legal process in connection with any such action or proceeding shall be deemed properly and effectively served when sent by certified U.S. mail, return receipt requested, to the address of the other party set forth in Paragraph 12 hereof, or in such other manner as may be permitted by law. The Guarantor and the Guaranteed Party each hereby irrevocably waives any and all rights to trial by jury with respect to any legal proceeding arising out of or relating to this Guaranty.
15. This writing is the complete and exclusive statement of the terms of this Guaranty and supersedes all prior oral or written representations, understandings, and agreement(s) between the Guaranteed Party and the Guarantor with respect to subject matter hereof. The Guaranteed Party and the Guarantor agree that there are no conditions to the full effectiveness of this Guaranty.

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- 16. Every provision of this Guaranty is intended to be severable. If any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.
- 17. Notwithstanding anything to the contrary contained herein or in the Agreement, but excepting any express remedy set for in the Agreement, the Guarantor shall in no event be required to pay or be liable to the Guaranteed Party for any consequential, indirect or punitive damages, opportunity costs or lost profits.
- 18. Nothing herein is intended to deny to the Guarantor, and it is expressly agreed that the Guarantor shall have and may assert, any and all of the defenses, set-offs, counterclaims and other rights which Seller is or may be entitled arising from or out of the Agreement or otherwise, except for defenses arising out of the bankruptcy, insolvency, dissolution or liquidation of Seller.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed and delivered as of the date first written above to be effective as of the earliest effective date of any of the Agreement.

Accepted and Agreed to:

[GUARANTOR]

Signature: _____

Name: _____

Title: _____

Date: _____

Acknowledged and Accepted:

Commonwealth Edison Company

Signature: _____

Name: _____

Title: _____

Date: _____

EXHIBIT E-2b
Schedule 1 – Foreign Guarantor Requirement
(Commonwealth Edison Company)

An entity that is proposing to serve as a Guarantor under a Guaranty, but that has not been formed or organized under the laws of a state of the United States or the District of Columbia, must meet the following additional requirements in order to be recognized as an acceptable Guarantor:

1. Such entity must deliver a legal opinion (“*Opinion*”) of a law firm or a counsel, in either case who is not an employee of such entity or any of its affiliates or subsidiaries and who is authorized and qualified to practice law and render legal opinions in the foreign jurisdiction in which such entity is formed or organized. The Opinion shall meet the minimum content requirements specified below.
2. Such entity must deliver the sworn certificate of the corporate secretary (or similar or comparable officer) of such entity that the person executing the Guaranty on behalf of such entity has the authority to execute the Guaranty on behalf of such entity and that the governing board of such entity has approved the execution and delivery of the Guaranty.
3. Such entity must deliver the sworn certificate of the corporate secretary (or similar or comparable officer) of such entity that such entity has been authorized by its governing board to enter into agreements of the same type as the Guaranty.
4. Such entity must maintain an agent for acceptance of service of process in the United States. By executing and delivering the Guaranty, such entity agrees that service of any process in any claim or proceeding relating to the Guaranty may be made or served upon such entity by United States mail (postage prepaid).
5. The country in which such entity is domiciled must have a long-term sovereign (or equivalent) rating of AA+/Aa1 from at least two of the following rating agencies: S&P, Moody’s or Fitch. Each rating agency’s sovereign rating for the domicile country will be considered to be the lowest of: country ceiling, senior unsecured government debt, long-term foreign currency sovereign rating, long-term local currency sovereign rating, or other equivalent measure.
6. Such entity must pay for all expenses incurred by Party B related to reviewing and acceptance of the documents to be delivered with the Guaranty as provided in paragraphs 1 to 3 (inclusive) above; provided, however, that such payment shall not exceed \$10,000.

Once the Opinion has been provided and accepted as sufficient by Party B, in lieu of repeating the above process, the proposed Guarantor may re-certify its status in a subsequent procurement event if there have been no changes that would have altered that Opinion. To re-certify, the proposed Guarantor must provide a current letter by its Corporate Secretary (or equal / higher Corporate Officer) that it certifies that there have been no changes in its status which would adversely affect the enforceability of the Guaranty, since the time that the original Opinion was rendered.

Party B shall have sole and absolute discretion, without liability or recourse to the proposed Guarantor or Party A, to evaluate the sufficiency of the documents submitted by such proposed Guarantor pursuant to the requirements of this Schedule 2B. The following minimum requirements are to be met by the Opinion mentioned in paragraph 1 above:

- (a) The Opinion must be in English.
- (b) The Opinion should contain a recitation of the documents that have been reviewed by such counsel as a basis for the opinions expressed. Such recitations should include statements that (i) counsel has reviewed the organizational documents for the entity in question and has reviewed the legal requirements and agreement(s) in question (i.e., the Indexed Storage Credit Agreement, the Guaranty, the Rules and associated Appendices, Exhibits and Schedules), (ii) counsel has considered any necessary corporate, regulatory or governmental authorizations or approvals that may be required as a condition to the entity entering into and performing the Guaranty and (iii) counsel has reviewed

evidence provided by the entity, which evidence has been satisfactorily identified or certified to counsel, of such corporate, regulatory and governmental authorizations or approvals.

- (c) Based upon the review described in the preceding paragraph (b), the Opinion should reach the legal conclusions that: (i) under the law of the jurisdiction where the entity is organized, the necessary steps have been taken to cause the Guaranty, when executed and delivered on behalf of the entity, to become a valid and enforceable obligation of that entity, (ii) the Guaranty, when executed and delivered on behalf of the entity, will be, to the extent that the law of the entity's jurisdiction of organization is applicable to the enforcement of the entity's obligations thereunder, a valid and enforceable obligation of that entity, enforceable against it in accordance with its terms, subject to any enumerated customary exceptions under the law of such jurisdiction, and (iii) under law of the jurisdiction where the entity is organized, the choice of [Illinois][New York] law to govern the Guaranty is valid and enforceable against such entity.

In rendering its opinions within the Opinion, counsel may state that it is not rendering any opinion with respect to the laws of the State of [Illinois][New York], which govern the Guaranty.

The following text provides an illustration of how the requirements in paragraphs (a) through (c) (inclusive) above might be presented in an opinion of counsel:

[Description of transaction background/reason for delivering opinion]

We are familiar with the proceedings taken by [entity] in connection with the Guaranty and the transactions contemplated thereby. In connection with the opinions hereinafter expressed, we have reviewed originals, or copies of originals certified to our satisfaction, of (i) [describe the organizational or governing documents of the entity], (ii) a certificate of the [corporate secretary (or similar or comparable officer)] of [entity] that the person executing the Guaranty on behalf of [entity] has the authority to execute and deliver the Guaranty and that the governing board of [entity] has approved the execution and delivery of the Guaranty, (iii) a certificate of the [corporate secretary (or similar or comparable officer)] of [entity] that [entity] has been authorized by its governing board to enter into agreements of the same type as the Guaranty, (iv) the Guaranty, (v) the ISC Contract, and (vi) [describe any other relevant documents]. We have considered the governmental or regulatory approvals that may be applicable to the execution, delivery and performance of the Guaranty by [entity]. We have also examined such questions of law and have satisfied ourselves as to such matters of fact as we have considered relevant and necessary as a basis for the opinions hereinafter expressed.

Based upon the foregoing, and subject to the assumptions, limitations and qualifications hereinafter stated, it is our opinion that:

1. Under the law of [jurisdiction of organization or formation], [entity] has taken all necessary action to cause the Guaranty, when executed and delivered on behalf of [entity], to become a valid and binding obligation of [entity]
2. The Guaranty, when executed and delivered on behalf of [entity], will be, to the extent that the law of [jurisdiction of organization or formation] is applicable to the enforcement of [entity's] obligations thereunder, the valid and binding obligation of [entity], enforceable against [entity] in accordance with its terms, except as such enforceability may be affected by [describe any exceptions].
3. The choice of the parties to the Guaranty to have the laws of the State of [Illinois][New York] govern the enforceability of the parties' obligations under the Guaranty is valid and enforceable against [entity] under the laws of [jurisdiction of organization or formation].

[Concluding paragraphs and signature]

EXHIBIT F
Examples

(If there are any inconsistencies between the provisions of the Agreement and the information in these examples, the provisions of the Agreement shall govern.)

Exhibit F-1
Example of Payment Calculation
(All Quantities are Illustrative only)

Vintage Month: January 2027

Date	ISC_a	ISC Reference Energy Arbitrage Price (\$/MWh)	ISC Reference Capacity Price (\$/MWh)	ISC Index Reference Price (\$/MWh)	Strike Price (\$/MWh)	ISC Daily Value (\$/MWh)	ISC Daily Payment Amount (\$)
	<i>q</i>	<i>e</i>	<i>c</i>	<i>r = e + c</i>	<i>s</i>	<i>p = s - r</i>	<i>D = p * q</i>
1/1/2027	0	35	21	56	70	14	0.00
1/2/2027	400	47	21	68	70	2	800.00
1/3/2027	380	41	21	62	70	8	3,040.00
1/4/2027	320	50	21	71	70	-1	-320.00
1/5/2027	266.667	55	21	76	70	-6	-1,600.00
...
ISC Monthly Payment Amount (Total)							...

May 1, 2025

The table below provides a summary of daily statistics of a hypothetical Project, with an assumed Contract Capacity of 100 MW. The figures shown have been aggregated from the hourly availability report to a daily level for illustrative purposes. For the actual pro forma hourly availability report, please refer to Exhibit C. For accounting of the number of ISCs credited, please refer to Section 4.1 of the Agreement.

Date	Average Available Power Capacity (MW) for a given day⁶	Notes⁷	ISC_d
1/1/2027	0 MW	The entire Project was not Available for the entire day; no Planned Outages	0
1/2/2027	100 MW	The entire Project was Available for the entire day; no Planned Outages	400
1/3/2027	95 MW	The Project was partially Available; no Planned Outages	380
1/4/2027	80 MW	The Project was partially Available; no Planned Outages	320
1/5/2027	0 MW	The entire Project was not Available for the entire day; 8 hours due to Planned Outage; rest 16 hours due to operational reasons not excused by Planned Outage ⁸	266.667
...

⁶ This is calculated as (Sum of Available power capacity) / (Number of hours), where hourly average Available power capacity is referred in hourly availability report. Please see the below note for ISC_d for details as referenced from Section 4.1 of the Agreement.

⁷ To provide context for the example, for illustrative purposes only.

⁸ Given the ISC Daily Value is negative for 1/5/2027 as illustrated on the prior table, Seller is credited four (4) ISCs per MW of Contract Capacity unless excused by Planned Outages. In this example, the quantity of ISCs generated is 266.667 ISCs pursuant to Section 4.1. Should the ISC Daily Value be positive, the quantity of ISC generated for such day would be zero (0) ISC.

Parameter	Notes for Calculation
ISC _d	<p>(a) For each day in which the ISC Daily Value is negative, Seller is credited four (4) ISCs per MW of Contract Capacity unless excused by Planned Outages. On a day on which a Planned Outage occurred, the number of ISCs credited shall be prorated based on the MW of Contract Capacity not affected by the Planned Outage and number of hours not affected by the Planned Outage using the following formula:</p> $ISC_d = 4 * \frac{\sum_{n=1}^{NumHrs} (Contract\ Capacity - Planned\ Outage_n)}{NumHrs}$ <p><i>NumHrs</i>: twenty-four (24), except in days affected by transitions to or from daylight savings, where <i>NumHrs</i> is twenty-three (23) or twenty-five (25), as appropriate.</p> <p><i>Planned Outage_n</i>: The size in MW of Planned Outage applicable in hour <i>n</i> in day <i>d</i>; in cases where the MW size of the Planned Outage is not uniform within hour <i>n</i>, the average MW size of the Planned Outage during hour <i>n</i> shall be used in this formula, rounded to the third decimal place. Seller will report <i>Planned Outage_n</i> in Seller’s hourly availability report; in no case shall <i>Planned Outage_n</i> exceed Contract Capacity; <i>Planned Outage_n</i> equals zero (0) for any hours not part of a Planned Outage.</p> <p>(b) For each day in which the ISC Daily Value is positive, Seller is credited four (4) ISCs per MW of Contract Capacity, which shall be prorated based on the available MW of the Project (the amount of available MW is the MW power capacity of the Project that is Available, or in the case of partial availability the MW power capacity of the portion of the Project that is Available), and number of hours the Project is Available, using the following formula:</p> $ISC_d = 4 * \frac{\sum_{n=1}^{NumHrs} (Available\ Capacity_n)}{NumHrs}$ <p><i>Available Capacity_n</i>: The amount in MW of power capacity of the Project that is Available in hour <i>n</i> in day <i>d</i>; in cases where the MW size of available power capacity is not uniform within hour <i>n</i>, the average MW size of available power capacity during hour <i>n</i> shall be used in this formula; rounded to the third decimal place. Seller will report <i>Available Capacity_n</i> in Seller’s hourly availability report; in no case shall</p>

Parameter	Notes for Calculation
	<i>Available Capacity_n exceed Contract Capacity.</i>
ISC Reference Energy Arbitrage Price (\$/MWh)	<p><i>ISC Reference Energy Arbitrage Price in \$/MWh for a given day d:</i></p> $\frac{\sum_{n=1}^4 \max (T_n - \left(\frac{B_n}{0.85}\right), 0)}{4}$ <p><i>T_n: Locational Marginal Price for nth top-priced hour in day d</i> <i>B_n: Locational Marginal Price for nth bottom-priced hour in day d</i></p>
ISC Reference Capacity Price (\$/MWh)	<p><i>ISC Reference Capacity Price =</i> <i>ELCC * [MISO's planning resource auction clearing price applicable to the ISC Delivery Point and applicable to the Vintage Month divided by 4 hours / PJM's base residual auction resource clearing price applicable to the ISC Delivery Point and applicable to the Vintage Month divided by 4 hours]</i></p>
ISC Index Reference Price (\$/MWh)	<p><i>ISC Index Reference Price =</i> <i>ISC Reference Energy Arbitrage Price + ISC Reference Capacity Price</i></p>
Strike Price (\$/MWh)	<p><i>Bid price as offered by Seller through the RFP and as indicated in the Product Order</i></p>
ISC Daily Value (\$/MWh)	<p><i>ISC Daily Value = Strike Price - ISC Index Reference Price</i></p>
ISC Daily Payment Amount (\$)	<p><i>ISC Daily Payment Amount = ISC Daily Value * ISC_d</i></p>
ISC Monthly Payment Amount (\$)	<p><i>ISC Monthly Payment Amount is the sum of ISC Daily Payment Amount for the Vintage Month.</i></p>

Exhibit F-2
Example of ISC Reference Energy Arbitrage Price Calculation
(All Quantities are Illustrative only)

The Location Marginal Prices of day d are given in Table 1 and the ISC Reference Energy Arbitrage Price is calculated in Table 2.

Table 1. Locational marginal price of day d

Hour	LMP (\$/MWh)	Hour	LMP (\$/MWh)
1	35.00	13	50.50
is2	45.00	14	52.25
3	47.25	15	56.00
4	47.40	16	65.00
5	47.50	17	61.00
6	48.00	18	54.00
7	48.10	19	53.00
8	48.50	20	52.00
9	49.25	21	51.00
10	49.50	22	49.00
11	49.75	23	47.00
12	50.00	24	44.00

Table 2. Calculation of ISC Reference Energy Arbitrage Price for day d

Rank	T_n	B_n	$T_n - \left(\frac{B_n}{0.85}\right)$	$\max \left(T_n - \left(\frac{B_n}{0.85}\right), 0\right)$
1	65.00	35.00	23.82	23.82
2	61.00	44.00	9.24	9.24
3	56.00	45.00	3.06	3.06
4	54.00	47.00	-1.29	0.00
Total				36.12
Total / 4 (rounded to 2 decimal places)				9.03

Note: Top four T_n hours are Hour 16, 17, 15, and 18, respectively, and Bottom four B_n hours are Hour 1, 24, 2, and 23, respectively, in this example.

May 1, 2025

EXHIBIT G
**Cybersecurity Baselines for Electric Distribution Systems and Distributed
Energy Resources**

(Attached)

CYBERSECURITY BASELINES FOR ELECTRIC DISTRIBUTION SYSTEMS AND DER

FEBRUARY 2024



U.S. DEPARTMENT OF
ENERGY



NARUC

National Association of Regulatory Utility Commissioners

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Executive Summary

The National Association of Regulatory Utility Commissioners (NARUC) has partnered with the Department of Energy (DOE) to develop a set of cybersecurity baselines for electric distribution systems and the distributed energy resources (DERs) that connect to them. Cybersecurity is an integral underpinning of power system resilience, and this initiative builds on work that states have undertaken over the last decade to mitigate cybersecurity risk across their critical infrastructures.

Electric distribution system stakeholders recognize the importance of enhancing grid reliability, resilience, and security. Indeed, addressing cybersecurity risk is essential as electric distribution systems continue to evolve, spurred by new technologies and operational models as well as the ever-increasing threat of cyber-attacks. The National Cybersecurity Strategy, issued in 2023, also directed the U.S. Department of Energy (DOE) to “promote cybersecurity for electric distribution and distributed energy resources (DERs) in partnership with industry, states, federal regulators, Congress, and other agencies.” This NARUC/DOE initiative complements industry and government efforts by providing cybersecurity baselines, tailored for electric distribution systems and the DERs that connect to them, creating a common starting point for cyber risk reduction activities.

These baselines, coupled with the forthcoming implementation guidance, are intended to be a resource for state Public Utility Commissions, electric distribution utilities, and DER operators and aggregators. They encourage alignment across states that choose to adopt the baselines to mitigate cybersecurity risk and enhance grid security. NARUC convened a Steering Group of regulatory, cyber, and industry experts from across the sector to help execute this challenging task. The development process also included multiple stakeholder review and comment cycles to ensure a wide range of perspectives were considered.

This initiative is divided into two phases:

- **Phase 1:** Development of a vetted set of **Cybersecurity Baselines** for Electric Distribution systems and the DERs that connect to them. These baselines define the cybersecurity controls that should be implemented, without specifying which procedures or technologies to use. It is expected that the baselines may be used by regulatory bodies and distribution utilities as a potential framework for developing their own cybersecurity requirements in conjunction with Phase 2 implementation strategies.
- **Phase 2:** Preparation of **Implementation Strategies and Adoption Guidelines** to support electric distribution system stakeholders as they continue to develop and refine their cybersecurity requirements. These Implementation Guidelines will include recommendations for assessing cybersecurity risks, prioritizing the assets to which the cybersecurity baselines might apply, and prioritizing the order in which the baselines might be implemented based on cyber risk assessments. The guidance will also address risk-based implementation timelines. The Implementation Strategies and Adoption Guidelines are aimed at Public Utility Commissions, utilities, and DER operators who wish to adopt the baselines. Phase 2 is expected to be completed over the course of the next year.

The Phase 1 Cybersecurity Baselines are intended to be used in concert with Phase 2 Implementation Guidance. Implementing the baselines without thoughtful consideration of scope, priorities, sequencing, and risk may result in the inefficient use of limited resources on the part of Commissions, distribution utilities, and DER providers and aggregators, thus diluting the effectiveness of cyber protections being applied where they matter most. Publishing the baselines now while undertaking Phase 2 allows for broader awareness of their development and provides an opportunity for commissions to engage in discussions with key stakeholders within their jurisdictions as the implementation guidance is being designed.

Phase 2 will tailor cybersecurity controls that focus on addressing risk to the different stakeholders that participate in the distribution system. The number of distribution system participants continues to increase, and each participant faces different types of risk based on entity sizes, architectures, components, and control mechanisms of power systems. Those risks will evolve over time as the power systems change, and as technologies advance and become more pervasive. Phase 2 will develop implementation guidelines based on these and other factors. As Phase 2 develops, enhancements to the baselines may be suggested.

Development of Cybersecurity Baselines

Rather than starting from scratch, NARUC, DOE, and the Steering Group recognized the importance of leveraging existing resources when developing these baselines. The Department of Homeland Security Cybersecurity and Infrastructure Security Agency's (DHS/CISA) Cybersecurity Performance Goals (CPGs) were selected as the starting point because they are risk-informed, and intended to be tailored to each particular industry's use. The CPGs were created to inform protections that could be deployed by sectors that had not already adopted more sophisticated and robust security practices. Work done during Phase 1 tailors the CPGs for electric distribution systems and the DERs that connect to them. Tailoring of the CPGs took into consideration existing cybersecurity frameworks, standards, and best practices, especially those within the electric sector. A key focus for the steering group was to promote risk-informed cybersecurity practices that, when applied, produce demonstrable cybersecurity benefits. Phase 2 will continue this risk informed focus and provide guidance, designed to help states and others interested in effectively implementing the baselines to achieve risk-informed, cost-effective cybersecurity objectives across their electric distribution systems.

Cybersecurity Baselines for Electric Distribution Systems and DER

1.A Asset Inventory

Maintain an inventory of critical IT and digital OT assets, using the organization's risk-based criteria for classifying the criticality of assets that are essential to the delivery of energy.

1.B Organizational Cybersecurity Leadership

1.C OT Cybersecurity Leadership

1.D Improving IT and OT Cybersecurity Relationships

Designate a senior-level role/title/position with explicit accountability for governance, planning, resourcing, and executing IT and OT cybersecurity activities. Identify the senior-level role(s)/title(s)/position(s) with delegated responsibility for planning, allocating resources, managing, and executing cybersecurity activities while promoting a culture of cybersecurity.

1.E Mitigating Known Vulnerabilities

Establish and implement a vulnerability management plan to address known exploited vulnerabilities, prioritizing critical assets identified in 1.A. Identify compensating controls for critical assets where removing the vulnerability is either not possible or may substantially compromise availability or safety.

1.F

Third-Party Validation of Cybersecurity Control Effectiveness

Develop and implement a plan for periodic independent validation of the organization's cybersecurity controls and mitigate findings in a timely, risk-informed manner.

1.G

Supply Chain Incident Reporting

1.H

Supply Chain Vulnerability Disclosure

As new procurements are made for critical devices or services, make a good-faith effort to negotiate procurement documents and contracts stipulating that vendors and/or service providers:

Notify the procuring customer of security incidents within a risk-informed time frame, as determined by the organization.

Notify the procuring customer of confirmed security vulnerabilities in their assets within a risk-informed time frame, as determined by the organization

1.I

Vendor/ Supplier Cybersecurity Requirements

Include cybersecurity requirements and questions, as appropriate, in the organization's procurement process, and evaluate responses as part of the vendor selection.

2.A

Changing Default Passwords

Establish and maintain a process to change default passwords before installation. Document and implement equally or more effective alternative methods or compensating controls where exceptions are necessary.

2.B**Password Management**

Establish and enforce a policy that requires a minimum password length of 15 or more characters for in-scope IT and OT assets that are not otherwise protected behind multi-factor authentication (MFA) or other passwordless authentication mechanism.

- If 15-character passwords, MFA, or other passwordless authentication mechanisms are not feasible, use the maximum password length that the technology supports and document and implement equally or more effective alternative measures or compensating controls to achieve the intended action(s).

Establish and enforce a policy to prohibit password reuse, unless an organization-defined risk exception is necessary and documented.

2.C**Unique Credentials**

Provide unique and separate credentials for users accessing services and assets on IT and OT networks. Establish and implement a process to manage and approve access to shared accounts / service accounts / machine accounts. Document and implement equally or more effective alternative methods or compensating controls where exceptions are necessary.

2.D**Revoking Credentials for Departing Employees**

Establish and enforce an administrative process to (1) revoke physical access and (2) disable logical access to critical organizational resources within 24 hours of an employee's separation unless an organization-defined risk exception is necessary and documented.

2.E**Separating User and Privileged Accounts**

Establish and maintain a policy to restrict administrator rights on user accounts on critical assets. Require separate user accounts for actions and activities not associated with the administrator role (e.g., for business email, web browsing). Reevaluate privileges on a recurring basis to validate continued need for a given set of permissions.

Document and implement alternative measures or compensating controls in instances where administrative privileges cannot be removed.

2.F**Network Segmentation**

Separate IT and OT networks, and OT networks of different trust levels.

- Use an appropriate network security device to enforce a deny-by-default policy on communications between networks that permits only those connections that are explicitly allowed (e.g., by IP address and port) for specific system functionality.
- Maintain documentation of allowed ports and services and their business justification.

2.G**Unsuccessful (Automated) Login Attempts**

Implement a process to detect, alert, and monitor unsuccessful logins and to inform the appropriate personnel. Document and implement equally or more effective alternative methods or compensating controls where exceptions are necessary.

2.H**Phishing-Resistant Multifactor Authentication (MFA)**

Implement MFA for remote access to assets using the strongest available method for that asset and where technically feasible. Document and implement equally or more effective alternative methods or compensating controls where exceptions are necessary.

2.I**Basic Cybersecurity Training**

Conduct training, at least annually, for all organizational employees and contractors that cover basic security concepts, such as phishing, business email compromise, basic operational security, password security, etc., as well as foster an internal culture of security and cyber awareness.

- New employees receive initial cybersecurity training within 30 days of onboarding and recurring training on at least an annual basis.
- Training topics and goals are clearly defined and related to the nature of their duties to the extent practicable.

2.J**OT Cybersecurity Training**

In addition to basic cybersecurity training, conduct OT-specific cybersecurity training, at least annually, for personnel who access or secure OT as part of their regular duties.

2.K**Strong and Agile Encryption**

Establish and implement a policy that addresses the protection of critical data in transit, including how the organization will update outdated/deprecated encryption technologies or document and implement equally or more effective alternative methods or compensating controls.

2.L**Secure Sensitive Data**

Establish and maintain a process to identify and securely store sensitive data, using strong access control methods for authenticated and authorized users and system applications. Document and implement equally or more effective alternative methods or compensating controls where exceptions are necessary.

2.M**Email Security**

Establish and maintain a process to reduce risk from email threats.

2.N**Disable Macros by Default**

Establish software restriction policies to prevent the execution of unauthorized code, such as a system-enforced policy that disables Microsoft Office macros, or similar embedded code, by default. If macros must be enabled in specific circumstances, establish a policy for authorized users to request that macros are enabled on specific assets, for only as long as they are needed. Document and implement equally or more effective alternative methods or compensating controls where exceptions are necessary.

2.O**Document Device Configurations**

Document, backup and maintain baselines and current configuration details of critical IT and OT assets to facilitate more effective vulnerability management and response and recovery activities. Periodically review and update documentation.

2.P**Document & Maintain Network Topology**

Document, backup and maintain physical and logical network topology across critical IT and OT networks. Review and document any change to the topology.

2.Q**Hardware and Software Approval Process**

Implement an administrative policy or automated process for critical IT and OT assets that requires approval before new hardware, firmware, or software/software version is installed or deployed, or before the asset is removed/decommissioned. Document and implement equally or more effective alternative methods or compensating controls where exceptions are necessary.

2.R**System Backups**

Establish and maintain a documented system restoration plan, including processes to back up critical systems where deemed appropriate by the organization.

2.S**Incident Response (IR) Plans**

Establish, maintain, and regularly (at least annually) validate IT and OT cybersecurity incident response plans for both common and organizationally specific threat scenarios and TTPs through cybersecurity exercises.

- Update incident response plans within a risk-informed time frame to incorporate lessons learned from the exercise.

2.T**Log Collection**

Collect and develop a process to securely store and protect time-synchronized access- and security-focused logs (e.g., authentication, intrusion detection systems/intrusion prevention systems, firewall, data loss prevention, virtual private network) based on criticality for use in both detection and incident response activities (e.g., forensics).

- OT: For OT assets where logs are non-standard or not available, collect network traffic and communications between those assets and other assets where feasible.

2.U**Secure Log Storage**

Establish and maintain a process to protect logs for critical IT and OT assets from unauthorized access.

2.V**Prohibit Connection of Unauthorized Devices**

Establish and maintain policies and processes to reduce the probability that unauthorized media or hardware are connected to IT and OT assets, such as by limiting use of USB devices and removable media and disabling AutoRun.

- Define acceptable types of media and hardware and establish scanning requirements when appropriate for devices that have a storage component.
- Establish validation and authorization steps when new devices are connected to ensure no unauthorized devices are connected.
- OT: When feasible, establish procedures to remove, disable, or otherwise secure physical ports to prevent the connection of unauthorized devices or establish procedures for granting access through approved exceptions.
- Document and implement equally or more effective alternative methods or compensating controls where exceptions are necessary.

2.W**No Exploitable Services on the Internet**

Implement a process to minimize the number of ports and services exposed to the Internet.

- Prevent assets on the public internet from exposing services with known exploits.
- Where these services must be exposed, document and implement appropriate compensating controls to prevent common forms of abuse and exploitation.
- Disable unnecessary applications and network protocols on internet-facing assets.

2.X**Limit OT Connections to Public Internet**

Establish and implement a process to ensure OT assets are not placed on the public internet, unless explicitly required for operation. Document necessary exceptions and implement compensating controls for excepted assets to prevent and detect exploitation attempts (such as logging, MFA, mandatory access via proxy or other intermediary, etc.).

3.A Detecting Relevant Threats and TTPs

Maintain situational awareness of threats and cyber actor tactics, techniques, and procedures (TTPs) relevant to their organization (e.g., based on industry, sectors), and maintain the ability to detect instances of those key threats (such as via rules, alerting, or commercial prevention and detection systems).

4.A Incident Reporting

Establish and maintain codified policy and procedures on when, to whom, and how to report all confirmed cybersecurity incidents to appropriate external entities.

4.B Vulnerability Disclosure/Reporting

Establish and maintain a public, easily discoverable method for security researchers to notify the organization of vulnerable, misconfigured, or otherwise exploitable assets (e.g., via email address or web form). Acknowledge and respond to valid submissions in a timely manner, taking into account the completeness and complexity of the vulnerability. Mitigate validated and exploitable weaknesses consistent with their severity and organizational policy. Establish policies concerning coordinated vulnerability disclosure/reporting.

4.C Deploy Security.TXT Files

Ensure that public-facing web domains have a security.txt file that conforms to the recommendations in RFC 9116 "A File Format to Aid in Security Vulnerability Disclosure."

5.A Incident Planning and Preparedness

Develop, maintain, and execute plans to recover and restore to service business or mission-critical assets or systems that might be impacted by a cybersecurity incident.

NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS (NARUC)

NARUC is a non-profit organization founded in 1889 whose members include the governmental agencies that are engaged in the regulation of utilities and carriers in the fifty states, the District of Columbia, Puerto Rico and the Virgin Islands. NARUC's member agencies regulate telecommunications, energy, and water utilities. NARUC represents the interests of state public utility commissions before the three branches of the federal government.

Direct comments and questions on this publication to cyberbaselines@naruc.org.

www.naruc.org



DISCLAIMER

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U.S. DEPARTMENT OF
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NARUC

National Association of Regulatory Utility Commissioners

Appendix B. Sample Tolling Agreement Term Sheet

Summary	[____], a wholly owned subsidiary of [____], is developing the [____] project ("Project", a [__MW x __MWh] battery energy storage project in [____] County, [STATE]).
Seller	[_____] LLC or an affiliate thereof
Buyer	[____]
Facility	The [____] Project located in [____] County, ____].
Transmission System Operator	[____], "TO"
Products to be Sold & Purchased	Full dispatch rights to Energy and Ancillary Services generated from the Facility, subject to the provisions described below. Energy shall mean electric energy in the form of three (3) phase, sixty (60) Hertz, alternating current. Ancillary Services means the services necessary to support the transmission of electric power from generators to consumers given the obligations of control areas and transmitting utilities within those control areas to maintain reliable operations of the interconnected transmission system such as regulation, spinning reserve and non-spinning reserves as defined by TO. "Products" shall refer to the foregoing altogether.
COD Deadline	[____], subject to extension by reason of delays beyond Seller's control, including force majeure events, Change in Law, delay in obtaining necessary approvals or permits required for the construction or operation of the Project, breach by Buyer of the Agreement (including Seller's exercise of any remedies for such breach), any other action or inaction of Buyer that prevents Seller from performing its obligations under the Agreement in a timely manner, or TO delays or delays by a similar party, including in executing a LGIA ("Excused Delay"). Seller shall be liable for liquidated damages for failure to achieve COD by the COD Deadline except in the event of COD Deadline extension due to Excused Delay, but not to exceed \$[____] per month.
Term	Twenty (20) years commencing on COD. The twelve (12) month period after COD and each successive twelve (12) month period shall be deemed a "Contract Year".
Conditions Precedent	The effectiveness of the Agreement shall be conditioned on the following: <ul style="list-style-type: none"> • Seller shall have obtained financing for the development, design, construction and commissioning of the Facility by [____];

	<ul style="list-style-type: none"> • Seller and TO shall have fully executed a LGIA, in form and substance acceptable to Seller, by [_____]. <p>The COD Deadline shall be extended day for day for the delay of each Condition Precedent up to [xx] days. This Agreement shall terminate if the Conditions Precedent have not been met after [xx] days of extensions.</p>
Delivery Point	Seller's Facility Node at the [_____] kV Substation; which shall be the point where both discharged Energy and Charging Energy are to be delivered.
Power Capacity of the Facility	[_] MW-ac
Energy Capacity of the Facility	[_] MWh (four-hour duration), discounted to the extent that the usable SOC is less than 100% of energy capacity as measured by manufacturer specifications.
Contract Price	Buyer shall pay Seller \$[___]/kW-Month for each kW of Power Capacity.
Taxes	Buyer shall be responsible for all federal, state and local taxes of whatever kind applicable to the sale and purchase of the Products.
Interconnection Costs	If Interconnection Costs remain subject to change or update at the time of bidding, Seller shall provide the most recent estimate received from TO. Once Interconnection Costs have been determined, to the extent that actual interconnection costs are different from the estimate provided at the time of the bid, Contract Price shall be increased or decreased by \$[___]/kW-Month for each additional charge or reduction of \$1,000,000 (pro-rated) of interconnection costs not reimbursable by TO beyond the estimate provided by Seller at the time of bid. If actual Interconnection Costs are within \$[_____] of the estimate provided at the time of the bid, Buyer or Seller may alternatively pay the other party the difference between the actual Interconnection Costs and the estimate.
Network Upgrade Costs	All network upgrade costs (defined as costs reimbursable to Seller from TO) are expected to be funded or otherwise financially secured by Seller, but Buyer shall be obligated to take assignment of transmission service credits in exchange for dollar-for-dollar cash payment for the transmission credits associated with such costs.
Transmission Delivery & Charges	Buyer is responsible, at Buyer's sole cost, for arranging any transmission and wheeling required to deliver Charging Energy to the Delivery Point and to accept and transfer discharging Energy at and from the Delivery Point.
Facility Availability Guarantee	Seller shall guarantee a Facility Availability (the "Guaranteed Availability") of: <ol style="list-style-type: none"> I. 85% during the first ninety (90) days of the first (1st) Contract Year; II. 97% during the balance of the first (1st) Contract Year; and

	<p>III. 97% during each Contract Year thereafter.</p> <p>Technical availability will be calculated based on the average during a Contract Year of the hours the system is available, as reported by the controls software, divided by the total hours in a given Contract Year. The following formula shall be used:</p> $Availability = \left(\frac{PH - FOH - EEH}{PH - EEH} \right) \cdot 100$ <p>Where:</p> <p>PH = Period Hours: the total number of hours in a Contract Year.</p> <p>FOH = Forced Outage Hours: the total number of hours the Facility is unavailable due to failures with Seller-provided equipment. If the Facility is partially available, then a partial outage hour shall be calculated based on the ratio of the curtailed capacity to full capacity.</p> <p>EEH (Excused Event Hours): the total number of hours the Facility is unavailable due to excused events, which shall include, without limitation, the following events:</p> <ul style="list-style-type: none"> • A Force Majeure Event (including major equipment failure such as serial defect or MPT failure); • A TO-Caused Event; • A Buyer-Caused Event; • Time to perform annual and semi-annual Preventative Maintenance Services; • Time to complete annual performance tests; and • Planned outages for augmentation of site energy capacity.
<p>Facility Energy Capacity Guarantee</p>	<p>Seller shall guaranty that the Facility will have an energy capacity of [____] MWh ("Guaranteed Energy Capacity").</p>
<p>Facility Round Trip Efficiency Guarantee</p>	<p>Seller shall guaranty an 85% Round Trip Efficiency (the "Guaranteed RTE"); where: RTE = the ratio of discharging Energy over Charging Energy delivered to the Delivery Point.</p>
<p>Performance Guarantee Liquidated Damages</p>	<p>If a metric is found to be below the guaranteed value, Seller will pay Buyer performance liquidated damages as follows:</p> <ul style="list-style-type: none"> • Availability Liquidated Damages (LDs) = LD rate of \$[____]/MW per every 1% that Availability for a Contract Year is below Guaranteed Availability times the Beginning Of Life (BOL) duration.

	<ul style="list-style-type: none"> ○ FOR EXAMPLE: If a 100 MW, 4-hour system is 1.5% short in Availability during a Contract Year: $100 \text{ MW} * \\$[_] * 1.5\% * 4\text{hr} = \sim \\$[_] \text{ LD}$ • Energy Capacity LD: Daily LD rate of $\\$[_]$ per every 1% or part thereof shortfall in Guaranteed Energy Capacity (which energy capacity will be tested once each Contract Year). <ul style="list-style-type: none"> ○ FOR EXAMPLE: If a 400 MWh system is 1% short (as evidenced by the annual capacity test for the applicable Contract Year): $400 * 1\% * \\$[_] * 365 = \sim \\$[_]$ • RTE LD: Daily LD rate of $\\$[_]$ per 1% that the Round Trip Efficiency is below the Guaranteed RTE (which round trip efficiency will be tested once each Contract Year). FOR EXAMPLE: If a 400 MWh system is 1% short (as evidenced by the annual round trip efficiency test for the applicable Contract Year): $400 * 1\% * 365 * \\$[_] = \sim \\$[_]$ <p>Both the Guaranteed Energy Capacity and Guaranteed RTE are subject to Seller’s ability to perform corrective actions if there is a deficiency and thereby avoid liquidated damages.</p> <p>If the LDs are owed, Seller will pay Buyer such amount within [60] business days following issuance of the invoice.</p> <p>Availability LDs for any Contract Year shall not exceed $\\$[_]$. The sum of Energy Capacity and RTE LDs for any Contract Year shall not exceed $\\$[_]$.</p>
Buyer’s Rights, Roles and Responsibilities	<ul style="list-style-type: none"> • Buyer shall have physical bidding and dispatch control of the Facility subject to an agreed set of Operating Parameters. • Buyer shall be the market participant on behalf of the Facility. • Buyer shall be responsible for any transmission charges or penalties.
Charging Energy	<ul style="list-style-type: none"> • Buyer shall be solely responsible, at Buyer’s sole cost, for managing, purchasing, scheduling, and delivering all energy necessary to charge the Facility.
Facility Operating Parameters	<p>The Facility shall be charged and dispatched by Buyer in accordance with an agreed set of Operating Parameters, which shall include the following:</p> <ul style="list-style-type: none"> • Charging Source: Grid • Daily Dispatch Limit: 2 cycles in any rolling 24-hour period, where a cycle is defined as the energy equivalent to discharging the BESS from 100% to 0% usable SOC. • Maximum Annual Throughput: $[_]$ MWh to the Delivery Point, up to 365 equivalent cycles per year.

	<ul style="list-style-type: none"> • Buyer may not utilize the Facility during planned outage periods or during grid outages. • Minimum/Maximum Charge/Discharge: +/- [] MWAC and +/- [] MWhAC • Maximum State of Charge (SOC) during Charging: 100% • Minimum State of Charge (SOC) during Discharging: 0% • Resting SoC to be 10-20% if BESS is scheduled to be idle for more than 72 hours • BESS to be cycled at least once per rolling 30-day period • Permissible Ambient Temperature: -20°C to 50°C • Permissible Relative Humidity: 4% to 95% • Maximum Annual Throughput means the maximum amount of cumulative Discharged Energy available to be discharged by the Facility at the Delivery Point in a Contract Year.
Seller Maintenance Responsibilities	<ul style="list-style-type: none"> • By November 1st of each Contract Year, Seller shall provide Buyer with a schedule of planned Facility outages for the following Contract Year. • Seller shall also notify Buyer of planned outage periods no later than 30 days prior to start of any such outage.
Seller Credit Support	<p>[\$/MW] of Power Capacity posted 30 days after execution of a definitive Agreement replaced by [\$/MW] of Power Capacity at COD throughout the Term. Seller may provide such Credit Support via cash deposit, investment-grade bank letter of credit, investment-grade rated corporate guarantee, or surety bond, all in such form and substance reasonably acceptable to Buyer.</p>
Buyer Credit Support	<p>[\$/MW] of Power Capacity posted 30 days after execution of a definitive Agreement and throughout the Term. Buyer may provide such Credit Support via cash deposit, investment-grade bank letter of credit, or investment-grade rated corporate guarantee (which credit support may be provided by a customer purchasing the Products through Buyer, if approved in advance by Seller), all in such form and substance reasonably acceptable to Seller.</p>
Settlement Period	Monthly
Indemnification	<p>Each party shall defend, indemnify, and hold harmless the other party, and its directors, officers, employees, and agents, from and against all claims, demands, causes of action, judgments, damages, losses, liabilities, and associated costs and expenses, including reasonable attorneys' fees, related to, arising from, or connected with any claims by a third party for bodily injury or property damage against an indemnified party to the extent caused by the fraud, negligence or willful misconduct of the indemnifying party.</p>

Waiver of Consequential Damages	Neither party shall be liable for incidental, special, indirect or consequential damages of any nature, except for liquidated damages.
Force Majeure; Events of Default; Insurance	Customary
Change in Law	<p>If, as a consequence of a Change in Law, the costs and expenses incurred by Seller in performing its duties and obligations under this Agreement increase by more than \$100,000 in any Contract Year, Buyer and Seller shall in good faith negotiate such changes as reasonably required under this Agreement to (a) preserve, to the extent possible, the original intent of the Parties as set forth in this Agreement, (b) allow for equal sharing of any mutual benefits arising from such change under this Agreement, and (c) where reasonably practicable to do so, maintain the original allocation of benefits and burdens to each Party arising under this Agreement.</p> <p>All costs and expenses referenced in this section are subject to verification by an Independent Engineer mutually agreeable to the Buyer and Seller.</p> <p>For purposes hereof, "Change in Law" shall mean and refer to the enactment, adoption, promulgation, amendment, modification, repeal or change in interpretation by a governmental authority of any applicable law, including any of the foregoing that render's a Party's performance under the Agreement illegal or impossible, or that has a material effect on this Agreement or either party's performance under this Agreement.</p>
Assignment; Financing Cooperation	<p>Neither party may assign, convey or transfer the Agreement, or any part thereof, without the prior written consent of the other party (which consent shall not be unreasonably withheld or delayed). The Agreement shall be binding upon, and inure to the benefit of, the successors and permitted assigns of the parties thereto. Notwithstanding the foregoing:</p> <ul style="list-style-type: none"> • Seller shall be permitted to freely assign the Agreement to any affiliate or entity acquiring the Facility provided such entity complies with the credit support provisions applicable to Seller (and the assignor should thereafter be relieved of all liability). • Buyer acknowledges and agrees that Seller intends to collaterally assign the Agreement in connection with a financing, and agrees to execute any related consent to Seller's collateral assignment of the Agreement and in

	all other circumstances, reasonably cooperate with Seller and its affiliates with respect to such financing.
Governing Law	[]
Transactions Costs	Each party to bear its own transactions costs related to the negotiation and documentation of the proposed Agreement.