

**‘RESPONSE TO THE ILLINOIS POWER AGENCY’S
ENHANCEMENTS TO EQUITY ELIGIBLE CONTRACTOR
CERTIFICATION ENHANCEMENT REQUEST FOR COMMENT ON
BEHALF OF THE SOLAR ENERGY INDUSTRIES ASSOCIATION, THE COALITION FOR
COMMUNITY SOLAR ACCESS, AND THE ILLINOIS SOLAR ENERGY ASSOCIATION**

The Solar Energy Industries Association, the Coalition for Community Solar Access, and the Illinois Solar Energy Association (collectively, the “Joint Solar Parties” or “JSP”) appreciate the opportunity to comment on the Illinois Power Agency’s (“IPA”) proposed changes to equity eligible contractor certification. The Joint Solar Parties recommend that the IPA take these comments into account when drafting the Long-Term Renewable Energy Resources Procurement Plan (“LTRRPP”) that will eventually be submitted for public comment and ultimately Commission approval later this year.

I. BACKGROUND

The IPA’s proposal regarding Equity Eligible Contractor (“EEC”) ownership and Equity Eligible Person (“EEP”) owners is in part defined by the Commission’s approval with modifications of the current LTRRPP now in effect. Part of that story is the Joint Solar Parties’ attempt to compromise with the IPA, which—despite reaching a compromise—ended up being largely rejected by the Commission.

In ICC Docket No. 23-0714, the IPA proposed (1) “majority owner EEP(s) must provide a demonstration of socio-economic status” and (2) the EEP owners must demonstrate management and/or control of the EEC entity. (*See* ICC Docket No. 23-0714, Draft LTRRPP for Commission Approval dated October 20, 2023 at 351.) The Joint Solar Parties recommended that if the Commission were to adopt the IPA’s proposals, the Commission should further require that: (1) successful participation of an EEC in the State of Illinois’ Business Enterprise Program creates an irrebuttable presumption of the socio-economic status of the EEC’s ownership, (2) socio-economic status is only reviewed at initial registration rather than on an ongoing basis, and (3) socio-economic status review is only applied to EEPs who qualify by virtue of residence or training program graduation. (*See* ICC Docket No. 23-0714, JSP Objections at 8-9.) The IPA for the most part agreed with these recommendations.

The Commission did not adopt this approach, however. As a threshold matter, the Commission found that “the IPA has the statutory authority to tighten the requirements for EEC certification to ensure that EAS benefits flow to the intended parties.” (ICC Docket No. 23-0714, Final Order dated February 20, 2024 at 127.) However, the Commission did not adopt the proposals of the IPA or the compromise between the IPA and JSP: “The Commission declines to adopt the IPA’s socio-economic status determination requirement. The Commission finds that additional stakeholder discussions would provide better direction on striking the right balance between adding EEP requirements and reducing manipulation of the EEC designation.” (*Id.* at 138.) The Commission did, however, provide some limited guidance for what a future structure could look like:

The Commission notes the IPA’s support for JSPs’ recommendation that entities already certified through the BEP be presumed as meeting the demonstration of

socio-economic status requirement and encourages the stakeholders to discuss qualification methods along with other alternatives. However, the Commission agrees with the IPA that a minimum REC Contract and business performance criteria proposed by ESI are not the best nor most practical indicators of EEC eligibility and declines to adopt this proposal.

(*Id.*) In several cases as well, the Commission directed the IPA to engage stakeholders about the appropriate “balance” between maintaining the integrity of the equity accountability system while not overly burdening EEPs or EECs. (*See, e.g., id.* at 138, 147.)

Taken together, the Joint Solar Parties acknowledge (as they did previously) that the Commission can set standards for EEC registration. However, the Commission’s calls for balance and engagement have led the Joint Solar Parties to continue to evaluate where that proper balance should be.

II. Responses to Request for Comments

1. In the 2026 Long-Term Plan, should the Agency propose requiring additional documentation or evidence to demonstrate that the majority-owner EEP(s) has/have active control and management of the business? If so, what types of governance documentation would be appropriate (e.g., operating agreements, bylaws)?

a. What should the Agency consider as qualifying criteria for demonstrating 'active control and management' of a business by majority-owner Equity Eligible Persons (EEPs)? Are there specific roles, responsibilities, or decision-making authorities that should be used to define this standard?

JSP RESPONSE: While in some cases there may be useful information in such documents, often it is generic or generally not illuminating—especially when an EEC is fully owned by EEPs. A better approach is that an EEP should be the point of contact for the Program Administrator and responsible for communicating on behalf of the EEC to the Program Administrator or IPA. If nothing else, the EEP contact can provide information about the roles of EEPs within the EEC.

2. Should the IPA propose requiring periodic re-certification or audits to confirm that EEPs remain actively involved in business operations? If so, how frequently should these reviews occur?

JSP RESPONSE: Audits are likely to be cumbersome and expensive to respond to, which can place enormous burdens on these businesses. A business that has already demonstrated compliance with the statutory requirements and the Agency’s certification process should not be required to periodically re-demonstrate that compliance. However, if the Agency chooses to require recertification, it should be no more than once every five years or on a similar time magnitude.

3. What alternative approaches could be used to ensure EEPs are not being used as figureheads to qualify businesses for EEC status in a way that conflicts with the equity objectives of CEJA? Please include detail related to any suggestions made in response to this question.

B. Verifying the Socio-Economic Status of Majority-Owner EEPs

1. In the 2026 Long-Term Plan, should the Agency propose requiring EEP majority-owners to demonstrate their socio-economic status (e.g., income documentation) to ensure they are individuals who would most benefit from equitable investments? If so, what types of documentation would be appropriate?

JSP RESPONSE: The Joint Solar Parties continue to recommend accepting certification of participation in the Business Enterprise Program or other programs in the State (including local government programs) that are intended to aid businesses owned by socio-economically impacted groups. This allows the IPA to outsource the income review—which has certainly led to bottlenecks and issues in the context of Solar for All for the applicable Program Administrator—to agencies that are already undertaking the process.

a. What should be considered when determining proper income cut-offs for eligibility, and how might those thresholds be set to balance inclusivity with the intent of prioritizing individuals facing systemic economic barriers?

JSP RESPONSE: The Joint Solar Parties are uncomfortable with prohibiting an individual that qualifies as an EEP—especially if the qualification is due to former incarceration or being an alum of the foster care system—to count toward majority ownership of EECs. The IPA continues to review the environmental justice community map. However, the income qualification process is likely to be quite intrusive and limit the number of EECs available at a time when the minimum equity standard percentage is rising. Requiring financial disclosures will also be outside the current oversight and data management scope of the IPA or the Program Administrator (low-income verification for Solar for All is very different) and requires investigation into personal finances that will both lead to gaming and scare participants away from the program.

EEP status is not just about *current* socio-economic status but also ensuring that opportunities for business-building are not denied *because* of somebody's background. Often, EEPs that have more wealth will have more relevant or potentially relevant business or practical experience or relationships. Adding barriers to EEC ownership will make each EEC inherently more risky and/or push EEPs toward experienced developers that can provide capital, risk management, or both.

b. What sources of verification should be utilized to authenticate socio-economic status, and what challenges might arise in collecting and assessing this information?

2. Are there other alternative measures that the Agency should consider to ensure the EEC certification process is fair and effective? Please include detail related to any suggestions made in response to this question.

C. Preventing Manipulation of the EEC Category

1. Should the Agency require EECs to demonstrate a minimum level of involvement in project development, construction, or operations to qualify for the EEC category in Illinois Shines? If so, what criteria should be used to measure involvement?

JSP RESPONSE: No. Acting as an Approved Vendor is itself a complex endeavor, and that obligation is placed on the EEC Approved Vendor. However, to the extent that the IPA does impose some requirements, any system that is developed (in whole or in part) or constructed (in whole or in part) by the EEC Approved Vendor should qualify. In addition, starting with projects selected in the 2026-27 EEC Block, if an EEC is neither a developer nor a general contractor/subcontractor, the EEC should be able to represent a project in the EEC Block that it did not develop or construct if there is a plan (included in the Part I application) for the developer and/or owner/operator of the system to provide the EEC with work (including potentially on other systems) that builds the EEC's capabilities to compete for and earn more business outside of the EEC Block. An example would be an EEC Approved Vendor that did not develop or build a system but that is made actively involved in the post-NTP (notice to proceed with construction) development, financing diligence, and run-up to PTO (permission to operate). This experience and the relationships will increase the chances that the EEC can branch out into development or post-NTP support as future lines of business.

2. Should the Agency create a scoring or prioritization system within the EEC category in Illinois Shines to reward projects where EECs serve as the primary developer or operator? If so, what factors should be included in such a system?

JSP RESPONSE: No. The Joint Solar Parties do not support a scoring system for the EEC Block. However, if there is overcommitment, the IPA has already introduced a developer cap and could (if there is oversubscription) prioritize projects based on binary questions regarding whether the EEC-Approved Vendor submitting the system participated in development and/or construction.

3. Should the Agency implement a scoring or prioritization system within the EEC category in Illinois Shines to reward EECs that demonstrate a stronger commitment to equity (e.g., by employing a higher percentage of EEPs or operating in EIEC areas)? If so, what criteria should be used for scoring?

JSP RESPONSE: No. The Joint Solar Parties urge the IPA to keep the EEC Block as a block intended for EEC Approved Vendors' growth and success rather than pushing EECs that are building businesses to also be responsive to other goals.

4. Should additional disclosure and transparency be required regarding EEC ownership structures and subcontracting arrangements?

JSP RESPONSE: EEC-Approved Vendor ownership is already disclosed to the IPA. The Joint Solar Parties strongly recommend against program rules that would make it more challenging (or perceived as more challenging) for EECs to work with established companies as part of the series of transactions necessary to develop, market, solicit, construct, finance, and operate solar (which—depending on project type—may be in a different order and have different unique challenges). EECs should not be discouraged from working with any contractual counterparty that would make their businesses more successful.

5. What additional measures could help deter sleeving or pass-through structures, where EEP ownership is nominal but non-EEC entities control operations and enjoy most of the financial benefits?

JSP RESPONSE: This is tough to measure or deceptive in its measurement. For instance, many non-EEC companies across industries will take on debt or investors (i.e. selling equity) for a cash infusion in order to build up their business. Such a model is no more or less meritorious than scaling only as revenue allows (especially if there are income limits on EEP owners, pushing likely available start-up capital lower). EEPs should not be penalized for seeking funding from the same sources any other company might.

6. What best practices should the IPA consider to ensure legitimate EEC participation without placing undue burdens on EEP majority-owners?

JSP RESPONSE: While EEPs EECs generally should not be impacted by undue burden given the relatively low number of EECs and still emerging EEPs (especially with DCEO training programs just beginning), the fact that EEC Approved Vendors and Designees cannot be retained by another Approved Vendor or Designee and have the EEC's project workforce count toward the non-EEC Approved Vendor, EECs participating as Approved Vendors in the EEC Block may be justified in additional restrictions on EEP ownership *for the purposes of participating in the EEC Block*. The Joint Solar Parties would be open to consideration of minimum residence within an EIEC for the EEP majority owners for the EEC Approved Vendor participating in the EEC Block, but that such residence length only impacts qualification for participation in the EEC Block.

D. Other Enhancements to the EEC Certification Process

The Agency welcomes additional suggestions for improving the EEC certification process to ensure it aligns with the statutory goals of advancing equity in the clean energy economy.

1. Are there other changes or enhancements to the EEC certification process that the Agency should consider? Please provide specific recommendations.

JSP RESPONSE: The Agency should consider exempting any business with the "EEC Subcontractor" designation from any socio-economic criteria or recertifications discussed in this Request for Comments.

In the 2024 Long Term Renewable Energy Resources Procurement Plan, the Agency created a new "EEC Subcontractor" designation to provide new opportunities for small contractors seeking to engage in Illinois' growing solar sector without the reporting burdens required to become certified as either an Approved Vendor or Designee or the direct REC Contract benefits of being an Approved Vendor. To further prevent these contractors from facing invasive or ongoing recertification that could hinder their market participation, the Agency should just exempt these firms from any requirements determined under this proceeding.

2. Are there any best practices from other industries or programs that could serve as a model for strengthening the EEC certification process?

JSP RESPONSE: Any Program Administrator process to assess EEC characteristics or recertify EEC designations must involve an appeals process that can address errors or omissions by the Program Administrator or Agency. Appeals must further be appealable to the Commission or in court. The stakes are very high with EEC status presenting substantial business opportunities given the appetite for EEC partnerships of the market.