

**Comments of NextEra Energy Resources, LLC on Adjustable Block Program
Distributed Generation Consumer Protection Disclosure Forms**

NextEra Energy Resources Development, LLC (NextEra) submits these comments to the Illinois Power Agency (IPA) and the Program Administrator (PA) for the Illinois Adjustable Block Program (ABP) on the following draft documents released for comment on October 3, 2018:

- Adjustable Block Program Distributed Generation PV Brochure Text (Brochure)
- Adjustable Block Program Guidelines for Distributed Generation Marketing Materials and Marketing Behavior (Marketing Guidelines)
- Adjustable Block Program PV System Power Purchase Agreement Disclosure Form¹ (PPA Disclosure Form)

Below, NextEra submits specific comments on each of the above-listed draft documents. However, NextEra's **overriding comment** is that the applicability of and requirement to use these three documents should be **limited** to marketing, sales contacts, and contracts with **residential and smaller business customers**. NextEra is focused on participating in the Illinois ABP PV DG market through installation of behind-the-meter solar generation facilities at or nearby to the premises of business customers, including in many cases substantial, sophisticated businesses that consume large amounts of electricity. These customers are typically significant buyers of energy for their businesses, have dedicated, knowledgeable energy procurement professionals on staff (or rely on experienced energy industry consultants), and are familiar with both the competitive retail electricity market and with other options such as self-generation options.² These customers almost always obtain their electricity supply from an Alternative Retail Electric Supplier (ARES) pursuant to a negotiated contract, rather than from the local electric utility under a standard or default service tariff. Contracting with these customers concerning the terms and conditions of installing solar facilities on their premises and the prices, terms and conditions of PPAs for the supply of electricity from the facilities involves arms'-length negotiations between teams of knowledgeable energy industry professionals. The resulting prices, terms and conditions will almost certainly be unique to each customer and installation, not standardized as may be the case for residential or "mass market" customers.

During the October 10, 2018, workshop, NextEra submitted a comment that a definition of "consumer" for purposes of these documents should be provided, and that in any event applicability of the documents should be limited to residential and smaller businesses electricity customers. The response provided by the moderators to this comment during the workshop was, in essence, that while business customers may possess skill and expertise in their particular business operations, they may lack understanding of solar energy, solar generation facilities, net metering, renewable energy credits (RECs), and so forth. With all due respect to the IPA and the PA, this is not NextEra's experience in dealing and transacting with business users of electricity

¹ NextEra will be participating in the Distributed Generation (DG) portion of the ABP solely through power purchase agreements (PPA) with customers for energy delivered from behind-the-meter solar generation facilities installed on or near customers' premises. Therefore, NextEra is not submitting comments on the draft Disclosure Forms for PV System Purchases and Leases.

² DG solar facilities as large as 0.50 MW to 2.0 MW can qualify for the ABP. Solar generation facilities this large are suitable for larger energy consuming businesses with electrical demands equal to or greater than the size of such DG solar facilities.

in numerous states across the country. Rather, as stated above, NextEra typically finds larger non-residential energy consumers to be very knowledgeable about their electricity acquisition choices and they often have experienced energy procurement professionals on staff or have retained and are represented by knowledgeable energy industry consultants.

NextEra offers two approaches for defining a demarcation line between retail electricity customers to which the proposed consumer protection and disclosure documents should apply, and those retail electricity customers to which the documents need not apply.³

- **Preferred Approach:** The consumer protection and disclosure documents should only be applicable to marketing to and contracting with (i) residential customers and (ii) small commercial retail customers, as defined in Section 16-102 of the Public Utilities Act (220 ILCS 5/16-102), *i.e.*, nonresidential retail electricity customers using 15,000 kWh or less of electricity per year.
- **Alternative Approach:** The consumer protection and disclosure documents should only be applicable to marketing to and contracting with (i) residential customers and (ii) nonresidential retail customers with electrical demands of 1 MW or greater. Pursuant to Section 16-115(f) of the Public Utilities Act (220 ILCS 5/16-115(f)) and the Illinois Commerce Commission’s (ICC) regulation at 83 Ill. Adm. Code Part 451, Subpart B, ARES serving only nonresidential customers with electrical demands of 1 MW or greater are subject to reduced certification requirements and obligations as compared to ARES serving residential and smaller nonresidential retail customers.

The Preferred Approach and the Alternative Approach each uses an established, familiar demarcation between residential and smaller business “consumers” and larger, sophisticated business customers. NextEra urges the IPA and the PA to adopt one of these approaches (preferably the Preferred Approach) to establish a demarcation line between retail electricity customers to which the proposed consumer protection and disclosure documents should apply, and those retail electricity customers to which the documents do not apply (unless an Approved Vendor elects to follow/use them for larger business customers).

NextEra’s specific comments on the Brochure, Marketing Guidelines, and PPA Disclosure Form, below, highlight in a number of places how these documents, as drafted, are not suitable for sales activities and transactions with larger nonresidential customers. These comments further demonstrate that the applicability of the consumer protection and disclosure documents should be limited to residential customers and smaller business customers.

Comments on the Adjustable Block Program Distributed Generation PV Brochure Text

1. Page 3 - Statement “Have your roof professionally evaluated to make sure the roof can support the weight of the panels and that it won’t need to be replaced during the life of the PV system.”

Comment: NextEra recommends revising this statement to read: “If the PV system will be installed on your roof, have your roof professionally evaluated to make sure the roof can support the weight of the panels and to evaluate if the roof may need to be replaced during the life of the

³ An Approved Vendor should be allowed, of course, to *choose* to use the consumer protection documents and disclosure forms with larger electricity users, even though not *required* to do so.

contract. If the roof may need to be replaced during the life of the contract, make sure this is taken into account in the location of the system and that the contract terms cover temporary removal or relocation of the system during the roof replacement.”

NextEra notes that while PV systems at residences will almost always be installed on the roof of the home, this is not necessarily the case for PV systems installed at business premises. This is one example of how the documents are written with residential consumers in mind and not necessarily business customers. Additionally, NextEra notes that while a roofing professional may be able to reasonably assess the need for a roof replacement over the next five or so years, the accuracy of such an assessment for a period 10 or more years into the future may be questionable.

2. Page 3 – Statement “The Approved Vendor will receive a certain amount of money from the utilities for RECs and will pass some or all of the money along to you.”

Comment: NextEra recommends revising this statement to read: “The Approved Vendor will receive a certain amount of money from the utilities for RECs. You should discuss with the Approved Vendor how the money received for RECs is taken into account in setting the price and other terms and conditions of your contract.”

NextEra submits that it is unlikely that the Approved Vendor will specifically pass some or all of the REC revenue back to the customer. Instead, the anticipated REC revenues will be one component taken into account in setting or negotiating the overall rate under a PPA or system lease. Note that this is reflected in the following statement on page 4 of the PPA Disclosure Form: “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.”

At a minimum, the treatment of REC revenues will be an item for negotiation. The statement as written would create incorrect expectations for the customer.

3. Page 3 – Statement “You may qualify for a federal tax credit. Consult your tax adviser.”

Comment: NextEra recommends revising this statement to read: “The PV system installed on your premises may qualify for a federal tax credit. You should discuss with the Approved Vendor how the federal tax credit, if any, is taken into account in setting the price and other terms and conditions of your contract.”

As noted earlier, NextEra (and other developers) will be installing PV systems on customers’ premises that the developer will own, and the developers will enter into PPAs with the host customers. The federal tax credits may go to the owner or developer of the PV system, who would be the taxpayer entitled to use the tax credit. Note that this is reflected in the following statement on page 4 of the PPA Disclosure Form: “You may not be eligible for all state and/or federal incentives related to your solar PPA. In many cases, a solar PPA customer will not be able to directly take advantage of incentives related to the PV system. Instead, the system owner or Approved Vendor will realize the incentive benefit. The benefit of these incentives may be passed on to you in the form of reduced costs.”

Again, treatment of the tax credit in setting the overall price, terms and conditions of the contract will be a subject for negotiation. The statement as written may create incorrect expectations for

the customer. This statement, as written, is another example of how the documents are written with residential consumers in mind and not necessarily business customers.

4. Page 3 – Statement (question) “How long do you expect to stay in your home?”

Comment: NextEra recommends revising this statement (question) to read: “How long do you expect to stay in your home or present business location?”

This statement (question), as written, is another example of how the documents are written with residential consumers in mind and not necessarily business customers.

Comments on Adjustable Block Program Guidelines for Distributed Generation Marketing Materials and Marketing Behavior

1. Page 1 – Statements: “Approved Vendors and their agents and subcontractors shall not make any demonstrably false or misleading statements” and “Approved Vendors and their agents and subcontractors shall accurately portray the nature of solar power, RECs, and the ABP.”

Comment: NextEra recommends that these statements be replaced with the following text: “All statements made by an Approved Vendor and its agents and subcontractors in marketing materials shall have a reasonable basis and support. When describing the nature of solar power, RECs, and the ABP, marketing materials shall use or be consistent with the following points, as applicable:” [Note: The “following points” refers to items 2.a, 2.b and 2.c on pages 1 and 2.]

While it may seem reasonable to specify that statements made by Approved Vendors, agents and subcontractors shall not be “demonstrably false,” the statement as written is unnecessarily general and vague, carries negative connotations, and may place the Approved Vendor in the position of having to “prove a negative.” The revised statement recommended by NextEra carries a more positive connotation and requires that Approved Vendors and their representatives have a reasonable and supportable basis for statements – which will enable the Approved Vendor to comply by developing marketing materials and sales presentation texts based on factual support. Additionally, the IPA and the PA have developed a two-page set of specific questions and answers describing solar power, RECs, and the ABP, which are the statements that Approved Vendors and their representatives should be required to use (or not use, in the case of the “may not make” statements) or be consistent with. This two-page list provides specific guidance; therefore, a general prohibition on “demonstrably false and misleading statements” is not needed.

2. Page 1 – Statement (item 2.a.iii.2): “If you sign a contract with us, and our application to the ABP is successful, the PV system we install on your roof will be part of the ABP.”

Comment: NextEra recommends that the statement be revised to refer to: “. . . the PV system we install on your roof or elsewhere on your property”

While PV systems at residences will almost always be installed on the roof of the home, this is not necessarily the case for PV systems installed at business premises. This statement, as written, is another example of how the documents are written with residential consumers in mind and not necessarily business customers.

3. Page 2 – Statement (item 2.c.i): “All terms and values in the marketing materials, including terms and values related to escalators, financing terms, and rates, must be consistent with

terms used in the disclosure form and the contract.”

Comment: This provision should be deleted, or at a minimum, should be specified as applicable only to marketing materials to be used with residential and small business customers. Marketing materials will be developed for generalized use with customers and will not be customer-specific. The marketing materials will typically be provided to potential customers well in advance of customer-specific negotiations and PPA development and execution. Rates, escalators, financing terms, and similar contract provisions will be developed on an individual customer basis, through negotiations, particularly with nonresidential customers. The customer-specific rates and terms will be set forth in the contract with the customer and other customer-specific disclosure documents. In summary, it will be very difficult to make information in marketing materials on rates, escalators, financing terms, and similar values “consistent” with the subsequently-developed specific terms of a customer’s contracts.

This statement, as written, is another example of how the documents are written with residential consumers in mind and not necessarily business customers.

4. Page 2 – Statement (item 2.c.iii): “All marketing materials must be consistent with the IPA informational brochure, and, in particular, with the following items from the brochure.” (Specific items are then listed.)

Comment: NextEra recommends that this statement be revised to read: “All marketing materials must be consistent with the following items from the IPA informational brochure.”

Specifying specific provisions of the Brochure with which marketing materials must be consistent is sufficient guidance. Requiring generally that all marketing materials must be consistent with the Brochure is overly broad and general and will inevitably lead to differences in judgment and interpretation, and disputes.

5. Page 5 – Statement (item 7): “An installer’s representative will make an in-person site visit to a potential customer and evaluate the site’s azimuth, orientation, and shading before designing a system. The system will be designed before the customer signs a contract.”

Comment: This provision should be deleted, or at a minimum it should be applicable only to installations at residential premises. An in-person site visit is not necessary, is not customary in the industry, and should not be required. There are many online and other tools available to enable a developer to gather the necessary information and prepare a system design. The developer will, of course, make a site visit if it needs information that can only be obtained through a site visit, but a pre-contract site visit should not be required. Additionally, NextEra seldom has the PV system designed, nor the specific equipment and supplier to be used designated, at the time it signs the PPA with the customer. NextEra typically reserves the right to select the appropriate equipment and the supplier just prior to installation. Business customers can, if they want to, specify in their contracts a right of approval over the specific equipment and supplier(s) to be used.

This statement, as written, is another example of how the documents are written with residential consumers in mind and not necessarily business customers.

6. Page 5 – Statement (item 8.a): “IPA informational brochure to be presented to the customer at first contact that is in person or online.”

Comment: The following sentence should be added to this statement: “If the first contact with the customer has occurred prior to the IPA informational brochure being finalized and released for use, the informational brochure should be provided to the customer at the next contact.”

NextEra, and likely many other potential Approved Vendors, have already had numerous contacts with potential customers for PV installations and PPAs.

7. Page 6 – Statement (item 13.e): “All Approved Vendor agents shall complete a training program that covers the applicable Sections of these marketing behavior guidelines. The Approved Vendor shall document the training of its agents and provide a certification to the Program Administrator showing that an agent completed the training program prior to an agent being eligible to market or sell PV that will be part of the ABP. Upon request by the Program Administrator or the IPA, an Approved Vendor shall provide training materials and training records within seven business days.”

Comment: NextEra accepts this requirement as reasonable for agents who will be engaged in marketing activities with residential customers and small business customers, but it should not be required for agents engaged in marketing activities with larger business customers (as determined based on one of the approaches presented on page 2 of these Comments for distinguishing between residential and smaller nonresidential customers on the one hand and larger nonresidential customers on the other hand).

Comments on Adjustable Block Program PV System Power Purchase Agreement Disclosure Form

1. Page 2 – Statement: “You should read your lease agreement closely before you sign it.”

Comment: This statement should be revised to state: “You should read your PPA closely before you sign it.”

2. Page 2 – Statement: “You may rescind your PPA contract within 10 calendar days of signing it by contacting the owner of the PV system.”

Comment: The Disclosure Form should specify that this provision is applicable only to PPAs with residential customers and small commercial retail customers (as defined in Section 16-102 of the Public Utilities Act). NextEra understands that this provision (that the customer may rescind the contract within 10 calendar days after signing) is taken from the ICC’s regulations pertaining to marketing practices for ARES at 83 Ill. Adm. Code 410.110(k). However, as provided in 83 Ill. Adm. Code 412.100, the provisions of Section 410.110(k) are only applicable to ARES serving residential customers and small commercial retail customers. Therefore, the 10-day cancellation privilege for solar PPAs should only be available to (and required for) PPAs with residential customers and small commercial retail customers. There is no need to accord this 10-day cancellation right to larger business customers. Such customers can negotiate for cancellation rights in their contracts if they want to have such provisions.

This provision, as written, is another example of how the documents are written with residential consumers in mind and not necessarily business customers.

3. Page 3 – Table requiring identification of the System Installer and the System Warranty and/or Maintenance Provider.

Comment: The System Installer and the System Warranty and/or Maintenance Provider may not be known at the time of execution of the PPA, particularly for individually-designed PV systems to be installed at a business customer’s premises. Additionally, business customers wanting to have a right of approval over the System Installer and System Warranty and/or Maintenance Provider can negotiate to include such a provision in their PPAs. This form should be modified to state that this information is to be provided if available at the time of PPA execution, but in any event the information shall be provided to the customer in writing at least 5 business days prior to commencement of installation.

4. Page 3 – Section on “System Information”

Comment: NextEra recommends adding another point after “Frequency of PPA payment (for example, monthly)” for “Invoice payment due date to avoid late payment charge (for example, 21 days after date of invoice) _____.” Alternatively, this point could be added on page 4 in the section on “Fees”.

5. Page 3 – Statement (under “System Information”): “This assumes that your system will produce ____ kWh of electricity per year.”

Comment: PV systems can be expected to experience degradation over time, so that they will not be able to produce the same amount of kWh annually over a 15-year period. This statement should be modified to require a table showing projected annual kWh production for each year of the contract term and an explanatory statement such as “Annual kWh production by your system is expected to decline over time due to normal degradation of PV system components.”

6. Page 4 – Requirement (under “Fees”) to provide System maintenance fees and Non-connection to internet fees.

Comment: The Approved Vendor may elect not to charge separate System maintenance fees and Non-connection to internet fees, but rather to reflect these costs in setting or negotiating the overall PPA rate. The Disclosure Form should be modified to state that specification of System maintenance fees and Non-connection to internet fees is required only if the Approved Vendor is separately charging those fees, and otherwise is optional.

7. Page 5 – Statement that “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: _____.”

Comment: The termination fee/penalty will typically depend on the year of termination within the contract term. The Disclosure Form should call for a table of termination fees based on the year of termination within the contract term, or a formula for calculating the termination fee that takes into account the year of termination within the contract term.

8. Page 6 – Statements (under “System Design Specifications”): “The manufacturer of the PV panels is ___” and “The make of the inverter is ____; The model of the inverter is: _____.”

Comment: Similar to Comment 3 above, the manufacturer of the PV panels, the make of the inverter, and/or the model of the inverter may not be known at the time of execution of the PPA. These provisions should be modified to specify that the manufacturer of the PV panels and the make and model of the inverter do not need to be specified if not known at the time of PPA

execution, but must be provided to the customer in writing at least 5 business days prior to commencement of system installation. Additionally, these provisions should state that if the make and/or model of the inverter is/are specified on the Disclosure Form, the Approved Vendor has the right to specify a different, but functionally equivalent, inverter make and/or model by giving written notice to the customer at least 5 business days prior to commencement of installation. Business customers wanting to have a right of approval over the PV panel manufacturer, inverter make and/or inverter model can negotiate to include such a provision in their PPAs.

9. Page 7 – Section on “System Operations, Maintenance, Warranties, and Guarantees.”

Comment: This may already be the IPA’s and the PA’s intent, but in this Section of the PPA Disclosure Form, space should be provided under each item in which additional explanatory or detailed information can be provided; or the Disclosure Form should be made available in Word format so that additional information can be typed in under individual items as appropriate. For example, the Approved Vendor may want to state in detail what it will do or not do with respect to removal of the PV system and restoration of the roof or ground site at the conclusion of the contract term.

10. Page 7 – Section on “System Operations, Warranties, and Guarantees” – subpoint on removal of the PV system and restoration of the site at the conclusion of the contract term.

Comment: NextEra recommends that: (1) The first point should be revised to read, “For roof-mounted PV systems, the system owner WILL *OR* WILL NOT return any portions of your roof to its original condition upon removal of the system (ordinary wear and tear excepted).” (2) An additional point should be added, as follows: “For ground-mounted PV Systems, the system owner WILL – *OR* WILL NOT return the site to its condition immediately prior to installation of the PV system.”

Since some PV systems may be installed on the ground at the host customer’s premises, rather than on the roof, there should be a separate line in the Disclosure Form concerning restoration of the ground site following the contract term. (Also, referring to comment 9 above, providing additional or expandable space on the Disclosure Form here will enable the Approved Vendor to specify in greater detail what will be done or not done in regards to removal of the PV system and restoration of the roof or ground site.)

11. Page 8 – Statement (under Property Transfers): “If you sell your home, you *MAY OR MAY NOT* to [sic] transfer the PPA obligations to the purchaser(s) of the home.”

Comment: The wording of this statement (and the following boxes and points beneath it) need to be revised, or an alternate provision added, to refer to “sale or relocation of your business or the sale of the premises in which your business is presently located.” This section (under “Property Transfers”), as written, is another example of how the documents are written with residential consumers in mind and not necessarily business customers.

12. Page 8 – Statement (under “Net Cash Flow Estimate”): “The savings calculations will rely on the current default electricity supply prices as the starting point with different escalator rates representing different potential future electricity rates and inflation forecasts.”

Comment: For nonresidential customers other than “small commercial retail customers” as defined in Section 16-102 of the Public Utilities Act, the savings calculation should not be

required, or if required it should not be based on the “current default electricity supply price as the starting point.” Nonresidential customers (other than “small commercial retail customers” as defined in Section 16-102) almost always obtain electricity supply from an ARES pursuant to negotiated prices and terms and seldom if ever take electric supply service from the electric utility at the default rate.

Respectfully submitted,

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