

[Submitter 9 letterhead]

January 18, 2019

[Submitter 9]

[Submitter 9 address]

Re: Comments on Second Draft REC Contract

[Submitter 9], [redacted]. We appreciate the opportunity to provide comments on the Second Draft REC Contract for the upcoming the Adjustable Block Program released on January 11, 2019.

As an initial matter, [Submitter 9] supports the comments filed by [redacted] on January 18, 2019. In addition to the comments filed by [redacted], [Submitter 9] has proposed additional revisions to the contract. Our redlines to the contract are attached. Further explanation of our redlines follow below.

Modifications to Section 5(e)(f)

The Second Draft of the REC contract does not permit the Actual Nameplate Capacity of the Designated System to be reduced more than the greater of 5kW or 25% of such Proposed Nameplate Capacity from the time of Part I submission to Energization. If capacity falls beyond these bounds, Seller must reapply for incentives.

While we appreciate and support the position that increases to Nameplate Capacity should not be permitted, we do not support penalizing Sellers in cases where the Actual Nameplate Capacity of Designated System *decreases* by the greater of 5kW or 25% of Proposed Nameplate Capacity. We instead propose Sellers receive an updated REC price and quantity per the Actual Nameplate Capacity.

As Sellers complete additional and costly diligence upon confirmation of incentive receipt, Sellers may find areas of the proposed system are no longer suitable for solar and consequently may need to reduce the system size by more than the greater of 5kW or 25% of the Proposed Nameplate Capacity. This change may occur following a structural assessment of a facility or completion of fieldwork, including Geotech. These diligence items, generally costing greater than \$20,000 per system, are typically too costly to complete prior to confirmation of incentive receipt for proposed systems. As such, we request allowing Sellers to retain incentives by modifying the REC price and quantity based on the Actual Nameplate Capacity.

Modifications to Section 9.2

Under the Second Draft of the REC contract, Buyer is permitted to assign the agreement to an affiliate “which is creditworthy on the Effective Date”. This requirement is problematic for financing because “creditworthy” does not have parameters and it is as of the Effective Date, so if such affiliate has a significant change in its creditworthiness after the Effective Date, the section still permits the assignment. As such, we struck the creditworthiness requirement from Section 9.2.

Under the present draft, seller has limited rights to assign. We understand the need that an assignor shouldn’t be relieved from liability under the agreement, but that liability should be released for the assignor post-assignment. [Submitter 9] has inserted language that permits Seller to assign to an affiliate.

Under the current draft, if there is a foreclosure by a financing party, there is a 120 day grace period for assignee to become an approved vendor. [Submitter 9] recommends a 180 day allowance for an assignee to become an approved vendor.

As it is unclear how an assignment would impact program administration, we have removed the \$1500 fee for each assignment.

Respectfully Submitted,

[Submitter 9 representative]