

ILLINOIS SOLAR FOR ALL PROGRAM **DISTRIBUTED GENERATION CONTRACT REQUIREMENTS**

May 10, 2019

Section 6.13 of the Long-Term Renewable Resources Procurement Plan (“the Plan”) states that, for distributed generation installations, the Illinois Power Agency (“Agency”) and its Program Administrator will develop “a list of contract requirements” to be provided to Approved Vendors for the system purchase contract, lease, or power purchase agreement (“PPA”) between the Approved Vendor (or its agent) and the customer.¹ That section also notes that “[a]t a minimum, Approved Vendors may also use model leases and model financing instruments provided by the Solar Energy Industries Association (“SEIA”), or other contracts that meet requirements provided by the Agency.”

Similarly, as described in Section 6.13.1 of the Plan, the Illinois Commerce Commission’s Order approving the Plan requires that, for systems already energized at the time of finalizing consumer protection requirements, the following is required:^{2,3}

1. A signed contract amendment, that brings the contract or subscription agreement into full compliance with the minimum contract requirements from the Plan;
2. The disclosure form, signed by the customer post-contract execution; and
3. Proof that the brochure was provided to the customer.

The contract requirements listed beginning on page 3 below constitute the distributed generation contract requirements for the Illinois Solar for All Program (“ILSFA”) as required by the Plan. These apply to Low-income Distributed Generation projects and Non-profit/Public Facilities projects within ILSFA, except in some noted cases where requirements apply only to Low-income Distributed Generation (low-income residential customers). All contracts with customers for installation of on-site distributed generation solar projects (including agreements for purchase money loans from lenders affiliated with an Approved Vendor) must contain the required terms stated in this document. In some cases, the requirements listed herein prescribe the content of specific terms, while other requirements prescribe only the scope of contractual terms to be covered.

¹ While this provision in Section 6.13 is expressly applicable to the Adjustable Block Program; Section 8.14 of the Plan states that consumer protections found in Section 6.13 “will also apply to the Illinois Solar for All Program.”

² Pages 22-24 of the Low-income Distributed Generation Marketing Guidelines (<https://www.illinoisfa.com/app/uploads/2019/05/ILSFA-Consumer-Protections-Guidelines-DG- v3.pdf>) contains an attestation for Approved Vendors to submit to the Program Administrator related to these requirements for such projects.

³ For systems already energized at the time Distributed Generation consumer protection requirements are finalized, Approved Vendors will have the opportunity at the Part I application to either provide proof of provision of the Disclosure Form and Informational Brochure to the system host, or else attest that good-faith, diligent efforts to provide the Disclosure Form and Informational Brochure to the system host after that date were unsuccessful. For systems that already had executed installation contracts with the respective system host as of the date of publication of the final Distributed Generation Contract Requirements, Approved Vendors will have an opportunity at the Part I application to attest that a contract amendment bringing the contract into full compliance with the requirements in this document was signed by the system host, or else attest that good-faith, diligent efforts to amend the existing contract with the system host after the date hereof were unsuccessful.

Note that the Illinois Solar for All Program does not necessarily require the submission of a signed contract (or a contract amendment bringing a previously signed contract into compliance with the below requirements) for every system purchase, lease, or power purchase agreement (“PPA”), provided that all Program requirements, such as demonstrating binding site control, are met through other means. However, as stated in Section 8.14 of the Plan, Approved Vendors must provide documentation to the Program Administrator explaining how the project will result in a cash-flow positive experience for the participant(s) (including an estimate of the monthly savings) – and specifically, ensuring that the savings accruing to each participant, net of any ongoing participation fees, are at least 50% of the value produced by the solar project through avoided usage or net metering credits. This may include providing a copy of the contract, or some other statement of customer savings estimates, including assumed parameters.

The Approved Vendor will attest to compliance with the contract requirements herein in Part I of the project application.

1. Common Contract Requirements for all business models

- Contract must be in the language requested by the customer.
- Customer cannot be required to provide an upfront payment prior to energization.
- Once energization begins, any ongoing payments (on an annualized basis) by customer cannot exceed 50% of expected first-year net metering value. This requirement applies to two distinct time periods: (1) the first year of the contract as well as (2) a calculated annual average for (a) the life of the customer's contract *or* (b), in the case of a purchase transaction or a lease/PPA with a buyout option, a 25-year period. For these calculations, the following assumptions must hold:
 - A standard annual production degradation rate of 0.5% must be used;
 - An annual energy price escalation rate of up to 1.7% can be used;
 - The annual customer payment rate escalation cannot exceed the energy escalation rate used.
 - For Low-Income Distributed Generation projects, the first-year net metering value used in the savings calculation must be based on either (i) an average statewide residential rate of \$0.1248 per kilowatt-hour, or (ii) an average of the customer's 12 most recent monthly bills.
 - For Non-profit/Public Facility projects, the first-year net metering value used in the savings calculation must be based on an average of the customer's 12 most recent monthly bills.
- Financing amounts, terms, and conditions for a purchase or lease of a system must be based on an assessment of the program participant's ability to repay the debt, as defined by Regulation Z, which is a federal rule that implements aspects of the Truth in Lending Act and the Dodd-Frank Act.⁴
- Right of rescission within seven business days after contract execution (only for Low-Income Distributed Generation; not for Non-profits/Public Facilities)
- System design specification:
 - Site plan or equivalent drawing
 - Size of system
 - Type of panels
 - Estimated first year production and annual degradation
- Change in pricing or other terms, if any, in the event of non-selection for an ILSFA REC contract. As an example, a condition precedent clause would satisfy this requirement.
- Allocation of responsibility for securing municipal permits and approvals
- Installer will be responsible for completing interconnection application if customer requests it
- Allocation of responsibility for harm to property, materials, and workers during construction
- Installer commits to not pass on any costs related to curing problems found in project inspections conducted by the Illinois Power Agency or its designees

⁴ See Consumer Financial Protection Bureau, April 10, 2013. *Ability-to-Repay and Qualified Mortgage Rule, Small Entity Compliance Guide*, http://files.consumerfinance.gov/f/201304_cfpb_compliance-guide_atr-qm-rule.pdf. Under the regulation (12 C.F.R. § 1026.43, issued under authority of 15 U.S.C. § 1639c), creditors generally must consider eight underwriting factors: (1) current or reasonably expected income or assets; (2) current employment status; (3) the monthly payment on the covered transaction; (4) the monthly payment on any simultaneous loan; (5) the monthly payment for mortgage-related obligations; (6) current debt obligations, alimony, and child support; (7) the monthly debt-to-income ratio or residual income; and (8) credit history.

- Installer commits to provide name of any subcontractor to customer before work begins
- Requirement that any change order, including scope and price, must be confirmed in writing
- Allocation of responsibility for entering meter data (this provision could be in a separate contract)
- All possible fees (other than those mentioned in #2, #3, and #4 below)
- Dispute resolution procedures
- Governing law
- **No prepayment penalties** (only for Low-Income Distributed Generation; not for Non-profits/Public Facilities)
- When mechanic's lien waiver(s) will be provided

2. Contract Requirements specific to Purchase Transactions

- Total price
 - Schedule of payments
- When title transfers to owner
- Provisions for owner's transfer of RECs to Approved Vendor (this provision could be in a separate contract)
- If warranty is provided for components or performance:
 - Term of warranty
 - Defects covered (e.g. faulty installation, malfunctioning components beyond manufacturer's warranty, roof damage)
 - Owner's remedies
 - Financial limits on warranty
 - Warranty provider
 - Owner's procedure to lodge a claim under warranty
- Owner's rights and obligations upon selling the property
- ***For situations where a low-income residential customer is taking a loan to finance purchase from a lender affiliated with Approved Vendor:***
 - Financial instrument must include forbearance terms.
 - Forbearance terms must encompass one of the following:
 - Suspension of total payments for up to 3 months; or
 - Suspension of interest payments for up to 6 months; or
 - Reduction of interest payments for up to 12 months
 - Missed revenues may be recovered later in the contract life, but no interest may be applied.
 - Loan may not be secured by home or home equity
 - Loan documents must indicate the following:
 - Principal loan amount
 - Schedule of loan disbursements
 - Schedule and due dates of repayments
 - Order of allocating payments (to principal, interest, fees, etc.)
 - Interest rate
 - Borrower(s), lender, servicer
 - Nature of lender's security interest (e.g. UCC-1 financing statement)

- Events of default and lender's remed(ies) upon default (including forbearance as discussed above)
- All fees and penalties

3. Contract Requirements specific to PPA Transactions

- Frequency of periodic (e.g. monthly) payments
- Method of invoicing and payment
- Pricing terms (including escalation)
- Date of first payment
- Term of PPA arrangement must be specified. Minimum term is 15 years.
- Host must have option to terminate early, with early termination fee or formula specified
- Events of default
 - Remedies of both host & installer in case of default
 - For low-income residential customers, host must be given forbearance for up to 3 months in case of nonpayment; missed revenues may be recovered later, but without interest
- System removal cannot be mandatory upon contract expiration; host shall have option to elect removal, purchase, or renewal
 - No system removal fee is allowed
 - Purchase terms must be specified upfront
 - Renewal terms must be specified upfront
- System performance warranty for at least 15 years must be provided, guaranteeing no degradation of electrical generation output greater than 15%
 - Host's remedy in case of underperformance
 - Host's procedure to lodge a claim under the performance guarantee
- Whether PPA offtaker has right to purchase the system before end of lease term (including economic terms for purchase)
- System owner's right to file UCC-1 statement
- Allocation of responsibility to maintain insurance on system, and the required insurance terms
- Installer must be responsible for operations and maintenance, including system and component repairs preventing functioning according to industry standards, for a period of at least 15 years
- Allocation of risk of loss in case of damage to system
- Host's rights and obligations upon selling or moving out of the property
 - Host shall have a choice to buy out (at contractually specified terms) the PPA arrangement or transfer it to a new resident/occupant
 - Procedures for transferring the PPA agreement to the new property owner

4. Contract Requirements specific to Lease Transactions

- Initial payment
- Frequency of periodic (e.g. monthly) payments
- Method of invoicing and payment

- Pricing over time (including escalations)
- Date of first payment
- Term of lease must be specified. Minimum term is 15 years.
- Lessee must have option to terminate early, with early termination fee or formula specified
 - Events of default
 - Remedies of both lessee & installer in case of default
 - For low-income residential customers, lessee must be given forbearance for up to 3 months in case of nonpayment; missed revenues may be recovered later, but without interest
- System removal cannot be mandatory upon contract expiration; lessee shall have option to elect removal, purchase, or renewal
 - No system removal fee is allowed
 - Purchase terms must be specified upfront
 - Renewal terms must be specified upfront
- System performance warranty for at least 15 years must be provided, guaranteeing no degradation of electrical generation output greater than 15%
 - Lessee's remedy in case of underperformance
 - Lessee's procedure to lodge a claim under the performance guarantee
- Whether lessee has right to purchase the system before end of lease term (including economic terms for purchase)
- Lessor's right to file UCC-1 statement
- Allocation of responsibility to maintain insurance on system, and the required insurance terms
- Installer must be responsible for operations and maintenance, including system and component repairs preventing functioning according to industry standards, for a period of at least 15 years
- Allocation of risk of loss in case of damage to system
- Lessee's rights and obligations upon selling or moving out of the property
 - Lessee shall have a choice to buy out (at contractually specified terms) the lease arrangement or transfer it to a new resident/occupant
 - Procedures for transferring the lease to the new property owner