

September 29, 2023

Illinois Power Agency

105 West Madison Street, Suite 1401
Chicago, IL 60602

Ampion is pleased to provide these comments on the IPA's Long Term Renewable Resources Procurement Plan (LTRRPP), which was issued on August 15, 2023. These comments are limited to the "small subscriber rule" for Traditional Community Solar (TCS) projects. Like many other stakeholders, Ampion disagrees with the IPA's recent effort to limit TCS small subscribers' participation to a total of 25 kW across the entire Illinois Shines Program.¹ The only argument that the IPA has made for this proposed change is that the statute sets a limit on the aggregate subscription of small subscribers. As explained in previous comments, the Climate and Equitable Jobs Act (CEJA) does not put a limit on the total capacity allocated to small subscribers across the Illinois Shines Program. The operative language in 20 ILCS 3855/1-75 explains the small subscriber rule as, "50% of subscribers to the project's nameplate capacity being residential or small commercial customers with subscriptions of below 25 kilowatts in size"² The statute merely limits the allocation of a residential or small commercial subscriber **on a single site** to 25 kW, and it makes it clear that both residential and small commercial customers are eligible as small subscribers. There is no basis for extrapolating from this limitation on the size of the allocation a residential or small commercial subscriber can receive from a single site to a limitation on the total allocation such a subscriber can take from all sites. Without any statutory basis for such a limitation, the proposed revision to the small subscriber rule should be rejected.

The IPA's antipathy toward the actual statutory language that governs residential and small commercial subscribers appears to be rooted in a misapprehension of how the community solar business in Illinois works on the ground. The IPA's view is set forth on page 207 of the draft LTRRPP:

The Agency believes this subscription size requirement must be interpreted in a manner that facilitates residential and small commercial customer participation opportunities for

¹ We support the Joint Solar Parties' argument that there are no statutory grounds for changing the interpretation of the small subscriber rule in Section 7.9.6.2, and we join in their more extensive comments in this regard.

² Pg 348, <https://ilga.gov/legislation/publicacts/102/PDF/102-0662.pdf>

subscriptions to community solar projects. Under an alternative interpretation through which individual subscription sizes are viewed purely in isolation, community solar developers may circumvent providing opportunities for residential and small commercial customers through instead marketing multiple 25 kW or smaller subscriptions to larger commercial and industrial customers.

First of all, the subscription size requirement is in no real need of interpretation as the relevant language of CEJA is plain on its face and, as noted above, relates to the size and composition of subscriptions on a single site. It is in no way a limitation on the total subscription size a residential or small customer can make use of across multiple sites. Second, the Agency does not have the authority to ignore the plain language of the statute in pursuit of the vague and ambiguous policy goal of “facilitat(ing) residential and small commercial customer participation opportunities for subscriptions to community solar projects.”³ Those opportunities are as set forth in the statute, and residential and small commercial customers are entitled to more than multiple subscriptions if they are on different sites and none of them exceeds 25 kW. It is the IPA’s erroneous interpretation of the statutory language that would limit opportunities for residential and small commercial subscribers.

Finally, the assertion that community solar developers may “circumvent providing opportunities for residential and small commercial customers” by giving some of those customers more than one 25 kW allocation on multiple sites is specious and insulting to those working to bring community solar projects to fruition in furtherance of CEJA’s clear goals.⁴ By definition, under the current rule, all of the subscriptions at issue belong to residential and small commercial customers. The LTRRPP’s commentary above implies that somehow developers are able to violate CEJA by giving multiple 25 kW subscriptions to “larger commercial and industrial customers.”⁵ This is not what developers and subscription managers like Ampion are doing and not what we seek to continue to be able to do. Clearly, if someone is giving multiple subscriptions to customers who are neither residential nor small commercial customers (and, thus, not “small customers” at all), that practice should be stopped. But that is not what the IPA’s proposed revised small subscriber rule would prevent. It would

³ <https://ilga.gov/legislation/publicacts/102/PDF/102-0662.pdf>

⁴ Pg 207,

<https://illinoisshines.com/wp-content/uploads/2023/08/2024-Draft-Long-Term-Plan-15-Aug-2023.pdf>

⁵ Ibid.

prevent entities who clearly meet the definition of residential and small commercial customers from receiving the full measure of community solar capacity to which they are entitled.

Imposing such an extra-statutory limitation would, if anything, defeat the clear policy directives of CEJA by making it harder and more expensive to fill community solar sites. The reality that the IPA's proposed change ignores is that the community solar industry strives every day to find residential and small commercial subscribers to place on sites. It is not always easy, and imposing a limitation that is at odds with the statute only makes it unnecessarily harder. Allowing a small business that clearly meets the definition of a residential and small commercial customer and which has sufficient electric consumption to take a 25 kW subscription on more than one site to have multiple subscriptions is a good thing, not a bad thing, and it is what the statute allows.

Moreover, positions the IPA has taken on this issue in the past show that the interpretation they seek to impose now is at odds with both the statute and past practice. In a rationale document published along with the Program Guidebook released on May 31, 2023, the IPA claimed that, "the Agency has consistently required that to qualify as a small subscriber, all subscriptions for that subscriber must total less than 25 kW."⁶ Not only is this inconsistent with the language in the statute, it is inconsistent with the IPA's own language and actions. The industry has collectively established a clear understanding of the small subscriber rule which has been reinforced by the IPA, InClimate, and Energy Solutions. The small subscriber requirements in the current Program Guidebook even include a footnote to a program announcement from January 13, 2023 which clarified the small subscriber requirements, stating, "to be considered a Small Subscriber for these purposes, the subscription or sum of multiple subscriptions **to each individual Community Solar project** under one utility account may not exceed 25 kW AC," (emphasis added.)⁷ Furthermore, the IPA has set up the most rigorous community solar audit process in the country; projects must submit subscriber information every quarter to ensure program compliance. If the IPA truly believes it has always limited small subscribers to one 25 kW subscription across the entire program, it is frankly absurd to claim that they recently discovered that 200 small subscribers "erroneously" counted as small

⁶ Pg 2,

<https://illinoisshines.com/wp-content/uploads/2023/04/Guidebook-Changes-Rationale-for-PY-23-24-FINAL-21-april-2023.pdf>

⁷ Pg 4,

<https://illinoisabp.com/wp-content/uploads/2023/01/Jan-13-ABP-Announcement-final-for-publication.pdf>

subscribers and this effectively renders the audit process useless. If anything, the IPA has been consistent with allowing for small subscribers to have multiple 25 kW subscriptions across the program, and only recently have they changed their interpretation of the statute to be more restrictive.

Ampion would like to reiterate another comment we have made at least twice before regarding REC prices. If the IPA decides to go forward with further restricting the statute and capping small subscribers' total subscription across the whole Illinois Shines Program to 25 kW, then the acquisition and subscriber maintenance portion of the REC price must be reevaluated. When \$14.82/REC was decided upon as fair compensation for small subscriber acquisition, data during a less restrictive time was used. If the IPA changes its rules in a way that will inevitably increase the costs community solar developers incur to build and fill their sites, then the small subscriber acquisition component of a REC must be reassessed to take into account the effects of the revised rule.

Ampion appreciates the opportunity to comment on this important matter.

/s/ Chris Kallahaer

Chris Kallahaer

SVP and General Counsel

Ampion, PBC.