

January 7, 2019

Illinois Power Agency  
160 North LaSalle Street  
Chicago, IL 60601

InClime, Inc.  
326 First Street, Suite 27  
Annapolis, MD 21403  
c/o Kevin Quilliam

RE: Adjustable Block Program – Request for Comment on Contract Requirements

On behalf of Pivot Energy, we draw from our experience in existing community and commercial DG solar markets and offer feedback regarding the Contract Requirements. Pivot Energy is a solar energy developer providing clients nationwide with turnkey expertise on commercial onsite solar, community solar, small utility, and project financing. Throughout the industry, there are various types of contract structures that take place in order to finance a project, or provide a purchase option, and all contract provisions required by both parties are negotiated within the discretion of the customer-developer relationship.

## A. Introduction

We would like to thank the Illinois Power Agency (IPA) and the Program Administrator (InClime) for providing the Draft Contract Requirements document, to offer a list of minimum requirements according to the Long-Term Renewable Resources Procurement Plan (LTRRPP). We are appreciative of the opportunity to participate in this comment period and offer suggestions. We understand and appreciate the IPA and Program Administrator's thoroughness to ensure consumers are protected from bad players in the market, however, contracts that have already been executed in advance of a mid-January program opening, would be at risk of participating if now asked to amend a fully executed contract. Additionally, as stated in the Draft Contract Requirements document, most items outlined will be provided to the customer as part of the Disclosure Form process, ensuring customers are aware of the project information, installation procedure, and maintenance activities to be performed throughout the system's life.

At this juncture of the program, a call for contract amendments this late in the process can impact a project's eligibility, and a customer's opinion of the program. We ask the IPA and Program Administrator allow the following projects to be exempt from making contract amendments:

1. A fully executed agreement, which has been adopted from a customer legal template. This type of document (i.e. an EPC Agreement), typically used for a solar purchase agreement, is derived from a master agreement of terms commercial and industrial customers are familiar with from within their own internal process. A contract template that is supplied by the customer should be excluded from the abovementioned contract requirements.
2. Any Power Purchase Agreement (PPA), Lease Agreement, or Purchase Agreement that has been executed prior to the Adjustable Block Program opening and not yet energized. As stated above, executed contracts are at risk of becoming ineligible if contract amendments cannot be agreed upon within the Adjustable Block Program timeline.

Additionally, Pivot Energy agrees with the comments and recommendations provided to the IPA and Program Administrator via the Joint Solar Parties' comment submission.

## B. Comments and Recommendations

### 1. Common Contract Requirements for all business models

- **Right of rescission within three or more calendar days**

Pivot Energy recommends striking this requirement altogether. This is not applicable to non-residential projects, as by the time a contract is executed, both the customer and developer have answered and discussed all questions and concerns, and both are entering the agreement in full-faith and understanding. A long, legal review has taken place, and within either a PPA, Purchase, or Lease agreement, there will be provisions related to termination that would achieve the goal of the Right of rescission.

- **Any change in pricing or other terms in the event of non-selection for Adjustable Block Program REC contract**

Within the Disclosure Form, it is required to essentially remind the customer of whether the project is subject to an award from the Adjustable Block Program. Furthermore, many behind-the-meter projects will be under construction prior to program opening and operating under fully executed agreements that clearly state that risk. Pivot Energy recommends removing this requirement.

- **Name of ICC-certified DG Installer entity that will perform work**

For many projects entering the Adjustable Block Program, there is uncertainty about which projects will be chosen if a lottery ensues. For that reason, it is difficult for a system owner to have chosen the ICC-certified DG installer, based on the availability of certified installers prior to the lottery. Additionally, within the Disclosure Form generation process, it is implied in the form of a question, whether an Approved Vendor would know the installer name at the time of generating the form itself, allowing for flexibility in choosing your installer. For that reason, we recommend removing this requirement, as for many projects it is still too early to determine an ICC-certified DG Installer.

Thank you for your time and consideration of our requests and feedback. We look forward to creating a successful program, which will establish Illinois as a leader in renewable energy development.

Sincerely,

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