

## [Commenter 20 Letterhead]

December 31, 2018

### [Commenter 20] Comments on the Adjustable Block Program REC Contract

#### General Comments

[Commenter 20] appreciates the work put forth by the IPA, InClime, and all other involved parties in crafting the draft REC Contract for the upcoming the Adjustable Block Program. Our comments are outlined below, along with references to the corresponding edits made to a red-lined version of the contract attached to this document.

As a general comment related to the process under which the ABP REC Contract will be finalized, we would like to request that a red-lined version of the REC Contract be issued, followed by an in-person stakeholder meeting and additional round of commenting. While we acknowledge and agree with the desire to open the program with as little delay as possible, we view having a final contract which adequately addresses current industry concerns as imperative for the long-term success of the program.

Moreover, [Commenter 20] believes it would be in the interest of all parties which may be involved in transactions involving solar photovoltaic projects under the ABP framework to combine the Cover Letter and Master REC Agreement, thereby directly implementing the changes to the latter outlined in the former, in the interest of simplicity.

#### Specific Issues with Draft REC Contract Provisions

- 1) **Contract Assignment:** As it stands now, the REC Contract is assignable, but only on a portfolio basis since an Approved Vendor signs a single Master REC Agreement with each utility. This places an undue level of restriction on project developers that need to have the flexibility to sell individual systems or groups of systems to more than a single counter-party. Instead, we propose that assignment be allowed for each Batch of systems, if not for each individual system above a given size threshold. Moreover, section 9.2 of the agreement grants unconditional discretion over the assignment of the contract to the utility. [Commenter 20] views this provision as unnecessary, as it will have significant negative impacts on third-party financing of a system or portfolio of systems. *Related edits/replacement language: page 25.*
- 2) **“Delivery Year REC Performance” Applied to Years 1 & 2:** The language for proposed Section 1.22.4 on page 13 of the draft REC Contract currently reads that system REC production over the first 2 years of operation will be evaluated for each individual

year, instead of waiting for the 3-year rolling average of system performance to become available. Moreover, there does not seem to be a mechanism whereby any potential shortfall penalty paid to the utility years 1 and 2 could be recouped or offset with surplus RECs from later years. This provision is unnecessary due to both the nature of solar production and the timing of the final REC payments for Large DG and CS systems.

While over the long-term the average annual production of a PV system will trend closer toward the P50 (50% probability) simulation software outputs that are based on historical data (e.g. 30-yr NREL ‘tmy’ data), the risk of a material deviation from this forecast number is significantly higher for any single year. Indeed, this was presumably the rationale for using a 3-year rolling average of system production under for the ABP- that it smoothes out the comparatively high level of deviation risk from a forecast capacity factor in any single year.

The existing contract language surrounding performance assurance seems to provide for more of a commodity hedge (cross default to project debt, effective margin calls against collateral posting) than a traditional REC contract based on solar PV production. Unlike a commodity, though, solar resource volatility is substantially muted through physics and is well understood and forecast through statistical analysis. P90 estimates of solar production (90% probability of being at or above the forecast level in a given year) rarely fall below P50 estimates by more than 10%. Thus, the analysis of the necessary amount of performance assurance should focus on the amount of the anticipated REC cash flow the utilities can pay out before they are exposed to statistically significant risk of having overpaid relative to long-term realized performance. The effective 20% cushion provided by the final REC payments having not yet been made at the end of year 3 should provide enough mitigation against this risk to justify waiting until the intended 3-yr rolling average can be utilized as the baseline for performance assurance. Additional supporting documentation on this subject can be provided upon request. *Related edits/replacement language: pages 7 & 13-14.*

### 3) **Performance Assurance Collateral:**

- a. **Timing:** The due date for the initial posting of the 5% Performance Assurance Collateral should be at or shortly after Energization, since the performance it is meant to assure will not begin until then. *Related edits/replacement language: pages 4, 20, & A-1.*
- b. **Form:** Restricting the form of the Performance Assurance Collateral to either a letter of credit or cash payment is overly restrictive and does not allow for other forms of performance assurance that are equally effective. Letter of credit facilities are typically only made available to large creditworthy portfolio owners or corporate entities, thus any requirement for a letter of credit or cash that precludes bonding or other similar collateral mechanisms such as performance insurance disproportionately affects small to mid-sized developers and system owners. *Related edits/replacement language: pages 15, 16, 20, & 21.*

- 4) **REC Surplus Account:** For the same reason related to third-party financing that contract assignment should be based on a per Batch (or per system) basis, Surplus RECs should be tracked and attached to an individual system or Batch/designated group of systems in separate REC Surplus Accounts to allow for cross collateralization without restricting potential financing/sale transactions to the portfolio level. *Related edits/replacement language: pages 7, 1, & Exhibit G.*
  
- 5) **System Size Change Between Application and Energization:** The +/- 5% threshold for system size change between application and energization is overly restrictive and places an unnecessary level of risk on the developer with regard to unforeseen and uncontrollable issues surfacing during the development and/or construction of a system that may necessitate a larger deviation from the planned size and design. *Related edits/replacement language: pages 4, 5-6.*