



October 26, 2018

Illinois Power Authority
160 North LaSalle Street
Chicago, Illinois 60601

InClime, Inc.
326 First Street, Suite 27
Annapolis, MD 21403

Re: Vivint Solar Comments on Illinois Adjustable Block Program: (1) Guidelines for Distributed Generation Marketing Materials and Marketing Behavior, (2) Distributed Generation PV Brochure Text, (3) PV System Lease Disclosure Form, and (4) PV System Purchase Disclosure Form

Dear Illinois Power Authority and InClime, Inc,

Thank you for the opportunity for Vivint Solar Developer, LLC ("Vivint Solar") to provide written comments on the Illinois Adjustable Block Program's: (1) "Guidelines for Distributed Generation Marketing Materials and Marketing Behavior" (the "Guidelines"), (2) "Distributed Generation PV Brochure Text (the "Brochure"), (3) "PV System Lease Disclosure Form" ("Lease Form"), and (4) "PV System Purchase Disclosure Form ("Purchase Form").

Vivint Solar commends the Illinois Power Authority ("IPA"), the Illinois Commerce Commission ("ICC"), and the Program Administrator, InClime, Inc. ("InClime"), for their thoughtfulness in the development of the Adjustable Block Program ("ABP"). We applaud the desire to spur solar development within the state of Illinois while also developing meaningful measures, requirements, and application processes to protect consumers.

Vivint Solar is a national leader in the residential solar market. Through Q2 2018, Vivint Solar has nearly 140,000 customers nationwide, and has installed approximately 952 MW of rooftop solar across 22 states. Vivint Solar employs approximately 3,500 people across the nation, including salespersons, installation technicians, electricians, warehouse employees, and administrative positions. We are actively involved with various trade organizations, including the Solar Energy Industries Association ("SEIA") and many of its state affiliates, and participate with other organizations seeking to understand the solar industry and protect consumers, including the Clean Energy States Alliance.

Vivint Solar offers both third-party and direct ownership financing models to provide customers with the option that best meets their energy needs. We announced plans to expand into Illinois on August 2, 2018, and look forward to bringing the benefits of clean affordable energy, along with the creation of jobs, to Illinois residents through our participation in the ABP as an Approved Vendor.

Vivint Solar appreciates the efforts of the IPA and InClime to gather stakeholder feedback, both during the Stakeholder Meeting held on October 10, 2018 (representatives of Vivint Solar's legal/compliance, new markets, and policy departments attended the meeting) and through written comments. Vivint Solar's comments herein are not intended to be a line-by-line review of the Guidelines, Brochure, and Forms, but will address select critical issues for IPA's and InClime's consideration. We also support the comments filed by the joint solar parties, and our comments should be viewed as an addition to theirs.



Comments

1. Guidelines for Distributed Generation Marketing Materials and Marketing Behavior

- 3. (a): “All materials shall reflect that the Approved Vendor, or the Approved Vendor’s agent, is not employed by, representing, endorsed by, or acting on behalf of a utility or a utility program, a consumer group or consumer group program, or a governmental body, except in those cases where the Approved Vendor is a consumer group or governmental body.**

The list in 3(b) contains specific “shall not” language (i.e., an Approved Vendor shall not use the logo of the IPA, utilities, etc. on marketing materials or make any representation of affiliation). Is compliance with the list in 3(b) adequate to fulfill the intention of 3(a), or is a specific disclaimer needed on all marketing material to adequately “reflect” that an Approved Vendor is not employed by, representing, endorsed by, or acting on behalf of a utility or a utility program, a consumer group or consumer group program, or a governmental body? This disclaimer is included in the disclosure forms, but does it need to be included on all separate marketing materials?

- 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.**

Vivint Solar supports the requirement that the system be designed prior to the customer signing a contract. However, an in-person site visit is not always necessary to evaluate the tilt, azimuth, orientation, and shading of a particular customer’s home. There are several accurate software tools such as Google Sunroof which take azimuth, orientation, and shading into account, and can be used to provide an accurate design to a customer in a timely manner. A design generated by such software should meet this requirement, regardless of whether the information was obtained in-person. However, we believe a system should not be installed on a home unless a site survey has been performed prior to install.

- 8. (d) Disclosure form to be completed after site visit and system design, and completed disclosure form to be delivered to customers before contract is signed. Approved Vendor agent shall review the disclosure form with the customer before the customer signs it and give the customer the opportunity to ask questions about it.**

For the reasons set forth above, we do not believe that a site visit is necessary before the Form is completed and the customer is given the opportunity to sign an agreement with the installer.

In any event, the IPA and InClimate should identify an effective date on which the Brochure and Forms will be required on a go-forward basis. Eligible sales have been occurring in the market since June 1, 2017, when the Future of Energy Jobs Act became effective, and are currently ongoing. Those systems should be eligible for the ABP, and the customers and solar installers associated with them should not be required to try to adhere to the process associated with the Brochure and Forms after-the fact.

Moreover, the effective date should be at least 180 days after the Brochure and Forms have been finalized and published. Implementing use of the Brochure and Forms will require Vivint Solar to adjust processes and may require software development. The specific requirements of and burden associated with implementing use of the Brochure and Forms will not be clear until the items are finalized and published.



9. (b): **“In the absence of local ordinances or regulations, Approved Vendors and their agents shall not conduct in-person solicitation at residential dwellings before 9:00 a.m. and after 7:00 p.m. or civil dusk, whichever is earlier.”**

In-person solicitation at a customer’s home is an effective means for customers to evaluate their options. Vivint Solar’s consultative sales process involves a number of customer touchpoints, including at the home where, after all, the system will be installed. This portion of the Guidelines is overly burdensome on both customers and solar installers.

We believe that towns and cities are best-suited to enact local ordinances governing in-person solicitation hours and that trying to enforce a statewide rule is unnecessary and unwise. If, however, such a rule is enacted, we believe that it ought to include the following: (1) it should provide that “in-person solicitation” does not include returning to interested customers who have expressly confirmed their desire to receive more information at a more convenient and traditional time in the evenings; (2) it should be standardized to allow in-person solicitation until 8 PM, both in winter and summer, in order to avoid having to check for what civil dusk is on a specific day. Civil dusk in the winter months takes place as early as 5:50 PM, an hour that many people haven’t yet returned from work. We understand the need to protect consumers from late-night solicitations, but we think it makes more sense to make and enforce bright-line rules that still allow consumers the opportunity to interact with sales professionals they might be interested in meeting with.

12. **“Each Approved Vendor offering sale or lease of solar systems to customers online shall clearly and conspicuously make available the informational brochure.”**

Vivint Solar advertises on its website. Does IPA and InClimate expect us to include a copy of the Brochure on our website?

13. (d): **“No Approved Vendor agent shall make a record of a customer’s account number until a contract has been signed.”**

This provision would inhibit our ability to comply with other aspects of the Guidelines. A customer’s utility bill, which likely includes the customer’s account number, is collected prior to the design of the system (and by necessity prior to the contract being signed). The bill is necessary to determine the customer’s historical usage and rate schedule, each of which are critical for designing a system. Even if we do not specifically record a utility account number from a bill until a contract is signed, we may have an image or copy of the bill in our possession. We understand that this requirement was adapted from the Alternative Retail Electric Supplier regulations, but those regulations are incongruent with the DG installation process. Given those differences, coupled with the low risk that a utility account could be misappropriated for use in a way that would harm a consumer, this provision is unnecessary and should not be included.

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.”**

Vivint Solar is supportive of a mandatory training program, but believes it should be developed by IPA and InClimate, and standardized across all market participants. Further, as discussed in the stakeholder



meeting, we believe this training should be available via an online training portal or webinar, and not be required to be administered in person.

Given the expected growth within the Illinois rooftop solar market over the coming months and years, a standardized training program available to Approved Vendors will yield better participation and compliance from Approved Vendors, and available for Approved Vendors to review on-demand with new employees or agents, along with those in need of additional training. Also, Approved Vendors should be given 21 calendar days to provide records associated with training, rather than 7 business days.

15. (c) “During a telephone solicitation, when it would be apparent to a reasonable person that a customer's English language skills are insufficient to allow the customer to understand a telephone solicitation in English, or the customer or another person informs the agent of this circumstance, the agent must transfer the customer to a representative who speaks the customer's language, if such a representative is available, or terminate the call.”

This provision unnecessarily limits a consumer's right to interact with an agent with the help of an interpreter. Moreover, a consumer on the other end of a telephone solicitation may end the call, if they choose. We understand with the desire to offer protections for consumers who don't speak English, but do not believe this provision is a reasonable way to achieve that goal.

21. “The Program Administrator and/or the IPA may refer misleading marketing issues to the Illinois Attorney General, consumer protection groups, and/or others”

We believe that most Approved Vendors will try to comply with these Marketing Guidelines and that any violation will be inadvertent and quickly rectified. We suggest an escalation path that refers these issues to the Approved Vendor first and goes to the Attorney General only when the violations are repeated, flagrant, and/or not cleared up quickly.

2. Distributed Generation PV Brochure Text

Vivint Solar is appreciative of the purpose behind the creation of the Brochure, but believes it should be evaluated side-by-side with the Forms in order to avoid unnecessary complexity and repetition. In other words, if it is in the brochure, with the exception of a few key material terms, it should not be repeated in the Forms. We share the view of the Joint Solar parties that in order to effectively inform consumers a balance should be struck between the amount and type of information included in the Brochure and Forms.

Brochure - Delivery

At the stakeholder meeting it was unclear whether the Brochure had to be delivered as a hard copy to all customers, or if an electronic copy was also permissible. Allowing for both options is the best way to inform consumers. For example, while the delivery of a hard copy may be appropriate for in-person solicitations, it is not feasible when first contact is made online or over the phone. Additionally, allowing the brochure to be sent electronically provides a better audit trail to ensure that the Brochure is actually being delivered to customers. The IPA suggested that some customers would be contacted and asked if they had received the Brochure, and the electronic copy would likely be easier for customers to find as they may not keep the physical copy of the Brochure.



At the stakeholder meeting, InClimate indicated that the Brochure was expected to be delivered at first contact, and again when the contract is signed. This approach is unnecessarily burdensome on installers without a corresponding benefit for consumers. We recommend requiring supply of the Brochure upon first contact, but not at the time the contract is signed, particularly since the customer will also be required to sign a lengthy disclosure form and sign a contract. Requiring another copy of the Brochure at this point could overwhelm the customer with information.

Finally, customers should not be required to sign the Brochure. Such a requirement is bizarre, at best, and would likely be disconcerting for a consumer who is simply looking to learn more about solar. Instead, the Approved Vendor should be able to confirm that they have provided a copy of the Brochure to a consumer.

Brochure - Content

“Can you take advantage of the federal Investment Tax Credit (ITC)? You may qualify for a federal tax credit. Consult your tax adviser.”

This statement may lead a power purchase or lease customer to believe that they could qualify for a tax credit, which is not accurate. We suggest a simple clarifying statement be added: “You may qualify for a federal tax credit **if you buy the system.**”

“A PV system should be installed where it gets a lot of direct sunlight – ideally, on a completely unshaded south-facing roof (or other surface). If your system is partially or entirely shaded, or it doesn’t face south, it will generate less electricity and be less valuable. Your installer is required to perform a shading study of the site, and you should ask to see this study.”

This statement may be accurate when it comes to the performance of a PV system in general, but it is inaccurate when it comes to the value to the customer. Consequently, we suggest a simple change - remove the phrase “and be less valuable” from the second sentence .

Under a traditional PPA or a lease arrangement, the customer is only charged for the actual (or expected in the case of a lease) per kWh electricity generation. Under these circumstances the Approved Vendor, not the customer, is the one impacted by any reduced economics stemming from inefficiencies of a system. A PPA or lease is often the best, and sometimes the only choice a customer has for going solar. Inaccurate language that might discourage a customer from pursuing rooftop solar should not be included.

“Will the retail price of electricity increase or decrease in coming years? By how much?”

The statement following this question is not responsive to the question. For ease of reference, that statement is: “the more the retail price of electricity increases, the more money you can save with solar. If the retail price of electricity decreases, generating your own electricity through solar panels may offer reduced savings or may not save you money at all.”

The initial question should be changed to “How can the retail price of electricity affect my potential savings?”

Earlier in the Brochure, and under this section, the Brochure provides: “Some of these questions you can answer for yourself, and others can be answered by your installer or Approved Vendor.” The Approved Vendor, installer, or customer cannot adequately answer if, and by how much, the retail price of electricity



will increase or decrease in the coming years. By rephrasing this question, it can be informative, fulfilling the purpose of its inclusion, but not unintentionally solicit customers to ask an Approved Vendor a question it cannot adequately answer.

“Especially if you lease or sign a PPA rather than buy your PV system, you may be required to take down the panels or buy out the lease if you move. This can reduce or eliminate savings from the system. Read your contract carefully to find out what happens if you move.”

Vivint Solar has successfully helped over 10,000 of its customers transfer a PPA or lease contract associated with a system to the purchaser of their home. Transferring from the seller to the buyer is the option that the vast majority of our customers have used. Thus, in our experience, this statement is unnecessarily alarmist, inaccurate, and seems to suggest a bias against PPA and lease products. This statement should not be included in the Brochure.

“If you have complaints related to the system or this sale process, you may contact the Adjustable Block Program Administrator by 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:”

As discussed in the stakeholder meeting, the first point of contact for the customer to resolve complaints should be the solar provider. This provision would direct all questions “related to the system” or “sale process” to InClime, which may have limited ability to manage call volume and address these concerns. The solar provider is better positioned to help the consumer - encouraging her to contact InClime or the Attorney General first is not likely to lead to faster or better resolution. Consequently, the consumer should be encouraged to contact her solar provider first and then, if the solar provider is unsuccessful in adequately addressing her concerns, to then contact InClime or the Consumer Protection Division.

Some suggested language: “If you have complaints related to the system or sales process, please contact your solar provider. If your solar provider is unsuccessful in addressing your concerns, you may contact the Adjustable Block Program Program Administrator by 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. . .”

3. PV System Lease Disclosure Form

As a preliminary matter, leases are subject to federal and state law intended to protect consumers. For example, lessors are required to provide lessors detailed disclosures under federal Regulation M, including meaningful and accurate disclosure of lease terms. These required disclosures are designed to give consumers the opportunity to compare lease offers to other lease offers, along with comparing the cost of leasing with the cost of buying an item on credit or paying cash. Lessors who fail to provide these disclosures can face meaningful consequences.

The IPA and InClime should be familiar with these required disclosures and ensure that the Lease Form is not inconsistent with them, and that it does not include redundant information.



Contract Requirements

At the stakeholder meeting, the IPA sought written comments on whether it should develop a guidance document on contract requirements to participate in the ABP. We suggest that this document be created and provided to Approved Vendors as soon as possible. Including contract requirements as part of the ABP but failing to provide a guidance document on those requirements would create unnecessary risk for Approved Vendors, consumers, and the overall goals of the ABP. Vendors, the IPA and InClime, and consumers would all be better-served by the provision of clear direction for contract requirements that obviate the need to go back and get new contracts signed because the original contracts failed to include specific requirements.

Access and Process

The disclosure forms should be available to any entity, regardless of whether they are an Approved Vendor. This is a practical necessity, particularly for aggregators who are not involved in the initial sale of a PV system, but need their installers to have access to the disclosure forms. It is also necessary for companies that intend to be Approved Vendors, but may not have been through the complete application process yet, to have access to the forms so that the systems they are selling will be eligible for the program.

The Forms should be made available in an editable format in order to allow Approved Vendors to integrate them into the Approved Vendors' systems. Approved Vendors should not be required to generate the Forms through ABP systems. InClime should devise a means of allowing Approved Vendors to generate the required savings estimate, which the Approved Vendor may then add to the form, as necessary.

Content

This form is required for your leased 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.

How often will the PA be contacting customers to ensure the disclosure form is received by the customer?

“If you have complaints related to the system or this sale process, you may contact the Adjustable Block Program Administrator by 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:”

Our comments about the Brochure, above, apply to this section as well. We believe before the customer contacts InClime or the Consumer Protection Division, she should be encouraged to contact the Approved Vendor, who is better suited to resolve customer concerns.

***Your lease may be assigned, sold, or transferred by the lessor 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.**

...



***Many systems [sic] lease contracts increase a lessee's monthly payments 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 lease payment rate, but also to the increases added annually due to the escalation.**

...

***If you do not maintain a high-speed internet connection, you may be charged a fee by the lessor to enable electronic lease payments.**

While statements such as this are not uncommon in disclosure forms, they are typically formatted in a way that only requires their inclusion if they are compatible with the particular lease in question, which may have variations. We recommend that the Lease Form be modified to ensure that customers are not confused by statements that may not apply to their situation.

“A full schedule of all lease payments”

As mentioned above, federal law already requires detailed disclosures on a number of topics, including lease payments. Including this on this disclosure form only makes it lengthier and more difficult to wade through, with no additional benefit to the consumer.

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

This statement is confusing. It seems to suggest that the customer is leasing the system from the utility. If the purpose is to explain to customers they may still need to buy power from their utility, this should be stated more simply. An example could be, “In addition to your lease payments from your solar provider, you may still receive a power bill from your utility.”

• “The expected value of the REC incentive payment(s) that will be received by the Approved Vendor for this PV system is \$_____”

The practical result from this and the subsequent disclosure is that an unrealistic and inappropriate expectation is set with customer that they should receive the cash value of the REC payment. That's not how the ABP works. Payments for the RECs are paid directly to the Approved Vendor, not the host customer. Without the REC incentive payment, the customer's purchase price or lease rate would be significantly higher.

**“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.”**

The concerns and statements in the previous comment are applicable to this section as well. This provision is inconsistent with the ABP, and is more likely to confuse a customer than help him. In any event, the following item in the Lease Form makes the important issue clear: “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 system lease payments.”

This disclosure makes the point clearly.



List all other state and/or federal tax incentives or rebates relied upon in determining the total of leasing the system and the value of each one:

Vivint Solar recommends that this table be removed as the only applicable incentive in most cases will be the ABP REC payment, which is already disclosed. Indeed, the statement immediately below the table makes that exact point: “*You may not be eligible for all state and/or federal incentives related to the lease of the PV system. In many cases, you will not be able to directly take advantage of incentives. Instead, the lessor 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.”

A fixture filing can make it more complicated and more expensive for you to refinance your mortgage or convey the real estate equipped with the PV system.

This statement is unnecessarily alarmist, and factually unsupported. Vivint Solar has helped over 10,000 customers complete transfers when a home has been sold. We recommend that this provision be removed.

- **Expected life of the system ___ years**
- **Expected overall percentage degradation over the life of the system ___%**

Vivint Solar recommends “Expected” be replaced with “Estimated.”

- **The manufacturer of the PV panels is ___.**
- **The make of the inverter is ___; The model of the inverter is ___.**

The stated objective during the stakeholder meeting on the manufacturer of the panels was to ensure that customers were not shown a “Tier 1” manufacturer on the disclosure form but then provided a lower quality panel at time of installation. Vivint Solar supports disclosing the manufacturer of the panels, but would like the flexibility to provide a short list of Tier 1 manufacturers. The exact manufacturer may not be known at the time the contract is signed, particularly if the installation takes place several months later. Installing a panel of the same quality as that disclosed on the Lease Form should meet this requirement.

[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.]

During the stakeholder meeting some of the necessary inputs were discussed, such as the utility rate for the customer, and the escalation rate. Vivint Solar believes that a prescribed savings analysis should not be required, and we support the comments made by the Joint Solar Parties on this point. However, if a savings analysis is required on the disclosure form then the inputs, such as utility rate, escalation rates, and formulas, should be determined by the IPA and InClimate and required for use by all companies to ensure that customers are getting accurate information that they can use for meaningful comparisons. Allowing companies to use, for example, differing utility rates for the same customer due to differences in methodology or time frame for calculating the rate would lead to savings estimates with differing results even if the the pricing and system were exactly the same.



What changes should require a new disclosure form?

This was briefly discussed at the stakeholder meeting and is an important point to clarify for companies to ensure they are able to comply with the disclosure form requirement. Vivint Solar believes that any changes to the financial product type, an increase in price, or major system size changes should require new disclosure forms. There are several scenarios where minor changes to a system may occur between the signing of the disclosure form and installation or energization. Here are a few examples of potential situations where we do not believe a new disclosure form should be required.

Change in Panel Wattage - Installers are constantly increasing the quality of the panels they use for installations. It is not uncommon for panels to change from when a contract is signed to the installation. For example, a system may have been designed with Canadian 310W panels but then at the time of installation the system the installer is using Canadian 315W panels. This is an immaterial change.

Changes in system due to permitting or interconnection review - Minor changes to a system due to permitting or code requirements (for example moving the location or the removal of a panel for fire code compliance), or after interconnection review (removal of a panel to pass the utility's net metering system size test) should not require a new disclosure form unless the change is significant. If the change requires a new system design or significant downsizing, then a new disclosure may be warranted.

Installation Deviation - During the installation process an unexpected issue may arise involving the location of a panel. Depending on the issue, it could result in the removal of a panel or two. If the change is minor, it should not require a new disclosure form.

Change in ABP incentive tier - It is likely that there will be situations where a contract with an estimated ABP incentive amount is disclosed, but by the time the system is approved into the program, the MW block has changed with the corresponding reduction in the REC value. This change in incentive value should not require a new disclosure form as it is outside of the control of the installer. This is particularly true for leased systems where the system owner (the Approved Vendor) is receiving the incentive and bears the risk of this scenario, not the customer.

4. PV System Purchase Disclosure Form

The comments addressed in the PV System Lease Disclosure Form, that would also be applicable to the PV System Purchase Disclosure Form, should be considered applicable to both forms.



Conclusion

Vivint Solar appreciates the opportunity to provide comments on the Guidelines, Brochure, and Forms. Our goal is to facilitate and support the adoption of renewable energy, specifically rooftop solar, as a viable consumer option in the state of Illinois. Thank you for your consideration of our comments, and please do not hesitate to reach out with any questions.

Sincerely,

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