STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Power Agency	)	
	)	
Petition for Approval of the IPA's 2022	)	ICC Docket No. 22-0231
Long-Term Renewable Resources Procurement	)	
Plan Pursuant to Section 16-111.5(b)(5)(ii)	)	
of the Public Utilities Act.	)	

VERIFIED PETITION FOR REOPENING ON THE COMMISSION'S OWN MOTION
ON BEHALF OF THE ILLINOIS POWER AGENCY

Pursuant to Section 10-113 of the Public Utilities Act and Sections 200.900 and 200.190 of the Commission's Rules of Practice, the Illinois Power Agency ("IPA" or "Agency") respectfully petitions the Illinois Commerce Commission ("Commission" or "ICC") to reopen the above-captioned proceeding on its own motion in order to approve certain modifications to the Agency's 2022 Long-Term Renewable Resources Procurement Plan ("2022 Plan") necessitated by the receipt of applications for Group A of the Equity Eligible Contractor category of the Adjustable Block Program on November 1, 2022 that exceed that category's capacity.

As described further below, the Adjustable Block Program began accepting community solar applications in three different categories on November 1, 2022. The Agency anticipated a large wave of applications to the Traditional Community Solar ("TCS") category on that date, but did not anticipate large numbers of community solar projects to be submitted into the Equity Eligible Contractor or Public School categories on that date, due to a variety of factors. Yet on the first day that the community solar applications were available, 112.5 MW of project applications were submitted into Group A of the Equity Eligible Contractor category, constituting 258% of the available capacity of 43.59 MW. Unlike the TCS category, for which the 2022 Plan lays out a very detailed and comprehensive scoring rubric to determine which projects submitted at the same time (i.e., on "Day 1") will receive a REC Contract, the 2022 Plan did not provide any guidelines on project selection for the Equity Eligible Contractor category in the event that "Day 1" applications exceed the available capacity.

In order to ensure that both the letter and the spirit of the law are met in the administration of the Adjustable Block Program, the Agency respectfully requests that the Commission reopen this proceeding for the limited purpose of approving modifications to the 2022 Plan[1] to address the selection of projects submitted to the EEC category on the same day.

BACKGROUND

Equity Provisions in 2022 Plan

As the Commission is well aware, the enactment of the Public Act 102-0662 (the Climate and Equitable Jobs Act, or "CEJA"), on September 15, 2021, introduced massive structural reforms to the Illinois energy statutory and regulatory landscape. This bold legislative initiative sets a high bar for equity in the clean energy economy, requiring Illinois to build a diverse and equitable clean energy workforce, build wealth and support energy sovereignty in low-income households and communities, create employment opportunities for those impacted by the retirement of fossil resources, and ensure the benefits of the clean economy reach historically marginalized and environmental justice communities. To implement these new requirements and in accordance with Section 1-75(c)(1)(A) of the IPA Act and Section 16-111.5(b)(5) of the Public Utilities Act, the Agency filed its 2022 Long-Term Renewable Resources Procurement Plan in this proceeding, outlining the Agency's proposals for meeting the myriad of new requirements for the Renewable Portfolio Standard ("RPS") under P.A. 102-0662. Many of those new RPS-related

[1] The Agency's proposed modifications to the 2022 Long-Term Plan have been filed along with this Verified Petition for Reopening.

requirements included equity components, such as the prioritization of projects developed and built by equity eligible persons and/or in environmental justice communities, the collection of demographic and geographic information from program applicants, and the establishment of minimum equity standards, under which equity eligible persons or contractors must make up 10% of the project workforce for each entity participating in the Agency's programs beginning in 2023-2024, rising to 30% by 2030.

The Adjustable Block Program ("ABP" or "Program"), which provides incentives for the installation of new photovoltaic distributed generation ("DG") and community solar projects throughout the state, previously featured three categories of projects (Small DG, Large DG, and community solar). Changes to Section 1-75(c)(1)(K) under P.A. 102-0662 expanded the Program to six categories with the addition of the Public Schools, Community-Driven Community Solar, and Equity Eligible Contractor categories.

The new Equity Eligible Contractor category—under which projects must be submitted by Equity Eligible Contractors ("EECs") as the Approved Vendor (i.e., direct applicant and REC delivery contract party)—is a central and instrumental pillar of the Equity Accountability System established by P.A. 102-0662. Section 1-75(c-10) of the IPA Act establishes the Equity Accountability system to create "priority access to the clean energy economy for businesses and workers from 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." The IPA Act requires the Agency to reserve "at least" 10% of the program capacity for projects from applicants that qualify as EECs. That portion must increase to 40% of the overall program capacity by 2030, though the IPA has discretion to determine the rate and timing of that increase "based on factors, including, but not limited to, the number of equity eligible contractors and capacity used… in previous delivery years."[2] The IPA Act also authorizes the Agency to create subcategories for different project types and sizes within the larger umbrella of the EEC category.

Requirements of the EEC Category

The requirements of the EEC category are outlined in Section 7.4.6 of the 2022 Plan. As approved by the Commission in this proceeding, the IPA set the capacity for the category at 10% of the overall Program capacity, the required minimum under Section 1-75(c)(1)(K)(vi) of the IPA Act. The Agency selected this level due to the low participation in the category after the initial opening in December of 2021, as explained further below. To allow for growth of the EEC market, the 2022 Plan did not create specific sub-categories within the EEC block to avoid premature limitations on project applications for either DG or community solar projects.

The litigation in the underlying proceeding with respect to the EEC Category focused on barriers to participation by EECs and ensuring that the EEC category capacity benefitted the intended applicants. Intervenors and the IPA recognized that the barriers to participation in the solar market that equity eligible persons and contractors face might slow participation in the category, and no party objected to the initial capacity level of 10% as being too conservative. The IPA specifically noted that it would solicit feedback from EECs and other stakeholders to identify barriers to participation in the ABP and reduce or eliminate them where possible. To ensure that the capacity reserved for the EEC category directly benefits the intended disadvantaged businesses, the IPA Act states the category must be made up of projects "from applicants that are equity eligible contractors,"[3] and the Agency proposed that only projects developed by EEC Approved

[2] 20 ILCS 3855/1-75(c)(1)(K)(vi).

[3] 20 ILCS 3855/1-75(c)(1)(K)(vi) (emphasis added).

Vendors, as the entity which applies for incentives in the ABP, be eligible to submit projects within the category. The IPA also proposed that EEC Approved Vendors should not be permitted to assign projects submitted within the category to non-EEC participants for six years following Part II approval (i.e., confirmation of system energization) of an application. The Commission agreed with the Agency's interpretation and approach to capacity level and assignments, and approved these requirements in its Final Order.

Initial Participation in the EEC Category

Pursuant to 1-75(c)(1)(G)(iv)(6) of the IPA Act, the Agency opened the new EEC category on December 14, 2021 with a capacity of 75 MW for projects submitted by qualifying applicants prior to the publication of the draft Long-Term Plan in accordance with 1-75(c)(1)(A). The category accepted only DG applications initially. No projects were submitted to the category prior to the temporary close of the Program on June 30, 2022. On September 1, 2022, the current program year opened with a total capacity across the EEC category of 144.63 MW, with 43.59 MW allocated to Group A and 101.04 MW allocated to Group B. Only DG applications were accepted during the first two months of the program year; once again, no projects were submitted to the EEC category. Overall, during the more than seven months that the EEC category blocks were open for DG applications, not one application was submitted into the newly-created EEC category.

Day 1 Community Solar Applications in the EEC Category

On November 1, 2022, the Program portal opened for community solar applications in the Traditional Community Solar, Public Schools, and Equity Eligible Contractor categories. As expected, there was high demand for capacity in the TCS category; this is reflected in the Plan through the comprehensive project selection criteria outlined in Section 7.4.3 and is also exhibited through the robust comments and objections offered in parties' briefs in the underlying proceeding. On Day 1, the Program received applications totaling over 673 MW submitted for the 170.9 MW available in the Traditional Community Solar category. Participation in the EEC block on Day 1, however, far exceeded the IPA's expectations. Despite the rollover of significant amounts of uncontracted capacity, Group A community solar applications totaled 112.5 MW, constituting 258% of available capacity. Similarly, Group B saw a significant number of community solar applications, totaling 70.9 MW through the first month of applications.

The low levels of participation in the EEC category in the nascent days of the block's opening, during the development of the Long-Term Plan in the winter of 2021-2022, and across the litigation in the underlying proceeding through the spring of 2022 gave no indication – to the IPA, the Program Administrator, or other stakeholders – that there was reason to expect capacity in the EEC category to be exhausted in the 2022-2023 program year, let alone on Day 1, such that the Agency should need first day tiebreaking project selection criteria.

<u>The Plan and ABP Requirements Do Not Delineate an Allocation Process for the EEC Category</u>

Neither the IPA Act, the 2022 Plan, nor the Program Guidebook outline a project selection process for the EEC category should applications received on the first day exceed capacity. While the Plan does discuss in Section 7.4.3 the need to develop a methodology for prioritization of projects submitted to the Program at the same time (i.e., on the same day), those methodologies were created specifically for the TCS category. The requirements surrounding the EEC category, as set forth in Section 7.4.3 and described above, do not discuss a preference for a particular project type or developer caps, as seen in the TCS category.

As a result, other Program materials do not address a possible resolution to this situation. The Adjustable Block Program Guidebook, designed for and utilized by Approved Vendors in order to assist with the navigation of the ABP requirements, provides no additional guidance on the EEC category requirements beyond what is laid out in the 2022 Plan. Project scoring and selection guidelines are only outlined in the Guidebook with respect to the Community-Driven Community Solar and Traditional Community Solar categories. The only available guidance within the Guidebook for the allocation of capacity in an oversubscribed category deals with a block exceeding capacity over time. Section 1.B. of the Program Guidebook explains that when capacity has been exhausted, "the Program Administrator will announce that the block will close in seven calendar days or when the next project application submitted to the block would exceed the block's capacity by 10 MW from the original published block size, whichever comes first." As the capacity of EEC Group A was exceeded by *over 10 MW on Day 1*, it is impossible to utilize this approach. The Program Administrator produced a significant number of materials related to the portal's November 1 opening for community solar applications, including announcements and communications to program participants, webinars, how-to guides, and clarifications around category requirements. None of these documents provided any warning or insight to program participants about the potential for capacity within the EEC category to fill quickly on Day 1, nor did the Program Administrator indicate that a project selection process for the category may be necessary. In fact, the Program Administrator provided explicit guidance on October 28, 2022 to program participants that the TCS scoring rubric did *not* apply to the EEC and Public Schools categories.

The Agency seeks to reopen the underlying proceeding in order to introduce into the Plan a path forward for the category, both addressing the needs in the current program year and also developing a mechanism to avoid a similar situation in the 2023-2024 program year. Reopening of this docket for consideration of the IPA's proposed strategy to address the unexpected oversubscription of Group A of the EEC Category not only allows for the Commission's review and approval, but also provides all parties the opportunity to comment on the approach, and ensures that the ICC has an opportunity to review and approve what would have otherwise been a contested issue before it.

Approaches Considered by the IPA in Developing Resolution

The IPA proposes to expand the 2022-23 program year EEC category Group A block to accept all valid project applications. The IPA comes to this conclusion after considering the following additional alternatives.

One option is to maintain the existing block size, but use a random selection process for determining which projects receive capacity. While a random selection process would constitute a fair and unbiased approach to project selection, solar project developers have previously expressed strong distaste for lottery processes, because depending on the draw, this process risks some developers being shut out at the benefit of other developers. Recognizing that the Commission has expressed concerns about random selection processes,[4] particularly after the 2019 community solar lottery, and as the IPA intentionally avoided random selection processes in the 2022 Long-Term Plan, the IPA believes this would not be the best approach.

A second option is to award contracts in proportion to the AV's share of the EEC category Group A block size, leaving developers with the choice of which projects to move forward or resize depending on their proportionate share of the Group A block. A similar approach was authorized under Section 1-75(c)(1)(G)(iv) of the IPA Act for initial community solar contract awards under CEJA, with each developer receiving contracts awards proportionate to its waitlist share (subject to a 20% developer cap) and delivering a portfolio of projects back to the Agency

[4] Final Order, ICC Docket No. 19-0995 at 43-47 (Feb. 18, 2020).

for contract approval. But with EEC category submissions, not all portfolio and resizing decisions are of equivalent complexity or feasibility. A small developer with only a handful of projects may face more difficult decisions around resizing than a larger developer who can develop multiple projects at scale. Further, while the Section 1-75(c)(1)(G)(iv) process was codified in Illinois state law and Approved Vendors had the opportunity to offer back portfolios reflecting those choices, EEC Approved Vendors were not on notice that a similar process would be utilized in the EEC category. Consequently, the IPA prefers avoiding proportionate awards, even if this constitutes the most reasonable of the other alternatives considered by the Agency.

A third option is to employ qualitative scoring criteria translated to a point system, similar to the approach authorized in the Traditional Community Solar category under the 2022 Long-Term Plan. However, this approach carries serious fairness concerns, as Approved Vendors were not on notice that any scoring would be used (and thus did not have the opportunity to propose projects designed to score well); the IPA believes the development of a post-hoc scoring system would be fundamentally unfair when no Approved Vendors were on notice of its use, and it could be viewed as favoring certain projects only after reviewing the portfolio of projects received. Additionally, certain categories of points – such as for using EECs for a share of project development work – make less sense to apply when applicants are *already required* to be EECs for category qualification.

Ultimately, the IPA determined that it must consider the magnitude of EEC category oversubscription (especially relative to the overall Adjustable Block Program size), the IPA Act's preferences for supporting EECs' program participation, and the IPA Act's express instruction that the EEC category be expanded over time. The Agency believes that expansion of the category is the approach that most aligns the goals and the intent of the statute. The IPA believes that the best approach would be to expand the EEC category Group A block for the 2022-23 delivery year to accept all valid Day 1 project applications into that category.

Expanding the EEC category to take all valid project applications will require approximately 68.9 MW of additional capacity constituting an 8.6% increase of overall ABP capacity for the 2022-23 program year. Given a corresponding proposal in the Plan to “net out” this category expansion through unallocated Program capacity from the 2022-23 program year—as well as reduced budget impacts from attrition of utility-scale projects originally awarded under P.A. 99-0906, the Future Energy Jobs Act, and lower-than-expected successful participation in the IPA’s first Indexed REC procurement process under CEJA—the IPA believes any resultant RPS budget impact is very manageable.[5]

Through this filing, the Agency seeks to reopen the underlying proceeding and request that the Commission approve modifications to the 2022 Plan which would (1) utilize the statutory authority to expand the EEC category beyond the minimum size set forth in the IPA Act for the 2022-2023 program year, (2) allow EECs to seek a capital advance for projects submitted into the appropriate DG category in the 2022-2023 program year, and (3) address the available capacity for the EEC category in the 2023-2024 program year, including waitlisted projects, through the creation of a developer cap and subcategories within the EEC block. The IPA has provided proposed modifications to the 2022 Plan in conjunction with this Petition; those modifications include not only updates to the EEC Category in Section 7.4.6 of the Plan (primarily contained in new Section 7.4.6.3), but also updates to the ABP block sizes across multiple program years, and the re-allocation of uncontracted capacity at the close of a program year.

[5] This approach to expanding EEC category Group A helps facilitate additional project development in Central and Southern Illinois, where MISO Zone 4 recently cleared at the Cost of New Entry and stakeholders have voiced resource adequacy concerns necessitating additional generating capacity.

RELIEF REQUESTED

The Agency requests that the Commission exercise its authority to reopen this proceeding, on its own motion, for the limited purpose of considering the proposed modifications to address oversubscription of the EEC category under the 2022 Plan. Section 200.900 of the Commission's Rules of Practice provide that after the time to petition for rehearing has expired, a party may petition the Commission to reopen on its own motion any proceeding when "conditions of fact or law have so changed as to require … such reopening." The new facts and circumstances surrounding the oversubscription of the EEC block on Day 1 clearly meet this threshold. The IPA thus respectfully seeks the reopening of this proceeding for the limited purpose of modifying the 2022 Plan to modify the EEC category for years 2022-2023 and 2023-2024.

The IPA believes that all EEC-qualified Approved Vendors – those that submitted community solar projects on Day 1 and those that did not – will be impacted by the modifications proposed upon reopening. The Agency appreciates that non-EEC Approved Vendors and other program participants may be not only interested but also potentially affected by Program modifications. All parties to the proceeding, as well as all AVs, should have the opportunity to address the proposed modifications and provide comments or suggest alternatives. Accordingly, should the Commission agree with the IPA and reopen this proceeding on its own motion at its January 5, 2023, Regular Open Meeting, the IPA suggests the following schedule upon reopening:

Objections to Proposal	January 19, 2023
Responses to Objections	February 2, 2023
Replies to Responses	February 16, 2023
Proposed Order	March 2, 2023
Briefs on Exceptions	March 16, 2023

Briefs in Reply to Exceptions March 23, 2023

While this schedule provides what appears to be a short time for Objections following Reopening, the IPA believes that all parties are on notice of the filing as of the date it is filed, not the date of the Commission's action on reopening; thus, there is sufficient time for interested parties to develop a response. Furthermore, the issue is sufficiently narrow in scope to accommodate a somewhat accelerated schedule and timeline. Finally, this schedule allows for Commission approval of an approach prior to the opening of the 2023-2024 program year on June 1, 2023.

CONCLUSION

WHEREFORE, as set forth above, the Illinois Power Agency respectfully requests that the Illinois Commerce Commission reopen Docket No. 22-0231 on its own motion, for the narrow purpose of approving modifications related to the oversubscription of the Equity Eligible Contractor category within the Adjustable Block Program. Specifically, the Agency requests approval of the modified 2022 Plan attached hereto, and for any further relief the Commission deems appropriate and just.

Dated: December 2, 2022

Respectfully submitted,

Illinois Power Agency

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VERIFICATION

Pursuant to 83 Ill. Admin. Code 200.130 and 735 ILCS 5/1-109, under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this Verified Petition for Reopening are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Anthony Star

Anthony Star
Senior Advisor and Interim Bureau Chief of Planning and Procurement, Illinois Power Agency

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NOTICE OF FILING

Please take notice that on December 2, 2022, the undersigned, an attorney, caused the Illinois Power Agency's Verified Petition for Reopening on the Commission's Own Motion to be filed via e-Docket with the Chief Clerk of the Illinois Commerce Commission in Docket No. 22-0231.

Kelly A. Turner

Kelly A. Turner

CERTIFICATE OF SERVICE

I, Kelly A. Turner, an attorney, certify that a copy of the foregoing document was served upon the parties on the Illinois Commerce Commission's service list as reflected on e-Docket via electronic delivery on December 2, 2022.

Kelly A. Turner

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