

Power Purchase Agreement Exceptions List

NOTE: While the following list of exceptions notes items of significant concern as identified by Bidder in the form of PPA included in the Request for Proposals, it is not an exhaustive list of all edits that may be required to finalize that Agreement with a distribution company counterparty. A final binding agreement with respect to the PPA must therefore remain subject to the negotiation of terms and conditions by Bidder and such counterparty in their sole discretion.

<i>PPA Section</i>	<i>Description of Exception</i>
<u>Section 3.1(a)</u>	We would suggest revising this section to make the first two milestones (permitting and site control) subject to a commercially reasonable efforts standard but not additional security or damages, which is a standard approach in PPA's in our experience, while leaving the Commercial Operations Date as a fixed deadline subject to extension as drafted.
<u>Section 3.1(e)</u>	For the same reasons above, we would not subject permitting or site control to the "time is of the essence" clause.
<u>Section 3.2(a)</u>	We propose revising to add a limitation on Delay Damages equal to \$20/MW of Facility capacity, with Buyer having a right to terminate the PPA if the cap is reached. We would also like to clarify that Delay Damages apply only for the MWh of the Contract Maximum Amount represented by that portion of the Facility that has not achieved COD.
<u>Section 3.5</u>	We would like to discuss revising certain of the covenants in this section regarding operations to qualify them with materiality, so as to avoid the potential for "foot fault" breaches in which an immaterial deviation from vendor specifications or immaterial permit noncompliance (for instance) could create liability for breach under the PPA.
<u>Section 4.2(a)</u>	We would like to replace Buyer's right not to purchase Energy during any negative LMP period with a right to have Seller curtail and compensate for such curtailment in line with the terms of Section 4.4.
<u>Section 4.4</u>	We would like to clarify this provision and/or the definition of "Resale Price" to note that if Seller is unable to sell Energy and REC's to a third party as a result of Buyer's failure to accept, then Buyer shall pay seller the contract price plus an amount that, after taxes, would be equivalent to the production tax credit lost by Seller.
<u>Section 4.8</u>	We would suggest that all Test Energy simply be purchased at 95% of the Price for Energy.
<u>Section 5.1</u>	We propose deleting the sentence in this section stating an exclusive list of payments that Buyer may owe to Seller under the agreement, as the list omits other important items, such as damages for breach
<u>Section 5.1</u>	We would delete the sentence in this section stating that Seller will credit Buyer for negative LMP prices. Such a provision is unusual in our experience and could prohibit project financing.

<u>Section 6.1</u>	We would clarify that all security amounts are \$/MW of capacity, not MWh, and would propose deleting the requirement to replenish security to avoid unlimited exposure that can be problematic for financing.
<u>Section 6.2</u>	We would add an investment-grade guaranty as a third option for Credit Support (in addition to cash and letter of credit)
<u>Section 6.2(c)</u> <u>(National Grid)</u>	We would delete this provision as it effectively provides that Seller may deliver \$10K less than any Credit Support Seller may have provided – we have not seen a provision like this in any other PPA
<u>Section 6.2(d)</u> <u>(National Grid)</u>	We would delete the language providing that Letter of Credit is valued at zero starting 20 days prior to expiration, in favor of clarifying that any credit support must be maintained continuously and without interruption during the term
<u>Section 6.3</u>	We would like to better understand and then clarify the meaning of this section, which seems to provide Credit Support requirements redundant with those found elsewhere in Section 6.
<u>Section 6.5(a)(ii)</u>	We would delete this allowing Buyer to use cash security toward its own separate interests once posted – we have not seen a provision like this in any other PPA.
<u>Section 6.5(a)(iv)</u>	We would revise this section to remove the condition that no Seller Event of Default be present in order for Buyer to transfer interest on security to Seller.
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<u>Section 7.2(m)</u>	This representation that Seller has all site control seems to be at odds with the earlier Construction Milestone to acquire such site control. We would propose utilizing the latter in place of this provision
<u>Section 7.2(n)</u>	We would propose clarifying that Seller will take all necessary and appropriate actions “to pursue” FCM qualification, provided they are commercially reasonable.
<u>Section 9.1(e)</u>	We would add a cure period for permit compliance Event of Default similar to the cure period provided for other covenants.
<u>Section 9.2</u>	We propose an increase of 5 additional business days to the cure periods where provided for Seller Events of Default, as the cure periods as drafted may make cure impossible in certain instances.
<u>Section 9.3</u>	We would clarify that any Termination Payment is to be reduced by liquidated damages or other amounts already paid that are redundant with damages reflected in the Termination Payment.
<u>Section 14</u>	We would clarify to allow assignment and change of control without a consent requirement in case of transfers to affiliates, to a new equity owner with Apex remaining as project day-to-day manager, and to any new entity (i) not in competition, (ii) with creditworthiness equal to or greater than Seller’s and (iii) minimum 2 years operating at least 300MW of wind
<u>Other</u>	We propose an overall limitation of liability in an amount equal to \$80,000 per MW of the Facility’s nameplate capacity.

<u>Other</u>	To the extent Buyer Percentage Entitlement with respect to the Facility is less than 100%, we would like to revisit certain percentage thresholds throughout the agreement (e.g., % of Facility to achieve COD), to reduce these to reflect the total capacity of concern to the Buyer as a portion of the larger Facility