



October 26, 2018

Travis Lowder
Policy and Regulatory Manager
ForeFront Power
100 Montgomery St., Suite 725
San Francisco, CA 94104
415-800-1604
tlowder@forefrontpower.com

Re: ForeFront Power Comments on Illinois Adjustable Block Program PV System Power Purchase Agreement Disclosure Form

ForeFront Power would like to thank the IPA for providing opportunities to comment on the range of materials it has drafted for the Adjustable block Program, including the PPA Disclosure Form on which we have provided comments herein. We appreciate all your efforts to develop a sound and robust market for distributed solar in Illinois.

ForeFront Power, a wholly-owned subsidiary of Mitsui Co., Ltd., is a leading community solar developer and provider of solar energy services, serving business, public sector, utility, and residential customers. We have invested heavily in the Illinois solar market and have a strong desire to see the state achieve its solar goals. It is in this spirit that we submit the following comment to the draft PPA Disclosure Form published by the IPA on October 3rd, 2018.

A note on format: we have structured our comments to be in-line with the IPA's draft Disclosure Form to allow for ease of reference. Therefore, the remainder of these comments will not be printed on ForeFront Power's letterhead.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "T. Lowder", written over a large, stylized diamond graphic composed of overlapping green and blue squares.

Travis Lowder
Policy and Regulatory Manager
ForeFront Power
tlowder@forefrontpower.com

Illinois Adjustable Block Program
PV System Power Purchase Agreement Disclosure Form

Draft for Stakeholder Comments

Released October 3, 2018

Comments Due October 26, 2018

This form gives consumers who are considering contracting for a solar photovoltaic (“PV”) system clear information about the system and their transaction. Execution of this form is required for the system to be eligible for the Adjustable Block Program, a state-administered incentive program.

The Adjustable Block Program provides payments for the sale of Renewable Energy Credits (“RECs”) produced by new PV systems. RECs are created when solar panels generate electricity; one megawatt-hour of solar production equals one REC. RECs represent the environmental value of solar power, and whoever owns the RECs has the legal right to say they used that solar power. Because the environmental attributes of generation are sold as part of that transaction, customers participating in the sale of RECs relinquish their right to claim they are receiving solar energy.

Through program participation, all RECs from your system will be sold to Illinois utilities and retired to meet a compliance obligation. Payments for these RECs may be used to offset the purchase price or financing cost for the PV system you contract for. The actual level of these payments will vary depending on the size and location of the PV system.

There are different ways for customers to contract for a PV system. Customers may buy a system (system purchase), lease a system (lease), or contract to buy electricity generated by a system (power purchase agreement). Under a system purchase, the customer pays for and owns the system. Under a lease arrangement, a customer enters into a service contract to pay scheduled, pre-determined payments to a solar leasing company, which owns the system on the customer’s property. Under a power purchase agreement, a customer agrees to host a system and to buy electricity generated from it at a per-kilowatt-hour rate from a company that owns the system. The type of contract you enter into will impact the economics of your solar decision.

By participating in the Adjustable Block Program, an installer or other vendor is required to provide you with this disclosure form so that you have accurate information about the PV system, including its size, cost, operations, warranties, and financial benefits. At the point when you decide to enter into a solar contract, you will be asked to sign this form indicating that the information in it has been provided to you. The form will be submitted to the Adjustable Block Program Administrator.

Power Purchase Agreement Disclosure Form

You are entering into a Power Purchase Agreement (PPA) to buy electricity generated by a PV system installed on your property. Another party will own the system installed on your property.

We have replaced “an” with “a” to correct a typographical error.

The purpose of this form is to provide you with clear and accurate information about terms of your PPA, but this form is not a substitute for your contract, which is a legally binding agreement. Do not rely exclusively on this form for your PPA; You should read your agreement closely before you sign it.

Previous language read: “you should read your lease closely...” (our emphasis). We have changed “lease” to “agreement” to reflect the proper form of contract for this disclosure.

This form is required for your PPA PV system to be eligible for the Adjustable Block Program, a state-administered incentive program for PV systems, and an executed copy of this form will be provided to the Program Administrator. The Program Administrator may contact you to verify that you received this form.

Because you will not own the PV system, you are not eligible to take the federal income tax credit for PV system owners; however, entering into a PPA may have tax implications for you. You should consult a tax professional to understand any tax consequences that may result.

Often, the tax implications of entering into a PPA are negligible, but the current language above suggests that tax complications could be the rule, and not the exception. In order to prevent consumer confusion or alarm on the matter, we recommend specifying that any savings from purchasing electricity the your solar system vs. the utility will be untaxed, and that there will be no tax assessed on the value ascribed to exported energy (as per the net metering regulations). We believe this will help clarify that the principal value streams from a solar system are not subject to taxation.

You may rescind your PPA contract within 10 calendar days of signing it by contacting the owner of the PV system.

If you have complaints related to the system or this PPA process, you may contact the Adjustable Block Program Administrator by [emailing admin@illinoisabp.com](mailto:emailing_admin@illinoisabp.com) or by calling (877) 783-1820. If you have been subject to fraudulent or deceptive sales practices, the Consumer Protection Division of the Illinois Attorney General’s office may be able to help. Customers may contact the Illinois Attorney General’s office by calling one of the following hotlines:

Chicago
800-386-5438
TTY: 800-964-3013

Springfield
800-243-0618
TTY: 877-844-5461

Carbondale
800-243-0607
TTY: 877-675-9339

Spanish Language: 1-866-310-8398

Customer’s Contact Information

Customer
Name:
Address:
Phone Number:
Email Address:
Customer’s Electric Utility

Other Parties’ Contact Information

System Owner	Approved Vendor (per Illinois Adjustable Block Program rules)
Legal Name:	Legal Name:
Name Used for Marketing (if different):	Name Used for Marketing (if different):
Business Address:	Business Address:
Phone Number:	Phone Number:
Email Address:	Email Address:

System Installer		System Warranty and/or Maintenance Provider (if different from system installer)
Name:	Name Used for Marketing (if different):	Name:
Qualified Person:		Name Used for Marketing (if different):
Business Address:		Business Address:
Phone Number:		Phone Number:
Email Address:		Email Address:

**The parties listed above are independent and are not representing, endorsed by, or acting on behalf of, a utility, a consumer group, or a governmental body except in those cases where they are a governmental body or consumer group.*

**Your PPA may be assigned, sold, or transferred by the PPA provider to a third party who will be bound by the terms of your contract. If such a transfer occurs, you will be notified if this will change the address or phone number to use for questions, payments, maintenance, or repair requests.*

System Information

- Total of all your estimated payments over the course of the PPA contract, including any down payment, all PPA payments, interest or escalators, service fees, and other fees: \$ ____
 - Deposit, down payment, or initial amount owed at PPA signing \$ ____
 - The term of the PPA is ____ years and ____ months
 - Frequency of PPA payments (for example, monthly) _____
 - Initial PPA price per-kilowatt hour \$ _____.
 - The first PPA payment is due _____ (for example, 30 days after system interconnection).
 - The final PPA price per kilowatt hour is \$ _____.
 - The time the final PPA payment is due _____ (for example, 20 years after the first PPA payment).
 - Total number of PPA payments over the term of the contract ____
 - Annual escalation rate _____
 - This assumes that your system will produce ____ kWh of electricity per year.

**Many PPA contracts increase the per-kilowatt hour PPA price on an annual basis to account for inflation and projected annual increases in electricity rates. These escalation rates are compounding. They apply not only to the initial PPA payment price, but also to the increases added annually due to the escalation.*

- A full schedule of the price per kilowatt-hour for all PPA payments

The inclusion of an escalation rate in PPA pricing will depend on a number of factors, one of foremost being the customer's needs. Indicating that "many" PPA contracts have escalators may obscure the fact that customers can have agency in deciding whether or not to include one.

Accordingly, ForeFront Power recommends changing the above paragraph to the following language: "Your PPA may be either fixed (a contract price per kWh that remains unchanged year-over-year), escalating (a contract price per kWh that increases by a certain percentage, typically year-over-year) or variable (nonlinear increases or decreases to the contract price per kWh). Your solar provider should provide you with a schedule of what your PPA rate will be each year (or, if changes happen between years, a schedule that shows each price change)." We also recommend including a box to check below this language to indicate whether or not such a schedule has been provided in the PPA.

**Your PPA payments may not constitute your total monthly amount for electric service from your utility.*

To make this more clear, we recommend changing this to "Your total cost for electricity may be your PPA payment plus your remaining electricity bill."

You will receive ELECTRONIC OR PAPER invoices

ForeFront Power recommends striking the requirement to provide this option in the disclosure form. In many cases, billing details will not be settled until after a PPA has been signed and system administration has been transferred to the asset manager.

- The expected value of the REC incentive payment(s) that will be received by the Approved Vendor for the PV system is \$_____
 - Will the Approved Vendor pay a rebate to you for some or all of the value of the REC payment(s) received for the system? Yes OR No
 - If so, you will receive \$_____ OR _____% of the value of the REC payment(s) received for the system.
 - Is PV system installation contingent upon selection for the Adjustable Block Program incentive? Yes OR No

**As the counterparty to a REC delivery contract with an Illinois electric utility, the Approved Vendor will receive payment(s) for your system’s RECs. Even if the Approved Vendor will not pay a rebate to you for some or all of the value of the REC payment(s) received for your system, those REC payments may be reflected in your overall PPA payments.*

It is atypical to pay rebates to customers for the value of RECs, tax benefits, or other incentives available to PV systems. The industry standard is to pass on the value of these incentives via a lower PPA rate to the customer. We believe that mentioning here that there is even a possibility of a rebate for this value will confuse customers into thinking that it is a common industry practice. Therefore we recommend striking this paragraph entirely and including mention of RECs in the paragraph below when mentioning how incentives are “passed on to you in the form of reduced costs.”

- _____ List all other state and/or federal tax incentives or rebates relied upon in determining the total payments due under the PPA and the value of each one:

ForeFront opposes the inclusion of the federal tax incentives in this table. These values will not be known until system costs are finalized, that is, at the time of commercial operation. Moreover, recording these values can allow competitors to back into a company’s capital and financing costs, both of which are proprietary data points for industry players.

Name of Incentive/Rebate	Estimated Value	Party Directly Realizing the Benefit of the Incentive
	\$	
	\$	
	\$	
	\$	

**You may not be eligible for all state and/or federal incentives related to you solar PPA. Because the system is owned by a third-party, a solar PPA customer will typically not be able to directly take advantage of incentives related to the PV system. Instead, the system owner or Approved Vendor will*

- If the system owner will impose an early termination fee or penalty, the amount of the fee/penalty will be \$___ OR will be calculated as follows:

ForeFront Power opposes the inclusion of language regarding UCC filings. Particularly, claims about complicating and/or adding expense to a refinancing or sale can be somewhat misleading. The UCC filing plays a very small role in either event, and the paragraph, as currently written, could cause unwarranted concerns among customers.

In the case of a refinancing, developers typically seek a Subordination and Non-Disturbance Agreement with the financial institution providing the loan. This is standard industry practice and is meant to protect the solar asset from the risk of repossession in the case of a foreclosure or other breach of the refinancing agreement. It is this SNDA, rather than the UCC filing, that is at issue in a refinancing. Furthermore, because the SNDA represents a transaction between the mortgage lender and the solar developer, it does not impose appreciable hardship on the property owner (i.e. the solar host).

Most PPAs will state the developer’s right to file a UCC. If the IPA would like to make consumers aware that a UCC filing is being made, then we recommend there be a box to check specifying that such a disclosure has been made in the PPA.

- Any other fees (description, amount and when it is due)

Fees	Amount	When It Is Due
	\$	
	\$	
	\$	
	\$	

System Installation Timing

- The approximate start date of system installation will be ___ days from the date your PPA is signed or _____[date].
- The approximate completion date of system installation will be ___ days from the date your PPA is signed or _____[date].
- YOU OR THE SYSTEM OWNER OR THE SYSTEM INSTALLER are responsible for submitting a system interconnection application to your utility.

*The interconnection rules may vary based on location and utility service territory. Links to interconnection information are provided below for three electric utilities:

- Ameren Illinois: <https://www.ameren.com/illinois/electric-choice/distributed-generation>
- Commonwealth Edison Company: <https://www.comed.com/MyAccount/MyService/Pages/DistributionLess10k.aspx>
- MidAmerican Energy Company: <https://www.midamericanenergy.com/customer-generation.aspx>

System Design Specifications

- Size of system in kilowatts ___kW DC and ___kW AC
- Estimated gross annual electricity production in kilowatt-hours from your system in the first year ___kWh
- Estimated annual system production decrease: ___%
- ___ Expected life of the system ___ years

ForeFront Power recommends striking this line item and replacing it with the following two line items: "Option to Renew" and "Length of Renewal Period". At present, with most deployed PV in its infancy, expected life is a speculative matter. Renewals are instead something that is currently underwritable by financiers, and provide more concrete information to the customer about the potential for system life.

- Expected overall percentage degradation over the life of the system ___%
- System will be ROOF-MOUNTED OR GROUND-MOUNTED
- System WILL OR WILL NOT track with the location of the sun in the sky.
 - If a tracking system is installed it is a SINGLE OR DUAL-AXIS TRACKER.
- The manufacturer of the PV panels is ___.
- ___ The make of the inverter is ___; The model of the inverter is ___.

ForeFront Power suggests including the qualifier "Anticipated" to the manufacturer and make of the panels and inverters. While developers typically provide desktop designs to customers using specific products during the proposal phase, they will not make final selection of equipment until just before construction start. Therefore, at the time of filing for this Disclosure Agreement, manufacturers will likely not be known for certain.

* Because your system may be participating in the Illinois Adjustable Block Program, your system will be connected to the grid. Your electric utility remains responsible for the delivery of electric power and energy to your premises and will continue to respond to any service calls and emergencies. A grid-connected PV system will not function in the case of an electricity outage unless you have an accompanying electricity storage system and the ability to "island" (disconnect from the grid).

Net Metering

*Net metering allows you to get credit from your energy supplier for electricity generated by the PV system you host. Your electricity bill will reflect the amount of electricity supplied to you, minus the excess electricity generated by the system and delivered to the grid. You are eligible to participate in net metering if you own or operate an eligible PV system less than or equal to 2,000kW (AC-rated) for your own use. To participate in net metering, an application for net metering must be submitted to your energy supplier. Energy suppliers doing business in the State of Illinois are required to provide net metering for eligible solar customers. Net metering is subject to change or termination by executive, legislative, or regulatory action, which may impact the rate and terms under which you are credited.

ForeFront Power believes that including language about regulatory and legislative risk of net metering and other policies can be unnecessarily alarming to consumers. The reality of policy and/or regulation changes is one faced by many industries, not just solar, and it is rare for governments and regulatory bodies to not provide at least some relief to existing contracts. When grandfathering or other means of abatement is unavailable to customers with existing contracts, governments and regulatory bodies can find themselves in the difficult situation of trying to justify measures in the name of public good while actively harming the investments of a subset of the population. This occurred in Nevada when the PUC voted in changes to the net metering regulations that, among other things, would severely step down the export credit and would not allow for grandfathering of existing contracts. After several legal challenges (including a challenge from the state Attorney General Office's Bureau of Consumer Protection) and a state court decision that determined the move to be unjust, the PUC reversed its grandfathering decision.

All this is to say that while policy risk is real, it is also remote. We support equipping consumers with the knowledge they need to understand their exposure, but we believe that the language above, as currently written, lends false balance to a situation that is unlikely to occur. Accordingly, we support the inclusion of language that helps give perspective (e.g. "Net metering is subject to change...though it is uncommon for this outcome occur without grandfathering of existing contracts or other means of ensuring that current customers are treated fairly in the transition").

System Operations, Maintenance, Warranties, and Guarantees

- System maintenance (operational upkeep) IS OR IS NOT included as part of the PPA.
 - If system maintenance is included, for ___ years by ___ (for example, system owner, installer, or approved vendor)
- System repairs (actions required to fix a malfunctioning system) ARE OR ARE NOT included as part of the PPA.
 - If system repairs are included, for ___ years by ___ (for example, system owner, installer, or approved vendor)
- Is the PV system warranted against issues related to improper installation? YES OR NO
 - If so, this warranty is for ___ years by ___ (for example, seller or installer)
- Do the PV panels come with a manufacturer's warranty? YES OR NO
 - If so, this warranty is for ___ years.
- Does the system inverter come with a manufacturer's warranty? YES OR NO
 - If so, this warranty is for ___ years.
- Your roof IS OR IS NOT warranted against leaks from the system installation.
 - If your roof is warranted against leaks from system installation, for ___ years after installation by ___ (for example system owner, installer, or approved vendor)
- The system owner WILL OR WILL NOT remove the PV system at the conclusion of the term of the PPA.
 - The system owner WILL OR WILL NOT return any portions of your roof to its original condition upon the removal of the system (ordinary wear and tear excepted).
 - The system owner WILL OR WILL NOT offer the customer an option to own and retain the PV system after the term of the PPA.
- The system owner WILL OR WILL NOT insure for loss or damage to the system.

- If the system owner will insure the system for any loss or damage, except under the following circumstances

**You are responsible for any loss of or damage to the PV system not covered under the system owner's obligations above. Consult an insurance professional to understand how to protect against the risk of loss or damage to the system.*

- The system owner is providing you with a:
 - ___ System performance or electricity production guarantee
 - ___ Other type of system guarantee (specify) _____
 - ___ No system guarantee

**Unauthorized modification of your PV system, including the relocation of it, is prohibited under the Adjustable Block Program.*

Property Transfers

- If you sell your home, you MAY OR MAY NOT to transfer the PPA obligations to the purchaser(s) of the home.
 - If transfer of the PPA is permitted, it will be subject to the following conditions:
 - Credit check of the home purchaser(s)
 - Minimum FICO score requirement: _____
 - Transfer fee \$ _____
 - Assumptions of the PPA contract by the home purchaser(s)
 - Other
- If you sell your home, you ARE OR ARE NOT required to purchase the system prior to the sale.
 In such event, the purchase price will be calculated as follows: _____

ForeFront suggests that this section be labeled as "For Residential Systems Only". If the system will serve a public sector or commercial customer, then a response should not be required.

Net Cash Flow Estimate

- Estimated total PPA savings calculation:

[Here, three savings estimates will be presented to the customer—with low, middle, and high future electricity rate forecasts. The savings calculations will rely on the current default electricity supply price as the starting point with different escalator rates representing different potential future electricity rates and inflation forecasts. The savings estimates will be automated based on form inputs.]

ForeFront Power opposes including savings calculations in the disclosure form, especially one where three different savings scenarios are required. Customers can easily get confused when provided multiple savings analyses, and it is common industry practice to provide one probable savings scenario unless variations are requested. If the IPA wishes to include some disclosure of savings, we advocate for a top-line number (rolling up all \$/kWh and \$/kW savings over contract term), and a statement of the assumptions used in calculating that number.

Additionally, does the statement “savings estimates will be automated based on form inputs” imply that the IPA will provide a form savings calculator? We would caution against this approach, as such a calculator would likely require an extensive process of fact-finding and model-building, with the product subject to a comment period and PUC approval. In lieu of a uniform standard for calculating savings, we support a transparency clause in this form to ensure that developers have been forthright with their customers in discussions on how savings are calculated. This could be a checked box, or a signed statement from both developer and customer affirming that open and transparent conversations were held regarding savings.

*These savings estimates are not guarantees. Actual savings may vary.

*This savings calculation uses your prior electricity usage to estimate future usage. Actual future usage may not be the same as prior usage.

*This savings calculation was based on a standard forecast for retail electricity prices, using the following assumptions:

-
-
-

Actual retail electricity rates may vary from this projection. For further information regarding your electricity rates, contact your electric utility or the Illinois Commerce Commission.

*Tax and other state and federal incentives are subject to change or termination by executive, legislative, or regulatory action, which may impact savings estimates. Savings may change if your electric utility’s net metering tariffs or distributed generation rebates change prior to the commissioning of the system.

Additional Terms and Disclosures

*Nothing listed below shall alter, amend, repeal, or supersede the disclosure requirements contained in this form.