

December 10, 2018

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 Draft Guidebook

On behalf of Pivot Energy, f.k.a Microgrid Energy, we draw from our experience in existing community and commercial DG solar markets and offer feedback regarding the Application Guidelines. Pivot Energy is a solar energy developer providing clients nationwide with turnkey expertise on commercial onsite solar, community solar, small utility, and project financing. We bring expertise from mature community solar programs and are excited to bring solar energy to Illinois.

I. Introduction

We would like to thank the Illinois Power Agency (IPA) and the Program Administrator (InClime) for developing the Adjustable Block Program (ABP) Guidebook, to offer a convenient, simplified version of the Long-Term Renewable Resources Procurement Plan (LTRRPP). We are appreciative of the opportunity to participate in stakeholder webinars and comment periods, and to offer suggestions on ABP requirements and requests for clarification.

Prior to our comments regarding the Draft Guidebook, we'd also like to take this opportunity to express our concern regarding interconnection queue transparency. Publishing an anonymous substation queue allows developers to make an informed decision, whether to advance, or share upgrade costs amongst other projects. Due to the impending lottery, the need for queue transparency should be of utmost importance to ensure participants operate with informed decisions.

The following pages will detail the sections of the Program Guidebook that we feel deserve more attention in order for the market to participate on a level playing field, and to ensure a smooth program opening on January 15, 2019. Pivot Energy fully understands the IPA's intent to prevent gaming of the program, and our hope is that our recommendations offer realistic examples of how and why specific requirements should be included in the ABP Guidebook.

II. Comments and Recommendations

A. Section 4: System Eligibility

Comments: REC Quantity Calculation

During the Stakeholder Webinar on November 30, 2018, many developers expressed concern regarding the Standard Capacity Factor that was determined by the ABP, and how such capacity factor was derived by the ABP. After further discussion, it was determined that applicants to the program can offer an alternate capacity factor as part of their application and can be derived from production software outside of the widely recognized standard, PVWatts. We appreciate the option to propose a higher, or lower, capacity factor for our proposed technology, and the opportunity to provide the Administrator our methodology for REC Quantity Calculation.

Recommendation:

1) Within the Section 4: Rec Quantity Calculation section, the option to provide an alternate capacity should be clearly stated within the Guidebook. Pivot Energy recommends that Part 1. and Part 2. be described as Option 1. and Option 2. to better alert applicants of the option to apply with an alternative capacity factor.

2) As discussed during the abovementioned webinar, the Administrator will need to prepare for, and access, alternative software systems (i.e. licenses), and proprietary methods of determining capacity factors. Pivot Energy recommends the Administrator invite interested applicants to provide their methodology in advance of the ABP Application, in the event the capacity factor will need to be reviewed. This will allow the Administrator time to “replicate the generation claimed”, and not delay the short window of review that is defined by the LTRRPP. Due to the overwhelming interest in both the distributed generation (DG) and Community Solar (CSG) categories, one could predict a variety of capacity factors in parallel with unique and available technology. With the ability to review proprietary methodology beforehand, the Administrator can identify potential roadblocks in advance of a highly-anticipated program opening. This recommendation can be achieved by communicating with interested participants via the illinoisabp.com website email subscription service.

B. Section 5: Project Applications, Required Information Part I**Comments: Non-Ministerial Permits**

In reference to the ABP Lottery Procedure, the draft ABP Guidebook documents, and the LTRRPP, Approved Vendors must attest they have obtained all non-ministerial permits. The definition of non-ministerial permits has been widely understood as adopted from the Massachusetts System of Assurance of Net Metering Eligibility as meaning:

“...A ministerial permit is a permit that is granted based upon a determination that the request complies with established standards. Such determinations are arrived at objectively, involve little or no discretionary judgment, and are usually issued by a single official or his/her designee. Non-ministerial permits are permits in which one or more officials consider(s) various factors and exercise(s) some discretion in deciding whether to issue (typically with conditions) or deny permits. Examples of ministerial permits include, but are not limited to building permits and electrical permits. Examples of non-ministerial permits include, but are not limited to wetlands Order of Conditions, Special Permit, Zoning Variance, Endangered Species, and MEPA Certificate.”

It is apparent there remains a discrepancy on the documentation needed to comply with the non-ministerial permit requirement. Pivot strongly recommends that the IPA state clear, objective criteria necessary to meet this standard, to the greatest extent possible. During the webinar, there were indications that this requirement would be policed by auditing a portion of projects to determine if all projects in a jurisdiction provided the same documents, with the implication that a project failing to provide a certain document that was provided by other projects might be failing to meet the requirement. While Pivot strongly supports auditing project documents to verify compliance, we also strongly believe that the aforementioned implication regarding matching documents is not correct. A scenario could easily be envisioned where 9 out of 10 projects provide an approval that is clearly not non-ministerial, simply to be comprehensive in documentation. That should not disqualify the 10th project that did not volunteer additional information. Conversely, if 9 out of 10 projects fail to provide a non-ministerial approval, that does not mean they all meet the requirement.

It is for this reason that Pivot requests clear, objective criteria be established to verify what must be provided to meet the “non-ministerial permit” requirement.

It is also apparent the intent of the IPA is to ensure that every project can prove it “can be built” at the time of the application, as discussed during the webinar on November 30, 2018. Pivot is supportive of this goal but believes the IPA must recognize that it is necessarily a criteria that requires judgment of each individual project’s circumstances.

Recommendations:

1. The following specific requirements should be sufficient to prove a project has its non-ministerial permits and “can be built”
 - a. The project must provide a land use permit or conditional use permit, or other similar document as required by the authority having jurisdiction (AHJ).
 - b. The project must provide documentation of its “commercially reasonable investigation of the Approved Vendor” as to all non-ministerial approvals required.
 - c. The project must provide any other non-ministerial approvals required, as revealed by the “commercially reasonable investigation”. This would typically entail such items as environmental approvals, conservation approvals, etc.
 - d. The project must provide the list of conditions that must be met to allow construction and operation of the project under the non-ministerial approvals. It is extremely important, however, to note that many of these conditions are ministerial or operational in nature and are not required to be met as of the time of application and award. Examples would include building permits, SHPO, SWPP, and other requirements that are ministerial in nature and typically may not be obtained until a project is ready to proceed to construction.
2. The IPA and the Program Administrator should have the discretion to judge whether the list of conditions provided in recommendation 1d above allow for a project that “can be built”. If such conditions would prevent an economic, operational project, the project should be disqualified. However, since this process would necessarily be subjective in nature, the IPA and Program Administrator should be required to consult with the affected project prior to rejecting it, to ensure that all context is understood. The need for consultation between the IPA, Program Administrator, and the Applicant will be of utmost importance particularly as interconnection cost estimates are subject to change after the lottery.
3. Finally, the list of conditions provided in recommendation 1d must not be interpreted as a list of conditions that must be met by time of application and award. By definition, conditions to non-ministerial permits become items that “involve little or no discretionary judgment” and thus are not in themselves non-ministerial requirements. They are instead items that must be completed prior to project construction or operation and are subject to the AHJ issuing said non-ministerial approval. The purpose of this requirement within the ABP program is to ensure that non-ministerial approvals are completed, not to instill a competition to see which projects can provide the most documents in their applications.

C. Section 5: Project Applications, Required Information Part I

Comments: Proof of Site Control

Overall, Pivot Energy agrees with the site control requirement for the ABP program. However, we would also request more clarification regarding the requirements for the DG category. Our recommendation is to require further binding agreements for DG projects in order to distinguish projects that are ready to build.

The CSG category has experienced tremendous saturation over the last six months. This demand has triggered a change in market behavior from an investment in CSG, to a focus on the available DG REC capacity. Coupled with the additional option for “project swapping” as of late, market conditions are ripe for solicitation of customers with below market value pricing to simply use as “lottery tickets” in the DG category.

Pivot Energy requests that DG projects be further evaluated based upon binding agreements, outside of site control, to ensure the DG category is not flooded with unrealistic projects that won’t get built. If the IPA’s goal is to ensure that awarded projects can be built (and Pivot supports this

goal), it would be reasonable and expected for the IPA to require documentation that the necessary business arrangements have been agreed upon to allow for the project to be built. This would generally reflect either an EPC (construction) agreement, a sale agreement, or a Power Purchase Agreement.

Recommendations:

1) Amend the language in Section G. Additional Provisions of the ABP Lottery Procedure document to, “2. Projects must submit a copy of a binding lease, option, PPA contract, or other binding agreement such as a host agreement or direct purchase contract agreement between the Approved Vendor or project developer and the site owner as proof of site control for any project where the project owner is not also the Approved Vendor and the host.”

D. Section 5: Project Applications, Required Information Part II

Comments: System Size or Capacity Variations

Within the draft ABP Guidebook and ABP Lottery Procedure documents released on November 28, 2018, the ABP has established a cap on system size or capacity variations, stating “...variations of less than 5% (or less than 1 kW, if 1 kW exceeds 5%) in size or capacity and variations in plot placement that impact less than 5% of the total surface area covered by the solar array(s) will not require project reapproval.” Additionally, within the ABP Lottery Procedure documents, the phrase “minor variations in plot placement” was included regarding the project-specific requirements of participants by Part II of the application process.

Pivot Energy fully understands the intent of the IPA to discourage gaming of the system, however we request that more thought is given to project specific constraints, in particular landowner needs, as well as a quantifiable way of determining the variation itself.

Recommendations:

1) Projects will be subject to equipment availability and procurement timelines from a variety of vendors. Pivot Energy is aware of the ability to list three different manufacturers on Disclosure Forms and requests the same opportunity at the time of application submission. When a project is ready for Part II of the application, and the system changes due to a change in equipment, the project should not be penalized if the system size change is +/- 10%, and the prospective equipment was provided at the time of application. A 5% change in size for an average solar module on the market right now is roughly 18 watts. The reality is that module manufacturers will frequently offer a variety of module bins (nameplate wattages), and that the change in market availability over a period of 6 months can easily exceed 18 watts due to changing trade tariffs, technology evolution, and market conditions. This scenario is a common and realistic occurrence throughout the solar industry, given market conditions which are subject to tariff implications.

2) The variation in plot placement should not be applicable to co-located community solar projects. With the above-mentioned requirements being met at the time of application (i.e. land use permit), it is assumed that either project is buildable. However, in the event only one of two projects is chosen, it should be up to the landowner’s discretion where the solar array should ultimately be placed. A situation could occur in which a landowner is left landlocked and unable to use his land for farming operations, if forced to build a solar project on one section of a parcel but not build on another section of a parcel that was not awarded.. This is a realistic concern for many market participants that were, as of late, planning on “project swapping” in full faith to bring forward the most cost-effective projects by swapping to co-located projects. The Administrator would be able to track co-located gardens during Part I of the application process by:

- a. Requiring applicants to identify if the project is intended for co-location, as allowed by the LTRRPP. This can be achieved by a ‘check box’, similar to the method used during the Approved Vendor process.
- b. Each co-located project application should clearly show the acreage available within the parcel(s) under site control.

- c. If a co-located project is selected, only those projects initially identified as a co-located project are eligible to re-locate the project area prior to REC contract execution.
- d. During Part II of the application process, the Administrator will be able to ensure the project remains in the eligible, identified project acreage.

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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