The Solar Energy Industries Association, the Coalition for Community Solar Access, and the Illinois Solar Energy Association (collectively the Joint Solar Parties) appreciate this opportunity to comment on minimum contract terms.

Timing

The Joint Solar Parties are concerned about the timing of compliance with these requirements. On one hand, the Joint Solar Parties recognize that the LTRRPP and behind-the-meter marketing guidelines did refer to contract amendments for energized systems and the LTRRPP did refer to minimum contract terms. However, even with the January 4, 2019 announcement that Block 1 is expected to open on January 30, it is a quick turnaround to finalize a contract amendment by February 13, 2019.

As an initial matter, the Joint Solar Parties understood from one of the webinars related to behind-the-meter marketing standards that the existence of a letter of intent—rather than full execution of a contract—would be sufficient to comply with the minimum terms requirements of Sections 6.13.1 and 6.13. To the extent that the standard is an attestation of a fully executed amendment (or full rejection/inability to contact the customer) within a month, the Joint Solar Parties believe the timelines for compliance are too short.

While over a month may seem to be a substantial amount of time, some customers—especially those in the public sector or commercial customers that undergo legal review—have a substantially longer lead time to approve contract amendments. The Joint Solar Parties noted that the form provided in the final behind-the-meter marketing guidelines does appear to allow space where an Approved Vendor could state that a suitable amendment has been presented but not yet signed. The IPA should explicitly confirm that an offer of an amendment is still pending at the time of Part I application is sufficient for a non-energized system and the full attestation (if one is required) should be required by Part II application. To require an attestation of customer acceptance (or rejection) by the Part I application for a non-energized system would result in significant time and resources (including legal costs) for both the developer and the customer, which will in turn increase project costs unnecessarily.

The Joint Solar Parties understand that while Approved Vendors are going to be required to address minimum contract terms for all customers, Approved Vendors need not provide (or attest to) amendments for systems that are not already energized but for which the Approved Vendor has already entered into a contract. The IPA should clarify that Approved Vendors that have already entered into contracts for behind-the-meter systems that are not yet energized need not do so.

Specific Terms

The SEIA model contracts were originally developed by a National Renewable Energy Laboratory (NREL) working group that brought together solar developers, attorneys, financiers, and other solar professionals to help reduce transaction costs, increase investor acceptance of solar, and offer clear contracts to end-users. Recognizing that residential and Commercial & Industrial (C&I) agreements have different requirements and needs, the NREL Working Group drafted separate model PPAs and leases for both residential and C&I consumers. The model agreements have

undergone revisions to reflect new developments and field experience. For example, SEIA's C&I Working Group revised the C&I PPA to streamline it and allow it to incorporate Property Assessed Clean Energy financing. And the residential lease and PPA added a section on free assumability to make clear that a lessor or PPA provider cannot block a home sale. The model contracts were intended to go beyond minimal terms and into best practices.

The Joint Solar Parties wish to note at the outset that SEIA model contracts are designed to provide a starting point for developers to tweak to accommodate a wide range of scenarios and business models. For instance, although the SEIA model PPA contemplates a price per kWh rate, SEIA's intent was certainly not to exclude other pricing models such as a fixed price per month or a percentage savings (i.e. percentage of net metering credit) price.

The SEIA disclosure forms were designed to summarize key items that consumers should know about; however, not all terms in a disclosure form may be in a contract. SEIA never intended its disclosure forms to dictate which terms must be in a contract—in fact, the disclosure forms are designed so that "N/A" is a fully appropriate response to many of the questions. For example, the lease and PPA forms include disclosures of upfront payments.

To reiterate an issue raised by the Joint Solar Parties in other contexts, to the extent that the IPA or the Program Administrator come into possession of contract terms and conditions, those terms should be treated as highly confidential. Even if an Approved Vendor uses a model agreement without change, the fact that the Approved Vendor or its agent uses that document is commercially sensitive. Frequently, there is a confidentiality provision in contracts that bind both the customer and the developer/owner/operator.

Common Contract Terms

- A three-day rescission period is appropriate for a residential customer, but is not necessary for and should not be required for a non-residential customer that likely has the benefit of legal review and sophisticated negotiation. Non-residential customers already have the right to terminate the contract if the provider does not meet certain conditional precedents (e.g. permitting, interconnection, obtaining the incentive). Accordingly, their interests are already well protected by these termination rights.
- Because construction schedules frequently depend on site evaluation and other factors after an agreement is signed, SEIA did not include a construction schedule in the residential PPA or lease.
- For the system specifications, the SEIA PPA does not identify panels and SEIA notes that engineering drawings are frequently developed post-contract. The other two requirements, the system size and estimated output are in the non-residential PPA but not the residential PPA.
- In SEIA's experience, instead of a procedure for making an underperformance claim the agreements provides contact information in case of underperformance. SEIA's experience is the same for warranties—SEIA sees contact information but not a claim procedure.
- In SEIA's experience, mechanic's lien waivers are not in the PPA or lease agreements.
- In SEIA's experience, warranty financial limits are not included in residential leases or PPAs.

- For Approved Vendors using multiple installers, the contract should allow for subsequent change of DG Installer without a full amendment (unless the customer is using the SEIA PPA, which has a separate installation agreement which might require amendment or re-execution). While the Joint Solar Parties recognize that the identity of at least one DG Installer is required as part of an Approved Vendor's application, an Approved Vendor may work with multiple DG Installers that change over time. Any customer (residential or non-residential) may have changes to DG Installer for a variety of reasons.
- Changes in the event that a system is not selected (or not selected in a particular block) in the Adjustable Block program should only be if applicable.

In addition, the Joint Solar Parties are unsure what the IPA means with regard to "entering meter data." While the Joint Solar Parties are aware that there are obligations for system owners to report production data of community renewable generation projects to utilities, it is not clear when and why a customer would enter meter data.

Purchase Transactions

In SEIA's experience, a description of title transfer is not in purchase documents. The Joint Solar Parties recommend that this description not be included.

PPA

- As noted above, businesses may offer PPAs other than a price per kWh product such as a fixed price per month or a percentage of savings/net metering credit.
- For the early termination fee and system removal fee, the Joint Solar Parties assume that a term need not be included if there is no early termination fee or system removal fee.
- For purchase rights, a contract should be able to offer both pre- and post-lease terms.
- The contract should give the PPA provider the right to give notice of their interest in the system either through a UCC-1 filing or some other way of notifying lien-holders (*e.g.*, like the C&I PPA).

Lease

The comments on the parallel PPA terms are applicable to the lease as well.