OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 13, 2017

VIA ELECTRONIC MAIL

Mario Bohorquez
Chief, Planning and Procurement
Illinois Power Agency
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Re: Comments on Draft Long-Term Renewable Resources Procurement Plan

Dear Mr. Bohorquez:

On behalf of the People of the State of Illinois, represented by Attorney General Lisa Madigan, we are writing to provide our response to the Illinois Power Agency's ("IPA") Draft Long-Term Renewable Resources Plan ("Draft Plan") that was released for public comment on September 29, 2017. Please note that failure to comment on any particular matter should not be taken as agreement. Our input on the Draft Plan is informed by expertise in our office's Environmental, Public Utilities, and Consumer Protection Bureaus.

1. The Draft Plan includes robust consumer protection elements.

We applaud the IPA's attention and focus on consumer protection elements throughout relevant parts of the Draft Plan, including the Adjustable Block, Community Solar, and Illinois Solar For All ("ISFA") Programs. We specifically highlight the following aspects as important measures to reduce negative consumer experiences and ensure that the IPA Programs maintain a solid foundation for growth in Illinois:

- Use of the "Approved Vendor" format will help the IPA, the ICC, and our office monitor the universe of entities that may wish to participate in marketing, developing, and selling distributed energy resources or subscriptions to Illinois consumers. *See* Draft Plan at 107 ("Participation in the Adjustable Block Program will take place through, and conditional upon, an Approved Vendor process proposed by the Agency."). The proposed terms that Approved Vendors will agree to appear to be thorough and comprehensive. The People are especially

supportive of the requirement for Approved Vendors, upon the IPA's request, to submit samples of marketing materials and to make changes to those materials as directed. Furthermore, requiring annual renewal and annual reports by Approved Vendors (see Draft Plan at 121-22) will help ensure continued adherence to the standards proposed in the Draft Plan. Finally, the penalty of losing status as an Approved Vendor is crucial to making this oversight system effective. The People wholeheartedly support strong penalties for their deterrent effect; however, the IPA may wish to propose a process for revoking Approved Vendor status, possibly involving the ICC, to ensure elements of due process where the vendor can have an opportunity to respond to allegations of wrongdoing.

- The People concur that the Program Administrator's proposed role should include assisting with oversight and tracking of Approved Vendors and with development of customer education and resource materials. *See* Draft Plan at 109.

- For project applications to the Adjustable Block Program, we endorse the IPA's statement that "[r]equiring clear and consistent information on the relationship between the end customer, the installer/developer, and the Approved Vendor is critical to ensuring that the fiscal risks and controls of this program are properly and prudently managed." Draft Plan 111. This is especially true for how the sale of RECs will be handled in customer-vendor relationships taking place under IPA Programs. For these reasons, we agree with the IPA's proposal to require Approved Vendors to include with their project applications the information that is provided to the customer hosting a solar resource. This will allow the IPA and the Program Administrator to observe how these communications are occurring and ensure that sufficient detail and clarity are being provided to Illinois solar customers.

- The People also strongly support the requirement to use standardized contracts, disclosure forms, and customer brochures. *See* Draft Plan at 112. In particular, the People approve of the IPA's recognition that vendors must use a standardized comparison of energy costs in disclosure forms to ensure potential customers are receiving accurate and reasonable estimates of energy savings. *Id*. at n.290. With respect to contracts, however, it is not clear in the Draft Plan if Approved Vendors must choose from an approved list of standard contracts or if they may develop and use their own ("Vendors <u>may</u> use model leases and model power purchase agreements ('PPAs') provided by the Solar Energy Industries Association ('SEIA'), or other standard contracts that have been approved by the Agency.") (Emphasis added.). We urge that the Draft Plan be modified to provide that Approved Vendors <u>shall</u> use either the SEIA agreements or another standard contract approved by the IPA (note, however, that the IPA could allow for customized contracts for larger sized systems such as those installed at factories, universities, or other locations that may wish to negotiate their own contract terms through their legal counsel).

- The Draft Plan wisely includes provisions pertaining to the monitoring of consumer complaints. *See* Draft Plan at 113.

- While existing consumer protection laws are useful and powerful tools for protecting consumers, we agree with the IPA's assessment that it is critically important to supplement laws of general application with specific rules and requirements, especially in the context of community solar subscriptions. Draft Plan at 132-34. In this vein, the thorough checklist of proposed customer disclosure items, set forth on pages 133-34 of the Draft Plan and drawn

from the Maryland Public Service Commission, are crucial to ensuring customers have received all the necessary information before deciding whether to sign up for a subscription.

- The People share the IPA's concern about door-to-door marketing and agree with alerting companies to the potential for heightened oversight by the Agency of entities that may choose to employ door-to-door marketing. *See* Draft Plan at 131-32.

- With respect to transferability of community solar subscriptions, Draft Plan at 134, it is not clear that the IPA considered a program condition that developers must allow subscribers to transfer the subscription back to the developer and not simply to "any person," assuming a subscriber is lucky enough to locate another electricity consumer to take over the subscription. Transferability is provided for in the statute, and the IPA through its authority to establish program terms and conditions can require that the community solar developer must be the one to locate another consumer in the utility service area to assume a transferred subscription.

- In regards to programs under the Illinois Solar For All, the People support the IPA's proposal to not allow any upfront cost or fees for consumers participating in the ISFA Programs and that any ongoing costs or fees must not exceed the value of energy produced. Draft Plan at 138. The People urge, however, that the IPA consider going further and require that consumers participating in ISFA have no financial liability at all. Low-income consumers' participation in the ISFA Programs should not threaten their ability to afford essential utility service or to qualify for other benefits programs. Recognizing the lack of significant discretionary income among qualifying low-income customers demands that incentives for individual low-income distributed generation and community solar participants be set at levels that require no contribution from qualified participants.

- The People strongly endorse the IPA's proposal to appoint a Program Administrator for the Illinois Solar For All Programs and to provide that entity with a broad set of responsibilities to oversee every aspect of the programs. Draft Plan at 153-54. Relatedly, the People also support the IPA's proposal for additional Approved Vendor requirements for those entities interested in ISFA programs, as well as the additional consumer protections that Approved Vendors must agree to in order to participate in the ISFA. *Id*. at 155-56; 161-62.

2. REC Sales and "Green" Marketing Claims

The IPA points out that the Adjustable Block and Community Solar Programs both involve the sale of renewable energy credits ("RECs") from the project to the utility and often by the installer or developer, not the consumer. *See* Draft Plan at 134-35. "Those RECs are then retired by the utility," explains the IPA, "to meet the annual RPS goals of that utility, and the original REC holder's claims to those environmental attributes are effectively extinguished through that sale." *Id.* at 135. The National Renewable Energy Laboratory ("NREL") provides a useful explanation of how RECs came about and how they are used in both the Renewable Portfolio Standard ("RPS") compliance scenario and the voluntary market scenario (such as corporations looking to use clean electricity):

> When electricity is generated—either from a renewable or non-renewable power plant—the electrons added to the grid are indistinguishable. So, on what basis can a consumer of electricity claim to be using renewables? In the United States, renewable energy certificates (RECs) are used to track renewable electricity from the point of

generation to the consumer. RECs represent the environmental benefits of one megawatt-hour of generation and can be sold separately or together with the underlying electricity. In the United States, RECs were developed as states passed renewable portfolio standards (RPSs) and were requiring fuel mix disclosure labels.

RECs are also used in the voluntary market, where customers are buying renewables to meet sustainability goals. [] RECs provide a way for purchasers to demonstrate claims of renewable electricity. Compliance purchasers (those with a mandated renewable obligation) purchase RECs to demonstrate that they have met requirements. Voluntary purchasers need to substantiate their self-imposed renewable targets and their marketing claims (e.g., "This product was made with 100% wind power"). In both compliance and voluntary markets, RECs are the way to show you are using renewable energy.[1]

The question is raised by the IPA: how does the REC transaction from the project installer or developer to the utility affect marketing claims that may be made? Specifically, the IPA asks: "With the underlying 'renewable' or 'solar' element of that generation having been decoupled and sold to the utility, can it still be marketed as a 'community solar' project?"

We believe the answer to this question is generally yes, as long as the developer: (1) clearly states what will happen to the RECs and how the revenue will be handled and (2) explains to the consumer that the consumer is not being provided "clean," "green," or "solar" electricity or power because the REC sale removes the environmental attributes of the power and makes it null electricity.[2]

Other appropriate marketing phrases may include that the consumer is hosting or participating in a project that produces renewable energy credits "sold to the utility" or statements such as: "help generate solar power" or "advance the state's renewable portfolio standard" or "support solar energy in your community." These statements would still seem accurate because, despite the sale of the RECs, by hosting solar panels on their property or by subscribing to a community solar facility, the consumer is indeed playing a role in helping to enable solar generation and RPS compliance in Illinois.[3] Again,

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[1] National Renewable Energy Laboratory, "Renewable Electricity: How Do You Know You Are Using It?," *available at* https://www.nrel.gov/docs/fy15osti/64558.pdf.

[2] *See, e.g.*, Office of Minnesota Attorney General, "Community Solar Gardens," *available at* https://www.ag.state.mn.us/Consumer/Publications/CommunitySolarGardens.asp: "Many people want to purchase community solar subscriptions in order to support renewable energy. Consumers should be aware, however, of exactly how far their support goes. Many community solar projects have elected to sell the renewable benefits of their facilities—known as renewable energy credits or 'RECs'—to Xcel. If a community solar developer elects to sell the RECs to Xcel, consumers need to know that they are not purchasing or using "renewable" energy. Instead, these RECs can be used by Xcel to meet its renewable energy mandates…." (Emphasis added).

"Electricity that has its RECs stripped away and sold is called 'null electricity.' Null electricity is not renewable and is simply unspecified and undifferentiated power from the electrical grid." State of Vermont, Office of the Attorney General, "Guidance for Third-Party Solar Projects," *available at* http://ago.vermont.gov/assets/files/PressReleases/Consumer/Guidance%20on%20Solar%20Marketing.pdf.

[3] As the Vermont Attorney General's Office points out: "In those projects where the RECs are sold, consumers who enter into agreements with the provider are paying money to help *generate* solar energy, but from a legal perspective, the consumers are not *using* solar energy from that project." *Id.* (emphasis in original).

however, the key is that the customer is informed that renewable electricity is not being provided or used, because only the utility can make that claim given its possession of the RECs.

The IPA also asks, in the scenario where a project developer sells the RECs to the utility, "can the subscriber make any claims for any commercial purpose about any 'green' (or similar) aspect of his or her energy sourcing?" Draft Plan at 135. Because the utility holds the rights to make claims about the environmental attributes of the electricity due to purchasing the RECs, the subscriber or owner of the solar generation cannot make claims such as being "solar powered" or "running on solar energy" or that its products are made with solar electricity.[4] However, we believe it can say, consistent with the above, that it is supporting solar energy, helping to generate solar power in the community, advancing Illinois' renewable energy goals, *etc*.

To assist with these questions about appropriate and accurate marketing, the IPA should consider creating a webpage that describes in detail REC transactions and what claims can be made by both the marketer and the consumer. The webpage would be an additional resource that solar installers and developers, after making the required standard disclosures to consumers, could direct consumers to for more detailed explanation. The IPA resource page could, among other things:

- Describe what RECs are and that they are distinct from electricity (*i.e.*, a different commodity). RECs are registered, tracked, and can be bought and sold.

- Projects in the Adjustable Block Program and Community Solar Program through the IPA will sell their RECs to the utilities. That means the original owner will no longer possess the environmental attributes of the power and cannot make claims regarding the electricity produced by the solar facilities.

- Explain that, if consumers want to be able to make claims about the "greenness" of their electricity, they should not participate in the IPA Programs and instead retain possession of the RECs and retire them upon making claims about the electricity.[5]

As part of this potential "customer-facing" website, the IPA could consider creating a brand name and logo for the group of IPA Programs which include Adjustable Block, Community Solar, and Illinois Solar For All. This type of branding will enable customers to recognize official communications or information from the IPA or its Program Administrators. Also, Approved Vendors in the Programs could be allowed to refer to and incorporate the brand name and logo in their marketing materials for projects related to the Programs. This can also assist customers in understanding the differences between certain "green" options that may be available in the Illinois electricity sector. Customers can have confidence that projects under the IPA Programs' branding and logo are made up of new and local renewable development—versus, for example, potential alternative supplier "green" products made up of unspecified RECs of a vintage and long-distance nature from Illinois.

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[4] *See, e.g.*, 16 C.F.R. § 260.15(d) (Federal Trade Commission guide on renewable energy claims).

[5] One possible example to use as a starting point for an IPA page is the Minnesota Department of Commerce's webpage at: https://mn.gov/commerce/consumers/your-home/energy-info/solar/tips-about-community-solar.jsp. Another potential example to draw upon comes from the Center for Resource Solutions: https://resource-solutions.org/learn/rec-claims-and-ownership/.

3. Use of U.S. Census Tract Data to Assist in Qualifying Participants.

The relevant statute defines eligible low-income participants as those whose annual incomes are at or below 80% of area median income ("AMI").[6] This is the same income eligibility definition included in Section 8-103B of the PUA governing energy efficiency programs for low-income participants. The People agree with the IPA's proposal to use U.S. Census tract data to identify, target, and qualify eligible single and multi-family low-income customers. Draft Plan at 159. Individual participation in the on-site distributed generation program should be qualified through individual income verification, as the IPA proposes. Draft Plan at 160. The People also urge that the Program Administrator should offer specific compliance methods for multi-family buildings with affordable rents that are not in designated census tracts. Qualification details for multi-family buildings should be developed in consultation with the Community Investment Corporation and/or other knowledgeable members of the low-income energy efficiency advisory committee referenced in Section 8-103B of the PUA.[7]

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Thank you for your consideration of these comments. We can be reached at the telephone numbers and email addresses listed below should you have any questions or wish to discuss our comments.

Sincerely,

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[6] 20 ILCS 3855/1-56(b)(2).

[7] 220 ILCS 5/8-103B.