



February 28, 2022

Via Electronic Mail

Anthony Star
Director, Illinois Power Agency
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Re: Comments on the Illinois Power Agency’s Draft 2022 Long-Term Renewable Resources Procurement Plan Dated January 13, 2022

Dear Director Star,

United States Solar Corporation (“US Solar”) submits these comments in response to the Illinois Power Agency’s (“Agency”) draft 2022 Long-Term Renewable Resources Procurement Plan (“Draft 2022 Plan”). US Solar is a community solar developer/owner/operator active in Illinois and a number of other states, with over 100 MWs of community solar projects installed and subscribed to date.

As an interested stakeholder, we have reviewed the Draft 2022 Plan along with relevant provisions of the Clean Energy and Jobs Act (“CEJA”). Based on that reading, together with our practical experience in community solar project development, subscription, and operation, we offer the following feedback, requests for clarification, and recommended changes to certain sections of the Draft 2022 Plan for Agency consideration.

I. Re: Section 7.4.3. (Adjustable Block Program; Categories; Traditional Community Solar)

As stated in this section, per CEJA the Agency will begin selecting Traditional Community Solar (“TCS”) project applications “on a first-come, first-serve basis” — rather than by a random selection process.¹ CEJA also allows the Agency to suggest additional methods to prioritize projects that are submitted “at the same time”, which the Agency has reasonably interpreted to mean on the same day.² This interpretation will likely come into play since, as the Agency

¹ Draft 2022 Plan, at 155.

² *Id.* (“The Agency proposes that ‘submitted at the same time’ be considered on a first day basis rather than the exact second (or nano-second) that a project application is submitted at program opening. This is intended to prevent an unfair advantage to entities that have a faster internet connection while maintaining the spirit of the law.”).

states, “it is likely that applications for Traditional Community Solar projects submitted even on the first day of block opening may continue to exceed block capacity”.³

We agree with the Agency that, in such a case, it would be better to award capacity among applications received on the first day by using “a scoring system that prioritizes qualitative aspects of individual projects” — rather than by using a lottery as was done in the initial program. In support of this approach, US Solar offers the following input and feedback regarding the six proposed tie-breaker preferences that the Agency enumerated in this Section:

1. Projects that are sited on brownfields. (3 points)

Siting community solar projects on a brownfield can often be positive for the land owner and the surrounding community. But these sites are typically more difficult, expensive, and risky for solar development, relative to a non-brownfield site. It is thus appropriate to grant three priority points for community solar applications sited on brownfields, as the Agency has proposed.

But it is unclear what definition of “brownfield” is being applied under this section. The Agency should thus clarify that the meaning of “brownfield” in this section is the same as the meaning given 22 pages earlier in the Draft 2022 Plan, at Section 5.4.2:⁴

“[B]rownfield sites are those sites which are regulated under the U.S. EPA’s Comprehensive Environmental Response, Compensation and Liability Act of 1980; the Corrective Action Program of the Resource Conservation and Recovery Act; the Illinois EPA’s Illinois Site Remediation Program; or the Illinois EPA’s Illinois Solid Waste Program; or is the site of a former coal mine that has met all state and federal remediation and clean-up requirements.”

For these reasons, we respectfully request Agency adoption of this redline language (or similar) to Section 7.4.3., at 155:

1. Projects that are sited on brownfields, as defined in Section 5.4.2. above. (3 points)

³ *Id.*, at 155.

⁴ *Id.*, at 133.

2. Projects that are committed to agriculturally-sensitive provisions, such as providing a pollinator friendly habitat. (2 points)

US Solar supports the inclusion of this tie-breaker preference. And we're proud to share that we have already implemented pollinator-friendly habitat at dozens of community solar projects across the Midwest. As the Illinois Legislature found in 2018, when done right, this type of solar development “provides benefits to game birds, songbirds, and pollinators.”⁵ But similar to brownfield siting above, this practice also comes with higher costs (mostly during the learning and construction stage) and more complexity (mostly during the operational phase). So it would be appropriate to provide a tie-breaker preference for this community solar project that commit to this practice, as the Agency has proposed.

Of course, to make this preference workable, applicants would need clear guidance as to what is required to achieve and maintain compliance over the life of the project. Fortunately, Illinois has already established such guidance — at least as to solar sites that claim “habitat which is beneficial to game birds, songbirds, and pollinators” — under the Pollinator-Friendly Solar Site Act of 2018. The Act, codified at 525 ILCS 55/, established a statewide opt-in standard through the Illinois Department of Natural Resources.⁶

Unfortunately, there is not a comparable state standard or regulatory framework for compliance reporting for onsite sheep grazing, beekeeping, or other forms of dual-use agriculture, so it would be hard at this time for a participant to commit to adopting those practices in a way that could be reasonably monitored for compliance.⁷ Also please note that any solar facility that is sited on agricultural land in Illinois must already abide to a mandated set of agriculturally sensitive practices under the state's standard Agricultural Impact Mitigation Agreement (AIMA)⁸.

It would thus be appropriate to focus on the state-recognized (but optional) best practices around pollinator-friendly solar, rather than attempt to draw distinctions between projects that are all governed by the same AIMA as to other agriculturally

⁵ The Pollinator-Friendly Solar Site Act, codified at 525 ILCS 55/

⁶ See Illinois Department of Natural Resources, Solar Site Pollinator Scorecard at www2.illinois.gov/dnr/conservation/PollinatorScoreCard

⁷ Ideally, the ABP would in the future provide an incentivize for dual-use agricultural practices, often called "agrivoltaics", either through a future REC adder or a future tie-breaker preference. But realistically that would likely require first arriving at a robust regulatory definition of agrivoltaics, identifying eligible use categories (*e.g.*, market garden, seed farm, apiary, sheep grazing), and developing reporting and compliance requirements, if any — as Illinois has already done for pollinator-friendly solar.

⁸ See Illinois Department of Agriculture, Agricultural Impact Mitigation Agreements at www2.illinois.gov/sites/agr/Resources/AIMA/Pages/default.aspx

sensitive practices. For these reasons, we respectfully request Agency adoption of this redline language (or similar) to Section 7.4.3.:

2. Projects that are committed to ~~agriculturally-sensitive provisions, such as~~ providing a pollinator friendly habitat under the Pollinator-Friendly Solar Site Act (525 ILCS 55/).
(2 points)

3. Projects that increase the geographic diversity of community solar by being located in a county or township that does not contain other approved community solar projects. (2 points)

If the Agency establishes this tie-breaker preference to encourage applicants to site projects in geographies that don't already have at least one community solar project, it will be important to add more specificity and transparency to this preference. For example, it would be most helpful if the Agency published a list of the counties and townships that already have an Agency approved community solar project. Presumably the Agency would need to develop such a list for itself, to apply as a screen for this preference. Sharing that authoritative list, once compiled, with program participants prior to the next block opening would be an efficient way to ensure that participants have reliable and consistent information as to which counties and townships will receive this tie-breaker preference.

The final approved 2022 Plan should also clarify that an "approved community-solar project," as used in this provision, means a project approved by the Agency itself. The contrary approach of tying this preference to a patchwork of county and township-level permit approvals would be more difficult and confusing to administer — especially considering that most Illinois jurisdictions don't draw a permitting distinction between community solar and other forms of primary use solar, and that some don't require a land-use permit at all. Conversely, if the Agency points to its own prior approval as the relevant standard, that should make data collection much easier — as the Agency already knows the location of all the community solar projects that it has approved to date — and simplify the overall administration and efficiency of this preference.⁹

⁹ In practice, the Agency would also have to decide and make transparent what project milestone it will count as "approval" for purpose of implementing this preference. Sequentially speaking, approval could potentially be tied to, *e.g.*, the initial capacity award, execution of the REC Agreement, approval of the project's Part II Application, or project COD (commercial operation date). Each alternative likely has pros and cons, and the Agency should consider project relocation and attrition when developing the list of counties and townships — since many community solar projects that were initially awarded REC capacity may have moved or dropped out of the program since then.

Finally, according to en.wikipedia.org and its entry citation, seventeen Illinois Counties are divided into “precincts” as opposed to townships.¹⁰ We thus respectfully request clarification that the two similar types of geographic subdivision will be treated as equivalent for purposes of this tie-breaker preference.

For these reasons, we respectfully request Agency adoption of this redline language (or similar) to Section 7.4.3.:

3. Projects that increase the geographic diversity of community solar by being located in a county, ~~or township,~~ or precinct that does not ~~contain other already host an Agency approved community solar projects.~~ (2 points)

4. Projects submitted by equity eligible contractors (2 points) or that can demonstrate contractual commitments for at least 50% of project development work to be performed by eligible equitable contractors (1 point).

We respectfully request the Agency to clarify that the 50% requirement in this proposed tie-breaker preference is tied to contractor labor (e.g., general, electrical, civil), not to equipment purchases, by adoption of this redline language (or similar) to Section 7.4.3.:

4. Projects submitted by equity eligible contractors (2 points) or that can demonstrate contractual commitments for at least 50% of project development ~~work or~~ construction labor to be performed by eligible equitable contractors (1 point).

We also request clarification as to how the proposed 50% opt-in requirement would be measured, e.g., are we aiming to demonstrate 50% of the construction workforce, 50% of hours spent, 50% of contracted labor costs, or 50% of something else?

5. Projects that commit to 100% of projects subscriptions being met through small subscribers (below 25 kW). (1 point)

Based on experience in other states, we would urge the Agency against adopting this sort of a tie-breaker preference. Because it is relatively easy for everyone to check this box at the time of application (unlike, say, the brownfield preference which is tied

¹⁰ https://en.wikipedia.org/wiki/List_of_precincts_in_Illinois citing A Guide to State and Local Census Geography. U.S. Department of Commerce, Economics and Statistics Administration, Bureau of the Census (1993), at 43 (“Of the 102 counties in the state of Illinois, 17 are divided into [243] minor civil divisions known as precincts. . . . The remaining 85 counties are divided into 1,433 townships.”).

to site control), this opt-in requirement could quickly become the de facto standard for all community solar applications, which would be unfortunate for a number of reasons.

First, if a 100% small subscriber requirement became the de facto standard, that would effectively deny non-small subscribers (including local governments, hospitals, school districts, colleges, libraries, and community centers) the ability to access and participate in the state's community solar program. In our experience, these type of community institutions can be ideal anchor subscribers, since they already have a mission to serve the community directly. The participation of these community anchors also help to financially de-risk the community solar project, which will become even more important as new community solar projects are required to “have subscriptions for 25 kW or less for at least 50% of the facility's nameplate capacity”¹¹

Second, under the Agency's proposed preference, most winning applications would likely pre-commit to providing 100% small subscriptions — effectively tying their hands and making it much harder to reach full subscription. By the same token, a 100% committed project will face a higher risk of failure, because the required marketing, sales, and contracting effort grows geometrically, while the leeway for error shrinks (including because you can no longer rely on an anchor subscriber to scale their subscription capacity up and down to balance turnover from smaller subscribers). Stated more generally, having a diversified mixture of subscriber types is good for community solar capital formation. Thus the Agency should not structurally incentivize applicants to voluntarily tie their hands and pre-commit to a more costly and higher risk 100% small subscription approach.

Third, because it would tend to reduce project flexibility and tie developers' hands, this proposed preference runs counter to the Agency's statement in Section 7.9.6.1. (Subscriber Requirements) that “In general, Agency seeks to allow creativity and flexibility in developing projects and creating unique value propositions for subscribers”¹²

Fourth, the systemic risk that this tie-breaker preference could impose is heightened by the fact that the additional cost and risk for projects that opt in will not be accounted for in the REC compensation rate. CEJA makes clear that the REC value for new Traditional Community Solar applications will be based on a 50% level of small subscriptions (rather than some higher or lower level).¹³ So the REC contract awarded to

¹¹ Section 1-75(c)(1)(K)(iii) (community solar “projects shall have subscriptions for 25 kW or less for at least 50% of the facility's nameplate capacity and the Agency shall price the renewable energy credits with that as a factor.”).

¹² Draft 2022 Plan, at 182 (“These considerations will apply for all types of community solar projects.”).

¹³ Section 1-75(c)(1)(K)(iii)(2) (“the Agency shall price the renewable energy credits with that [50% requirement] as a factor”). See *also* Draft 2022 Plan, at 162 (“[G]iven the new requirement that all projects have at least 50% small subscribers, the previous value the Agency proposed in the withdrawn

any Traditional Community Solar facility would almost by definition come with a REC value that does not account for the additional cost and risk that would be associated with committing to subscribe 100% through small subscriptions of 25 kW or smaller.

For the above reasons, we respectfully request that the Agency simply strike out this proposed tie-breaker preference.

6. Project applications that were eligible for inclusion in the blocks of capacity that opened in December 2021 (e.g., were on waitlists as of December 31, 2020) (2 points).

We support the adoption of this proposed tie-breaker preference, but it should also be clarified that projects formerly on the waitlist should have to maintain the approximate MW size they initially applied for, not be able to scale up to 5 MW.

II. Re: Section 7.4.4. (Adjustable Block Program; Categories; Public Schools)

According to the Draft 2022 Plan, “The Public Schools category includes Small and Large Distributed Generation projects as well as community solar projects that serve a public school in Illinois.”¹⁴ We understand how Small and Large DG projects can serve a public school, but the meaning of the last clause (“as well as community solar projects that serve a public school”) is not very clear.

Per CEJA, to qualify under the Public Schools category, a community solar project must be "installed at" the public school — presumably on the roof or elsewhere on the school property.¹⁵ Unfortunately, the Draft 2022 Plan's usage of the phrase "that serve" could be read as requiring that the public school must also subscribe to the community solar project. But such a requirement would go beyond what is required under CEJA, and could conflict with other community solar requirements such as 100% of the production must be sold to the local utility (not consumed on site) and minimum subscriber requirements.

The Agency should reject (not adopt) any proposed requirement that the public school be a subscriber, because that decision of whether or not to subscribe should be left to the school. In practice, each public school will probably have its choice of willing developers, and can easily incorporate a school subscription into its project requirements. Finally, any sort of

Second Revised for the 50% small subscriber adder has been included in all community solar prices and there is no longer a separate adder for small subscribers.”).

¹⁴ Draft 2022 Plan, at 156.

¹⁵ See section 1-75(c)(1)(K) (“The Adjustable Block program shall include the following categories in at least the following amounts . . . (iv) At least 15% from distributed renewable generation devices or photovoltaic community renewable generation project installed at public schools.”)

program-level contracting requirement could have the perverse effect of restricting the subscriber's ability to exit and/or resize the contract.

For these reasons, we respectfully ask the Agency to strike (or at least clarify) its proposed requirement that community solar projects installed on public schools must "serve" the public school, for example by adoption of this redline language (or similar) to Section 7.4.4.:

3. The Public Schools category includes Small and Large Distributed Generation projects as well as community solar projects that ~~serve~~ are located at a public school in Illinois.

III. Re: Section 7.5.6 (Adjustable Block Program; REC Pricing Model; Community Solar)

As the Agency explains in Section 7.5.6 of the Draft 2022 Plan, it is not currently proposing a REC adder for community solar projects that achieve over 50% small subscriptions by capacity — even though such a REC adder was an element of its Initial Long Term Renewable Resources Procurement Plan (“Initial Long-Term Plan”).¹⁶

We respectfully request that the Agency restore that REC adder for new Traditional Community Solar projects that achieve 75% capacity subscribed to small subscriptions. The value of the adder for achieving the additional 25% small subscription capacity (on top of the 50% now required by statute) could easily and fairly be pegged to one-half the \$14.82/REC pricing that the Agency proposed for 50% small subscription capacity under the withdrawn draft Second Revised Plan, and that the Agency now proposes to include in the base REC price for community solar projects.¹⁷

We call for this modest adder for the same reasons that we argued *against* adopting a tie-breaker preference for community solar applications that pre-commitment to 100% small subscriptions under Section 7.4.3 (above). If the Agency believes that there is a compelling public benefit to incentivizing community solar gardens to achieve a higher level of small subscriptions than the 50% capacity required by statute, then that incentive should help offset the higher cost and risk associated with a 75% small subscriber level, and also provide the applicant with an financial upside (not a compliance downside) if the applicant does actually manage to clear the higher bar of 75% by capacity.

¹⁶ *Id.*, at 166-67.

¹⁷ *See id.*, at 167 (“As the Agency had already proposed basing the highest level adder as being at the 50% of higher small subscriber level, the amount that was previously broken out as an adder is now proposed to be included in all community solar REC prices. The Agency proposes maintaining its suggestion from the withdrawn draft Second Revised Plan of having that adjustment set at \$14.82/REC.”).

IV. Re: Section 7.9.1. (Adjustable Block Program; Project Requirements; Technical System Requirements)

We note that the Agency is proposing to retain two technical system requirements from its Initial Long-Term Plan that proved somewhat problematic for community solar applications in the initial round, namely: (1) land-use permit, and (2) signed Interconnection Agreement ("IA").¹⁸ Of concern, this arrangement placed a considerable burden on scores of local governments and their residents who were suddenly bombarded by community solar applicants who were all facing the same arbitrary drop-dead date (on the ABP side) to rush through approval of their land-use permits. A similar dynamic played out on the utility side, with hundreds of community solar applicants rushing to secure utility interconnection studies and IAs ahead of an arbitrary REC block opening date, even though many if not most of those studies and IA had to be re-performed and re-issued after the ABP established its REC awards and ordinal waitlist.

For these reasons, we respectfully ask the Agency to consider removing these two requirements from the Part I Application for community solar projects, to avoid causing — for a second time — the negative consequences of effectively requiring all community solar applicants to procure these two approvals prior to the first day of the community solar block opening.

As an alternative, the Agency could simply require that all community solar applicants demonstrate that they meet **one or the other** of these paired requirements in their Part I Application. That would allow more flexibility for the applicant to work with both the utility and the authority having jurisdiction to sequence the approvals as benefits those parties, while also meeting the basic requirement of showing project feasibility at the time of application to the ABP. The Agency could also, as has been done in other states, require that each selected community solar applicant must obtain and present the second required approval (either the signed IA or the land-use permit) within 6 months of the formal REC award. If the REC selected application does not meet the 6-month milestone, the REC award could then be revoked so the capacity can be efficiently reallocated to the project waitlist.

For these reasons, we respectfully request that the Agency either drop the permitting and IA requirement from the Part I Application for community solar projects (*i.e.*, by moving those requirements to the Phase II Application), or make the following redline change (or similar) to Section 7.9.1, at 175:

“The technical system requirements are as follows:

- Information about the system location, and size, including but not limited to
 - A description of the technical specifications of the main system components including the make and model,

¹⁸ *Id.*, at 175.

manufacturer, number (quantity) of panels, of panels and inverters and meters, array location (roof or ground mount), tilt, orientation

- Site map or other project details
- Proof of site control and/or host acknowledgement
- Project-specific estimate of REC production during the delivery term using PV Watts or a similar tool
- For systems over 25 kW, an Interconnection Agreement (“IA”) signed by both the interconnecting utility and the interconnecting customer
- For ground mounted systems over 250 kW, a land use permit, when applicable, from the Authority Having Jurisdiction (“AHJ”) over the project may be substituted for the signed IA requirement directly above. In that case, if the applicant is granted a REC award, they will be obligated to secure the remaining approval, either the signed IA or the land use permit, within 6 months of the formal REC award. In the event a land use permit is not applicable, written confirmation from the AHJ that no permit is required must be provided.
- For systems that include a battery, a detailed schematic showing that either only solar generated power can be used to charge the battery or that the battery’s output does not run through the meter used to measure solar output.”

Also of concern, this same section of the Draft 2022 Plan states that:¹⁹

“[F]ailure to obtain permits is a developer risk and one which the Agency believes likely would not allow for the invoking of force majeure provisions applicable to failing to meet contractual obligations.”

This statement may be true in most cases, but we respectfully propose that it is not true in the case where a land-use permit has been: (1) wrongfully denied by the county or municipal board, and then (2) successfully overturned on appeal to the reviewing court. US Solar has experienced several instances like this in other states, where we were able to overturn a wrongful permit denial on appeal, and the duration of that legal appeal process was tolled as a force majeure event. We would like to make sure that this same sort of exception process is formally recognized in the final approved 2022 Plan.

¹⁹ Draft 2022 Plan, at 175.



We thus respectfully request Agency adoption of this redline language (or similar), at page 175:

“[F]ailure to obtain permits is a developer risk and one which the Agency believes likely would not allow for the invoking of force majeure provisions applicable to failing to meet contractual obligations, unless the applicant can show that the permit denial was wrongful by overturning the denial on appeal to the reviewing court.”

V. Re: Section 7.3.5. (Adjustable Block Program; Block Structure; Uncontracted Capacity at the Close of a Delivery Year)

No comment at this time.

Sincerely,

/s/ Ross Abbey

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