nrg

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September 29, 2023

Brian Granahan
Acting Director
Illinois Power Agency
105 West Madison Street
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RE: Comments of the NRG Companies regarding aspects of the Illinois Power Agency's 2024 Draft Long Term Renewable Resources Procurement Plan

Director Granahan;

Direct Energy Business LLC; Direct Energy Services LLC; Direct Energy Business Marketing LLC; Energy Plus Holdings LLC; Green Mountain Energy Company; NRG Energy, Inc. ("NRG Energy"); Reliant Energy Northwest LLC d/b/a NRG Residential Solutions d/b/a NRG Retail Solutions d/b/a NRG Business d/b/a Reliant-NRG d/b/a NRG Business Solutions d/b/a Reliant d/b/a Reliant Energy; Stream Energy Illinois, LLC; and XOOM Energy, LLC (collectively the "NRG Companies") appreciate the efforts of the Illinois Power Agency ("Agency") towards the creation of the 2024 Draft Long Term Renewable Resources Procurement Plan ("Draft LTRRPP"). The NRG Companies respectfully submit the following comments and recommendations for consideration by the Agency.

The NRG Companies' comments are limited to two (2) specific sections of the Draft LTRRPP. In each instance, the NRG Companies request revisions that are designed to increase the amount of customer participation in the clean energy transition that is envisioned in the Climate and Equitable Jobs Act, P.A. 102-0662.

1. ***Comments Concerning Section 7.9.6.2 - Residential and Small Commercial Customer Participation***

In this section of the LTRRPP, the Agency discusses the interaction of two statutory provisions related to community solar development. First, Section 1-75(c)(1)(K)(iii)(2) provides that at least 50% of the subscriptions are to be for 25 kW or less:

> "projects shall have subscriptions of 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;"

Second, the Agency cites Section 1-75(c)(1)(N), which instructs the Agency to expand access to ensure that there is robust participation by residential and small commercial customers:

> "the terms, conditions, and program requirements for photovoltaic community renewable generation projects with a goal to expand access to a broader group of energy consumers, to ensure robust participation opportunities for residential and small commercial customers and those who cannot install renewable energy on their own properties."

With that statutory backdrop, the Agency notes that there are many subscribers who have multiple subscriptions:

> "The Program Administrator recently discovered nearly 200 subscribers – erroneously counted as small subscribers – with multiple subscriptions that exceed 25 kW in sum".

As a result, the Agency proposes that:

> "Program-wide, subscriptions for a single subscriber must not sum to over 25 kW to be counted toward this minimum 50% threshold. A subscriber that has a single or multiple subscriptions that sum to over 25 kW across all community solar projects in the Program will not have its subscriptions considered to be 25 kW or less for compliance with statutory requirements or REC contracting purposes."

The NRG Companies appreciate the desire of the Agency to ensure that at least 50% of community solar subscriptions remain available for residential and small commercial subscribers. However, it seems that the Agency's issue is with the language in the statute, not the actions of customers. Certainly, the General Assembly could have written the statute differently, but as currently written, the statute does not prohibit multiple 25 kW subscriptions by a single subscriber; nor does it require that the subscriber be a residential or small commercial customer. Thus, it seems that the program is being implemented consistent with the law and no changes are required.

It also may be that the number of investment grade small commercial entities that operate multiple electric accounts that may seek community solar subscriptions is relatively small. If that is indeed the case, imposing the proposed 25 kW aggregate subscription limit may have little to no impact on participation by residential customers and small commercial customers who have a single site. Indeed, the ABP program doesn't prohibit >50% (up to 100%) of a project from being subscribed by eligible residential subscribers. We are aware of owner/operators who are securing mass market subscriptions for 100% of their project capacity. For such projects, the commercial mass market accounts do not displace residential subscribers.

Further, it is possible that evolving federal policies will make this even less of an issue. The United States Internal Revenue Service recently released guidance on the Low to Moderate Income ("LMI") adders to the Investment Tax Credit ("ITC"). While community solar developers are only now synthesizing the process to meeting the LMI requirements, the LMI ITC adder may be a significant financial incentive that will ensure that community solar providers in Illinois maintain a focus on engaging with LMI residential customers in Illinois.

Nevertheless, the NRG Companies recognize that there is a material difference between an industrial customer seeking multiple 25 kW subscriptions for a 10 MW load at a single site and a small commercial customer seeking multiple 25 kW subscriptions for multiple day-care locations. To the extent the Agency is just seeking to prevent the large single site from qualifying, the Agency's proposed language is too broad. That is, the proposed language in the Draft LTRRPP could be interpreted in a manner that would prevent multiple subscriptions for residential and small commercial subscribers from counting towards a community solar development's 50% small subscription obligation.

For example, it appears that the proposed language would prevent the owner of multiple neighborhood convenience stores – each being served as a small commercial account by the local utility – from securing multiple 25 kW subscriptions and allowing those subscriptions to count towards the community solar developer's mandated 50% small subscription requirement. Indeed, it appears that even a residential customer with multiple houses would be excluded under the proposed language. Such a result would undermine the state's policy objective to expand access to community solar and would be harmful to multiple parties and programs:

- Small subscribers. Limiting aggregated subscription volume to 25 kW effectively forces the small subscriber with multiple sites to compete with large subscribers who maintain material transactional advantages (e.g., credit, volume, administrative sophistication, etc.).
- Community solar developers. Limiting aggregated subscription volume to 25 kW will increase customer acquisition costs which can delay project financing and constrains the ability to maximize economic benefits to subscribers.
- Adjustable Block Program. Limiting aggregated subscription volume to 25 kW will increase the cost and complexity of the program. Investment grade, mass market commercial subscriber participation objectively improves the economic value for community solar projects, thereby increasing the success rate of the Program. This includes attenuating the impact of mass market churn (%) by offering longer-term contracts AND incrementally improving the credit profile of the subscriber base allowing owners to tap better debt terms. Limiting aggregated subscription volume to 25 kW also creates greater complexity by creating new categories of subscribers that were not specified in statute (e.g., small subscribers with single subscriptions of less than 25 kW; small subscribers with single subscriptions of more than 25 kW; small subscribers with multiple subscription of less than 25 kW; small subscribers with multiple subscription of more than 25 kW; large subscribers with single subscription of less than 25 kW; large subscribers with multiple subscriptions of more than 25 kW; large subscribers with single subscription of more than 25 kW).
- State clean energy policy. Limiting aggregated subscription volume to 25 kW denies a pathway to delivering the benefits of community solar into more and more diverse communities.

Based on this, to the extent there is any change to the program, the NRG Companies propose that the Agency apply its proposed aggregated limit of 25 kW for community solar subscriptions to only large commercial and industrial accounts (e.g., accounts that are not residential or small commercial).

Therefore, the NRG companies recommend the following changes to the language of the Draft LTRRPP:

7.9.6.2 Residential and Small Commercial Customer Participation

In the development of the Initial Long-Term Plan to address the requirement that the Agency propose terms and conditions that "ensure robust participation opportunities for residential and small commercial customers and those who cannot install renewable energy on their own properties," the Agency defined small subscribers as "residential and small commercial customers" so long as their subscription size is below 25 kW.

Effective for the past two program years (2022-2023 and 2023-2024) and the program years governed by this Plan (2024-2025 and 2025-2026), Section 1-75(c)(1)(K)(iii)(2) requires that "projects shall have subscriptions of 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." As this is a hard minimum, the REC prices for community solar projects reflect the assumed costs of acquiring and maintaining small subscribers, as explained above in Section 7.5.7.

In order to determine whether a community solar subscription qualifies to meet this threshold, subscriptions will be aggregated across all community solar projects. Program-wide, **multiple** subscriptions for ~~a single~~ **each residential or small commercial** subscriber**'s accounts** must not **exceed the** sum to over 25kW to be counted toward this minimum 50% threshold. A subscriber **that does not meet the definition of residential or small commercial** that has a single or multiple subscriptions that sum to over 25 kW across all community solar projects in the Program will not have its subscriptions considered to be 25 kW or less for compliance with statutory requirements or REC contracting purposes.

The Program Administrator recently discovered nearly 200 subscribers – erroneously counted as small subscribers – with multiple subscriptions that exceed 25 kW in sum. Upon a review of this issue, the Agency must implement the statute properly but appreciates the difficulty this clarification may cause Approved Vendors. As such, the Agency proposes to not apply this requirement retroactively, but rather ensure that beginning at the first Program Year (commencing June 1, 2024) following Commission approval of the 2024 Long-Term Plan Approved Vendors must ensure that **only** ~~small~~ subscribers with **residential or small commercial accounts with either single or** multiple subscriptions **of less than 25 kW for each account may be considered applicable to the 50% small subscriber set aside as established by statute** ~~are within the statutorily mandated 25 kW limit across their subscriptions~~. The Agency appreciates that this shift will require new processes and wants to ensure that proper time is given to outline and deploy such processes to comply with this clarification.

The Agency sees this clarification in the draft 2024 Long-Term Plan as necessary to provide certainty over the statutory requirements contained within the Act. While Section 1-75(c)(1)(K)(iii)(2) of the Act references subscription size, Section 1-75(c)(1)(N) instructs the Agency to establish "the terms, conditions, and program requirements for photovoltaic community renewable generation projects with a goal to expand access to a broader group of energy consumers, to ensure robust participation opportunities for residential and small commercial customers and those who cannot install renewable energy on their own properties." (emphasis added.)

The Agency believes this subscription size requirement ~~must~~ **should** be interpreted in a manner that facilitates residential and small commercial customer participation opportunities for subscriptions to community solar projects. Under an alternative interpretation through which individual subscription sizes are viewed purely in isolation **are considered for accounts that do not meet the definition of "small subscriber" as set forth in statute**, 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. As this interpretation would clearly frustrate Section 1-75(c)(1)(N)'s instruction that **the Agency ensure** opportunities be afforded to residential and small commercial customers, the Agency does not believe it is a viable reading of Section 1-75(c)(1)(K)(iii)(2).

When this clarification was originally published in the draft 2023-24 Program Guidebook, the Agency received feedback claiming that this requirement would cause implementation issues for community solar project developers seeking to remain in compliance with Program requirements. Stakeholders noted that it would be difficult to determine how many subscriptions a customer may hold or the size of those subscriptions. The Agency finds arguments regarding limited visibility into a prospective customer's subscriptions and the size of those subscriptions to be unpersuasive in light of the statutory instruction to prioritize residential and small commercial customers. If community solar providers truly focus small subscriber acquisition efforts on residential customers and small commercial customers, whose load will almost certainly be too small to sustain subscriptions over 25 kW, this issue will be easily avoidable. The Agency believes that it is only where providers are marketing to larger customers that the limited insight into a potential subscriber's other subscriptions becomes problematic.

Nevertheless, the Agency is interested in receiving feedback on how to resolve the issue surrounding the lack of insight as to a customer's status as a community solar subscriber and the size of a customer's other subscriptions. The Agency understands that some Approved Vendors may desire visibility into that customer's potential other subscriptions in order to comply with the 50% small subscriber requirement, and appreciates all public comments related to supporting community solar project developers in this effort while remaining in compliance with statutory requirements.

2. ***Comments Concerning Section 6 – Self-Direct Renewable Portfolio Standard Compliance Program.***

In this section, the Agency identifies the self-direct Renewable Portfolio Standard in the following manner:

> "The Illinois RPS self-direct program operates in contrast to the IPA-administered RPS activities in the following ways:
>
> 1. Under the self-direct program, RECs are received and retired by individual customers through their own purchases, rather than by the electric utility. Because the customer is responsible for retiring the RECs under their contract, the customer can make environmental claims regarding its own use of renewable energy.
>
> 2. As that customer meets RPS requirements through its own REC purchases, its electricity usage is no longer included in the calculation used to track the state's broader RPS compliance.
>
> 3. As that customer is engaged in its own REC procurement activities, it is credited back for, or excused from, some portion of RPS charges levied to support RPS activities.
>
> "[t]he Program Administrator recently discovered nearly 200 subscribers – erroneously counted as small subscribers – with multiple subscriptions that exceed 25 kW in sum". "

The Agency also notes certain benefits from the self-direct Renewable Portfolio Standard program in section 6.5:

> "Meanwhile, the benefit to the State of Illinois in providing the self-direct program is a reduction in the quantity of RECs required to be procured through IPA-administered utility-scale procurements, as "[e]ach renewable energy credit procured . . . by a self-direct customer shall reduce the total volume of renewable energy credits the Agency is otherwise required to procure from new utility scale projects." The self-direct program thus allows the Illinois RPS to recognize private sector renewable energy support through a reduction in required REC procurement quantities, albeit with a corresponding reduction to available RPS budgets. The requirement that contracts be at least 10 years in length should reduce the year-to-year budget volatility resultant from other possible self direct regimes."

The NRG Companies believe that the Agency should further note how the self-direct RPS program can serve to alleviate two substantive issues noted elsewhere in the LTRRPP:

- The self-direct program can serve as a mechanism to close the persistent RPS compliance deficit in Illinois which in program year 2024-25 is represented by an RPS compliance level of only 8% while the statutory RPS goal is 23.5%.

- The self-direct program can serve as an alternative source of funding to counter the projected RPS budget deficits that begin in program year 2030-31 and expand to over $1.4 billion in program year 2034-35.

The LTRRPP also should acknowledge that the market has spoken regarding the current design of the self-direct program: the fact that there are only two customers in the entire state who have enrolled demonstrates that changes are needed. Given the magnitude of the projected RPS shortfalls and budget deficits, the NRG companies recommend that the Agency consider all options that would increase participation in the self-direct program. A key element in improving self-direct participation would be to align the level of credit earned by self-direct program participants to the prices paid for RECs under the Agency's utility scale procurements. Therefore, the NRG companies recommend the following changes to the language of the LTRRPP:

6.5. Self-Direct Crediting and Accounting

The benefit of self-direct RPS program participation for an eligible self-direct customer is simply a reduction in the non-bypassable charges levied by Illinois electric utilities to support RPS activities (or, stated differently, a "credit" against those charges). The methodology for determining bill credits for participating customers is outlined in Section 1-75(c)(1)(R)(4) of the IPA Act. The interpretation of that bill crediting methodology as approved by the Commission in ICC Docket No. 22-0231 is explained below.

Meanwhile, the benefit to the State of Illinois in providing the self-direct program is a reduction in the quantity of RECs required to be procured through IPA-administered utility-scale procurements, as "[e]ach renewable energy credit procured . . . by a self-direct customer shall reduce the total volume of renewable energy credits the Agency is otherwise required to procure from new utility scale projects." The self-direct program thus allows the Illinois RPS to recognize private sector renewable energy support through a reduction in required REC procurement quantities, albeit with a corresponding reduction to available RPS budgets. The requirement that contracts be at least 10 years in length should reduce the year-to-year budget volatility resultant from other possible self direct regimes. **The self-direct RPS program also serves as a mechanism to close the persistent RPS compliance deficit in Illinois (e.g., the IPA projects an RPS compliance level in program year 2024-25 of 8% while the statutory RPS goal is 23.5% - see Appendix B, tab 'Total REC Deliveries'). Additionally, the self-direct RPS program serves as an alternative source of funding to support the RPS during periods of projected RPS budget deficits (e.g., the IPA projects an RPS budget deficit beginning in program year 2030-31 that expands to over $1.4 billion in program year 2034-35 - see Appendix B, tab 'Total REC Deliveries'). Given the many potential benefits of this program and the lack of customer interest in the program as it is currently designed, the Agency recognizes that changes are required for this program to be successful**.

6.5.1. Self-Direct Bill Crediting

Section 1-75(c)(1)(R)(4) authorizes a "reduction in the volumetric charges collected pursuant to Section 16-108 of the Public Utilities Act for approved eligible self-direct customers" as the benefit to those customers from self-direct program participation. The IPA understands "volumetric charges collected pursuant to Section 16-108" to refer only to those charges utilized to support RPS program and procurement activities pursuant to Section 16-108(k) of the PUA, and not charges used to support the procurement of zero emission credits, carbon mitigation credits, Coal to Solar and Energy Storage Initiative Charges, or other collections and initiatives referenced in Section 16-108(k).

That reduction, or "credit," is calculated to be "equivalent to the anticipated cost of renewable energy credit deliveries under contracts for new utility-scale wind and new utility-scale solar entered for each delivery year after the large energy customer begins retiring eligible new utility scale renewable energy credits for self-compliance." Section 1-75(c)(1)(R)(4) clarifies that the self-direct credit amount shall be "equal to the estimated portion of the cost authorized by subparagraph (E) of paragraph (1) of this subsection (c) that supported the annual procurement of utility-scale renewable energy credits in the prior delivery year using a methodology described in the long-term renewable resources procurement plan, expressed on a per kilowatthour basis." By law, the credit back to the customer cannot include "costs associated with any contracts entered into before the delivery year in which the customer files the initial compliance report to be eligible for participation in the self direct program" or "costs associated with procuring renewable energy credits through existing and future contracts through the Adjustable Block Program, subsection (c-5) of this Section 1-75, and the Solar for All Program," although as the ICC recognized in Docket No. 22-0231, Section 1-75(c)(1)(R)(4)'s reliance on crediting the "estimated portion" of utility-scale REC delivery costs could create overlap into actual costs from those categories.[256]

6.5.1.1. Interpretation of the Self-Direct Bill Credit

Section 1-75(c)(1)(R)(4) of the IPA Act specifies that the bill credit available to approved self-direct program customers is equivalent to the "anticipated cost of renewable energy credit deliveries under contracts for new utility-scale wind and new utility-scale solar entered for each delivery year after" that participation begins. The credit must be "the estimated portion of the cost authorized by subparagraph (E) of paragraph (1) of this subsection (c) that supported the annual procurement of utility-scale renewable energy credits in the prior delivery year."

As outlined above and reinforced by the Illinois Commerce Commission in Docket No. 22-0231, self direct bill crediting concerns *only* costs reflective of utility-scale wind and utility-scale solar procurements, and expressly not "costs associated with procuring renewable energy credits through existing and future contracts through the Adjustable Block Program, subsection (c-5) of this Section 1-75, and the Solar for All Program."[257] Self-direct bill crediting also does not include "costs associated with any contracts entered into before the delivery year in which the customer files the initial compliance report to be eligible for participation in the self-direct program[.]" In the 2022 Long-Term Plan, the Agency noted these limitations introduced problematic variance in the self direct credit level by basing that credit level on the specific year of a given self-direct customer's participation in the program.

In approving the 2022 Long-Term Plan, the Illinois Commerce Commission addressed these issues, concluding that it is appropriate to calculate the self-direct bill credit using a three-year rolling average of eligible utility-scale REC delivery contracts, where the three years to be used consist of "the two-years prior to the year being determined and the third year being the anticipated costs" outlined in the Plan.[258] This approach both addressed the Commission's concern that establishing the credit based on the self-direct customer's participation date "instills too much instability for Self-Direct Program participants,"[259] while also ensuring that only costs associated with utility-scale REC delivery contracts were credited.

The Commission's direction regarding the use of a three-year rolling average did not explicitly address how the costs for each of the three years should be determined. The Commission explained that the averaging approach would "reflect [the] statutory inconsistencies" and directed that "a three year rolling average of *eligible* utility-scale REC delivery contracts be used, consisting of the two years prior to the year being determined and the third year being *the anticipated costs as outlined in the [Plan]*."[260] The Order does not elaborate on which utility-scale REC contracts should be considered "eligible," nor does it reference the section of the Plan it is referring to regarding anticipated costs.

In finalizing the 2022 Long-Term Plan, the Agency ultimately settled on an interpretation through which the self-direct credit level is established by "including costs for utility-scale REC contracts regardless of when the contracts were entered into in calculating the costs for each of the three years." ~~Under this approach, REC delivery costs associated with the utility-scale REC delivery contracts dating as far back as the 2010 Long-Term Power Purchase Agreements ("LTPPAs") are used in determining the self-direct credit amount. This crediting approach reflects something akin to a "like for like" crediting by class of expenditure – the customer's bill crediting level is determined using *only* utility-scale project RPS costs, based on an average of those costs to the RPS budget over a three-year period, and does not reflect costs used to support the ABP or ILSFA programs.~~ **For the 2024 Long-Term Plan, the Agency recommends that the value of the self-direct program participants be calculated by dividing the product of the number of RECs provided by the self-direct program participant (up to 40% of annual consumption) and the rolling average of the prices paid ($/REC) for RECs secured by the Agency by the self-direct customer's annual consumption (kWh). This value would not be allowed to exceed the rate of the RPS charged by the utility serving the self-direct customer's load.**

A related interpretive decision concerns the treatment of brownfield site photovoltaic project REC delivery contract costs. The IPA interprets the Commission's reference to "eligible utility-scale REC delivery contracts" to mean the costs associated with brownfield site photovoltaic projects – which *technically* did not participate in utility-scale wind or utility-scale solar procurement events – should be included in the calculation as long the project qualifies as "utility-scale" (i.e., over 5 MW) under Illinois law. However, costs associated with coal-to-solar procurements would not qualify as those projects are funded through an entirely separate stream of collections (and not those collections authorized by Section 1-75(c)(1)(E) of the IPA Act).

The NRG Companies look forward to continuing to work with the Agency and other stakeholders to develop the 2024 Long-Term Renewable Resources Procurement Plan.

Respectfully Submitted,

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