US Solar – Feedback on Draft 2024 Long-Term Renewable Resources Procurement Plan

Dear IPA,

US Solar respectfully submits this feedback regarding the IPA's August 15, 2023, Draft 2024 Long-Term Renewable Resources Procurement Plan. As an active developer and owner-operator of distributed generation and community solar projects under the Illinois Shines program, we based these comments on our experience in Illinois and several other states.

Program Year Closure

We agree with the Agency's proposal regarding timing of annual blocks. We agree that closing the program year from May 1 to June 1 makes sense to allow for administrative transition from one program year to the next. We hope this will allow the program administrator time to catch up on tasks so that developers are not waiting well into the new program year for decisions about projects that applied during the previous program year. Specifically, this 1-month closure should allow the program administrator to process all the Part I Applications from the current program year to the award notification stage prior to the June 1 start of the next program year. We thank the IPA for proposing a solution that should benefit all parties.

DC to AC Capacity Ratio for Storage Projects

We appreciate the IPA's proposal to increase the AC to DC ratio for projects that have paired battery energy storage systems (BESS). As we submitted during the previous feedback period, limiting the DC/AC ratio to 1.55 (or to any fixed number) results in an underutilization of BESS. The ability to store more mid-day solar energy clipping and use the BESS more frequently helps cover the high cost of adding battery storage and will enable greater deployment of storage capacity in Illinois.

However, the proposed language in the Long-Term Plan leaves unanswered many key questions as to how this update will be applied. The language is too vague as to which projects can actually add storage to take advantage of this change. To maximize the deployment of BESS in Illinois, the administrator should allow for amendments to Part I applications to allow for increased DC and battery storage capacity – at least as to Part I applications that have not yet received a REC award within the program year it was submitted (*i.e.*, that were instead placed on a waitlist). These projects are still early enough in the development process as they are on hold until they come off the waitlist that they would be able to make a change to the DC capacity without changing the AC capacity. We hope the following change can be made to the proposed language on page 200 before it is submitted to the ICC:

> Systems that do not include a battery/storage component will be limited to a DC capacity of 155% of the AC capacity. Systems that include a battery/storage component will be limited to a DC capacity of 200% of the AC capacity. The Administrator shall allow any Part I application that includes a battery/storage component that has not yet received a REC award to submit an amended Part I application with an increased DC and/or battery storage capacity to optimize the use of the battery/storage component.

Small Subscriber Requirements

Understanding how the Agency is going to implement the small subscriber requirements for community solar gardens is important for the development and long-term operation of these gardens. We appreciate the Agency acknowledging the challenges that come with changing interpretations of existing programs. However, the Agency's concession that the change not be made retroactive and only apply beginning June 1, 2024, does leave questions on the implementation on this change. Subscription activities are currently underway for projects that will be energized both before and after this date.

To create a clear, bright line rule that is easy to follow and administer for approved vendors and designees as well as the Agency and Administrator, we suggest that this June 1, 2024, date apply to projects that receive REC awards beginning on that date. Having multiple rules that apply to different subscribers of the same project is bound to be messy and cause more problems for the Administrator. Creating a clear delineation between projects that have REC contracts with Trade Dates awarded for the 2024 program year and beyond and those that have already applied for and will potentially be awarded in the 2023 program year is the cleanest way to implement this new policy. We propose the following redline to the Long-Term Plan on page 206 to make the requirements clear.

> 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 for any project that receives a REC contract with a Trade Date beginning at the first Program Year (commencing June 1, 2024) following Commission approval of the 2024 Long-Term Plan Approved Vendors must ensure that small subscribers with multiple subscriptions 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.

Annual and Quarterly Reports

We appreciate the Agency's proposal to allow greater flexibility when it comes to discipline for failure to submit the required Annual Reports on July 15. It is often difficult to pull together the necessary information, specifically over a short period of time that includes a holiday. For smaller approved vendors and designees, this can be especially challenging when only one or a handful of employees are involved in the creation of these reports and must coordinate vacation schedules. The current penalties are too harsh and can result in adverse consequences for customers or subscribers in the event of inadvertently missing a single deadline.

In addition to the changes proposed to the annual reports, we suggest that similar changes be made to the quarterly reporting deadlines as well. Currently, these reports are open on the first of the month and the deadline is 10 days later. However, this does not consider weekends or holidays. For example, for the most recent quarterly report, the 10-day window began on Friday, September 1, ran

over the Labor Day weekend, included a four-day work week, then ran over another weekend to be due Monday, September 11. This allowed only five business days for the required reports. We suggest that the 10-day reporting period be changed to read 10 *business* days to account for the fact that the calendar can shift from period to period depending on which day of the week the first of the month falls on, as shown in this suggested redline change to the LTP at 217:

> A community solar project must demonstrate that it has met a minimum subscription level to be considered Energized and eligible to receive payment for RECs. Under Section 1-75(c)(1)(K) of the IPA Act, 50% of the subscriptions must be from small subscribers, and at least 50% of the capacity of the project must be subscribed at the time of Energization in order to receive payment for RECs, and that payment will be based upon calculating the number of RECs that correspond with the amount of the project's capacity that has been initially subscribed. The Approved Vendor shall report subscription levels on a quarterly basis during the first year. The Agency will update the Program Guidebook section C on pages 90-91 to place the deadline for the quarterly reports on the 10th business day of the month following the close of the Quarterly Period. The calculation of the number of RECs for payment will be updated after one year of operation (based on the final quarterly report of that first year) to allow for the acquisition of additional subscribers. A community solar project may request one additional extension (with a refundable extension payment as provided for in Section 7.11.2) to its energized date if it needs additional time to acquire subscribers.

Finally, while we appreciate the additions to the required annual reports, we find the language of the disclosure form attestation to be problematic. The proposed requirement reads: "Attestation that **any and all** Community Solar Disclosure Forms were signed by the subscribers" (emphasis added). This absolute language does not consider several instances where disclosure forms are not required to be signed to remain in compliance with program requirements. For example, during the recent disclosure form leniency period that ended June 29, 2023, approved vendors were only required to make "best efforts" to get disclosure forms signed for subscribers who signed up during this year long timeframe. Additionally, according to the most recent guidance released by the IPA on disclosure forms, when a subscription size changes beyond 2kW, we are required to generate a new disclosure form and send it to the subscriber, we are not required to ensure it is signed. To take into account the instances where a project may have disclosure forms that are not signed, but are still operating within program requirements, we suggest the following change to the attestation requirement on page 225:

> Attestation that any and all required Community Solar Disclosure Forms were signed by the subscribers

Termination of REC Contracts for Good Cause without REC Deposit Default

One aspect of the Illinois Shines program that is currently putting additional barriers in place for solar developers is the rigid provisions regarding non-refundability of the collateral requirement for REC

contracts. The current REC contract only allows for partial refundability of the REC contact, and only in a single scenario, where a project receives an interconnection agreement with a cost estimate exceeding 30 cents per watt AC may receive a 75% deposit refund if they cancel within 30 days of receiving the too-high interconnection cost estimate.[1] However, there are many reasons that a project may need to terminate a REC contract after the REC contract has been awarded that are no fault of the developer and should not result in forfeiture of the REC collateral. For example, the utility may not determine (after a project's Part I application has been submitted) that a project is actually outside of their service territory and unable to interconnect until well into the interconnection study. As EEC and Traditional Community Solar projects do not need a signed interconnection agreement to submit a Part I application, there could be circumstances where the project is offered a REC agreement, and/or funds the collateral requirement, and will not want to move forward as there is no path forward to interconnect. To subject the approved vendor to discipline and forfeiture of the collateral in these circumstances is unnecessarily harsh. We would suggest the IPA include language allowing for no-fault REC contract termination.

Key Performance Indicators

It should be noted that the 2022 program year was plagued by incredibly long lead times for application review, inconsistent portal functionality, and lack of communication by the program administrator and project applicants. Projects that submitted applications in November 2022 still have not received REC awards. The portal servicing disclosure forms was originally supposed be available by July 1, 2022, but did not gain limited functionality until June 1, 2023. Program participants are still waiting for other key functionality to be added to the program portal. We thus suggest the IPA consider and adopt a of set of formal key performance indicators ("KPIs") that the administrator must report to the IPA on a regular basis. Potential KPIs could include data processing timelines, new portal functionality progress, API uptime, requests for process improvement by program participants, and other relevant performance metrics.

IPA Appeals Process

The current appeals process for administrator decisions is non-functional. As an approved vendor, we have two outstanding appeals submitted in May and June of 2023 and have yet to receive any communication on the status of these appeals. The IPA should provide improved clarity around the IPA appeals process under the Long-Term Plan, and not just in the Program Guidebook. There should be a structure followed for all appeals including expected timeline for agency decision, clarity about tolling of deadlines under dispute, and the ability to track the status of project-related appeals in the program portal. The IPA should include language in the Long-Term Plan to update the Program Guidebook to provide the following (or similar) clarification regarding the process for IPA appeals:

- IPA shall acknowledge its receipt of an application's formal appeal within five business days and toll any relevant program-related deadline during the pendency of the appeal.

[1] 2022 20-Year REC Delivery Contract, page 35.

- IPA should endeavor to promptly collect and/or request any other information relevant to the appeal (including via conference call with the applicant), and to issue its considered determination on the appeal within 30 business days or as soon as possible thereafter.
- Application may appeal an adverse IPA appeal decision to the ICC, as long as they do so within ten business days.

EEC Category Eligibility

We have previously submitted feedback on EEC category eligibility on May 5, 2023, and June 29, 2023. We note that the Agency did not incorporate our feedback that EECs should be subject to the Minimum Equity Standards as the IPA "hesitates to put additional burdens on EECs when the concept is new and when there are still few certified EECs".[2] However, all of the proposals the IPA is seeking feedback for regarding certification that EEPs are "active in the management of the business" do place additional burdens on EECs. We again state that articles of incorporation should be sufficient to determine that an applicant EEC complies with the statutory requirements to become eligible for the EEC category. The IPA should thus focus its review on that document and provide advanced notice to potential EEC applicants explaining the need to clearly set forth the relevant information in their articles of incorporation for purposes of EEC certification. We do not support requiring EEC AVs to submit governance documents, tax documents, or other documentation outlining the specific role each partner plays in the development of projects. These documents do not provide any information that is relevant to any existing or proposed criteria for EEC eligibility. It is reasonable to require information to confirm actual criteria of EEC eligibility (e.g. the IPA could ask for a driver's license to prove eligibility of residence) – however, it would be inappropriate to try to discern income levels of the shareholders and company, because there are no income-related criteria for EECs. Each partnership is bespoke, likely to have very different agreements between all the parties and should be scrutinized only to the extent required to confirm the EEC conforms to statutory requirements.

To reiterate our previous comments on EEC category partnerships, we do understand the IPA is likely seeing a lot of different and/or novel ownership structures in the EEC space, some of which were formed specifically to develop projects for the EEC category. But that does not mean these approaches are prima facia bad (or should be discouraged). Quite the opposite: we know EEC joint ventures are allowed because CEJA specifically established a 51% minimum ownership threshold. It was thus contemplated that a new-entrant EEP could and most likely would want to partner with other entities or persons who provide skills or resources required for successful development and ownership of these projects, that the EEP owner itself doesn't possess. This is especially true given that the EEC AV cannot assign those projects to a non-EEC AV during the first six years of project operation (unlike other project categories), so EEPs will likely want a partner with a successful track record of raising construction capital, navigating complex tax equity structures, and achieving and maintaining commercial operation. With this context in mind, it would be strange if an EEP did chose to partner with a non-developer or another non-experienced partner for the purpose of developing MW-scale solar projects.

In other words, EEP partnerships are designed in a bespoke fashion, with parties coming together to bring their own unique and valuable skills, resources, knowledge base, community, and

[2] Draft 2024 Long-Term Plan page 338.

professional networks, etc. to the task of building – and in the case of community solar gardens, fully subscribing – new solar projects across Illinois. For this reason, we suggest the IPA focus on the delivery of actual benefits to individuals and communities that "have been excluded from economic opportunities in the energy sector, have been subject to disproportionate levels of pollution, and have disproportionately experienced negative public health outcomes" (as required under the minimum equity standards).

The IPA should also consider that the first and highest goal of the ABP is to efficiently develop solar and other renewable energy resources across Illinois in order to achieve the state's climate and renewable energy goals. Of course, CEJA also includes equity goals that must be pursued, but as long as the EEP participants are bona fide EEPs, the IPA should take care to not put-up additional roadblocks that diminish the program's ability to bring sufficient levels of solar online in a quick and cost-efficient manner.

The intent of the EEC category was for the EEPs to be majority recipients of project economics through year 6 of the REC contract. We understand, however, that some EECs may be trying to sell projects to non-EEC buyers. If the project (and its subscription revenues) can immediately be sold to a non-EEC buyer, and the REC values can be directly passed through to the non-EEC buyer, there is no meaning to the 6-year rule at all. You simply have a non-EEC buyer take all the project economics in return for an upfront fee. The Long-Term Plan should adopt clarifying language that within the 6-year period: 1) the REC value cannot be sleeved to a non-EEC entity, and 2) EEC projects cannot be sold to non-EEC buyers. The Long-Term Plan should also enable the creation of some sort of enforcement strategy for non-compliance.

Developer Cap for EEC Projects

As stated in our comments during the last feedback cycle on this topic, developer caps may make sense when a program category is immediately oversubscribed, but they should only be implemented in the instance where the category is oversubscribed on the first day of the program year. The first day is an important marker, because it represents the point in time that all eligible project applications (i.e., all the projects that started predevelopment in the prior 12 months) are submitted to the program. Especially in program categories that are not oversubscribed on the first day, it would promote additional development in these areas if developers were not subjected to an arbitrary cap on the amount of projects they could submit in a program year when there is available capacity available. This could prevent customers from having to sit and wait for another year before their project capacity is approved, even if there is remaining capacity for allocation, just because the approved vendor had reached the arbitrary 20% limit for the year.

Additionally, the issue of the application of a developer cap as applied to EEC projects has already been litigated before the ICC and decided in the Commission's May 4, 2023, Order on Reopening. During the process of reopening the previous Long-Term Plan, the Agency and developers both weighed in and the Commission declined to apply a developer cap to the EEC program if the category was not oversubscribed on the first day of program opening. The Commission's conclusion states:[3]

[3] Docket No. 22-0231, Order on Reopening, May 4, 2023, Page 17.

> A 20% cap is appropriate if the EEC community solar subcategory is oversubscribed on the first day, which allows for a greater number of EECs to apply on day one but still allows any remaining capacity to be allocated on day two or later. The 20% cap will be measured against the total capacity made available to the EEC category for the program year.

We believe the Commission's previous ruling should stand on this issue and the developer cap for the EEC category should remain the same as it was applied for the 2023 program year.

Advance of Capital

We are disappointed to see the IPA propose additional barriers for EECs when it comes to accessing advance of capital (AOC), a feature of the category provided for by statute. The process for evaluation of AOC requests should be made more transparent as it has been a practice of shifting goalposts for EECs to receive their requested AOC. The statute implementing the AOC feature does not contemplate additional qualification beyond the qualification of becoming an EEC.[4] Any and all format and process, required information or documents, criteria, weighting of criteria, and deadlines for submittals should be specifically proposed in the Long-Term Plan and subject to stakeholder feedback and ICC approval. The current proposal for the IPA to publish this additional information after the Plan's approval does not serve the interest of the intended beneficiaries of this feature or the long-term development of EEC projects.

The IPA's current pause on review of AOC applications is also troubling. The IPA has instituted this holding period to develop additional processes which should be proposed in this Long-Term Plan and subject to stakeholder feedback. The obfuscation of the review process for AOC applications has already been detrimental to the development of EEC projects and has left EEC approved vendors facing uncertainty about the future of their projects. Any process development should be completely transparent and involve approved vendors who have the knowledge and expertise in the development process to help steer the IPA to create guidelines that work for all parties involved.

EEC Subcategories

We disagree with the IPA about the treatment of EEC subcategories. While we understand the IPA's desire to diversify the EEC category between community solar and other DG projects, the treatment of the sub-reservation was litigated and decided by the ICC in the proceeding on reopening of the previous Long-Term Plan. The 25% subcategories are to remain open for the first nine months of the program year, at which time remaining capacity is to be reallocated to other EEC community solar projects that were submitted during the program year. The draft proposal, to keep the subcategory open

[4] Section 1-75(c)(1)(K)(vi) of the IPA Act ("The Agency shall propose a payment structure for contracts executed pursuant to this paragraph under which, upon a demonstration of qualification or need, applicant [EEC] firms are advanced capital disbursed after contract execution but before the contracted project's energization.").

for the entirety of the program year (11 months) and then to direct any unused capacity to the new prioritization will only serve to remove capacity from EEC projects and redirect the capacity to other, non-EEC DG projects which would receive first priority of any uncontracted capacity at the end of the program year.

Because the EEC category is statutorily required to expand until it encompasses 40% of program capacity, taking megawatts from EEC, reserving it for DG projects (for which to date there have been **no applications**) and return it to the total pool at the end of the program year is inconsistent with state law and the supposed preference for EEC projects. The IPA should modify the provision in section 7.4.6.4 on page 178 to read:

> As the Agency is committed to providing opportunities for distributed generation projects that are developed by EECs, the Agency will ~~no longer~~ reallocate sub-category capacity within the EEC category after nine months (as is set to occur during the 2023-24 Program Year per the 2022 Modified Long-Term Renewable Resources Procurement Plan). The Agency will reallocate any uncontracted capacity in either EEC sub-category ~~at the close of the Program Year, following the process as outlined in Section 7.3.4~~to any waitlisted projects within the other EEC sub-category within the same Group A or B.

Thank you for your consideration in this matter.

Respectfully submitted,

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