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June 16, 2023

Illinois Power Agency
105 West Madison Street, Suite 1401
Chicago, IL 60602

Re: 2024 IPA Long-Term Plan Feedback - Chapter 9: Consumer Protection

Ampion, PBC is pleased to submit the following responses to the request for feedback on the Long-Term Renewable Resources Procurement Plan issued by the Agency on May 26, 2023.

TOPIC 1: Community Solar Providers Directly Managing Customer Utility Accounts

a. What other consumer protection concerns are presented by the model of having Community Solar Providers take over management of customer's utility accounts?

Ampion encourages the Agency to proceed cautiously in regulating the establishment of agency arrangements between customers and energy providers of any kind, including Community Solar Providers. While Ampion claims no specialized knowledge of agency law in Illinois, it is generally the case that various agency arrangements are well established in a State's statutory or common law. As a first principle, the Agency should place the kinds of agency arrangements it is concerned with in the context of existing law so as to apply only the least increment of regulation necessary to address those concerns that may require action and, as importantly, to avoid unintended consequences. For example, Community Solar Providers may wish to use limited forms of agency in order to perform ministerial actions on behalf of their subscribers in order to provide a better customer experience. We see no reason to prohibit such arrangements across the board. Many Illinois residents have also granted control over their utility account and other day-to-day matters to a third party through a durable power of attorney where the resident may be unable to perform those functions. The Agency should also take care not to inadvertently interfere with such arrangements.

Proceeding cautiously we believe will necessarily mean looking at agency arrangements between Community Solar Providers on a case by case basis, guided by a few principles. One would be examining whether the provider-agent in such arrangements agrees or is otherwise obliged to act as a fiduciary of the subscriber-principal. A finding of a fiduciary obligation of the agent to the principal would mean that the agent would be constrained to act in the best interests of the principal. Such a finding would both establish boundaries around the agent's actions and give the Agency a much clearer standard by which to judge the agent's actions. Using an example in a non-energy context, one might enter into an agency agreement with a friend, giving them control of one's bank accounts. In the absence of a fiduciary obligation, the friend might be

constrained only by his sense of personal obligation from emptying the accounts and taking the money to a casino. So the question of fiduciary obligations sets the ground rules for anything that comes thereafter.

The above example also gets to the second point, which is the question of consent. Even in the presence of a fiduciary relationship, the owner of the bank accounts would be within their rights to direct the friend to pursue the most aggressive uses of the money available, up to and including gambling.[1] When examining agency relationships between a Community Solar Provider and subscribers, the Agency should look closely at the consent given by the subscriber to the provider. At the very least, it should be clear from the overall context of the relationship (based on all of the materials presented to the subscriber) that the subscriber is aware of and understands the actions that the agent may take on their behalf. There is a range of actions that a provider-agent could take on behalf of a subscriber-principal that corresponds with a continuum of levels of consent. Granting a provider the right to take actions on the subscribers behalf that are limited to ministerial tasks needed to effectuate the terms of the community solar subscriber agreement is at one end of that continuum, and is arguably included implicitly in the execution of the subscriber agreement. Using access to the subscriber's utility account to buy other products and services on the subscriber's behalf would be much farther along the continuum of consent.

The final consideration would be the question of whether the use of the agency arrangement frustrates other important policy goals that might override the benefits of a principal-agent relationship governed solely by existing Illinois law. As noted in the request for feedback, transparency and continued subscriber control are important considerations. Ampion takes no position on where the Agency should draw the line with respect to any particular issue, but we agree generally that the subscriber's ability to receive important communications from the utility and to have continuous access to their online account are material concerns.

b. Are there concerns around billing transparency that may be particularly acute in ILSFA, where there are required minimum savings levels?

Ampion takes no position with respect to this question.

c. What are the benefits and/or drawbacks of prohibiting this model based on consumer protection concerns?

As noted in our response to the first question, Ampion urges the Agency to proceed cautiously in implementing any outright ban on uses of an agency arrangement by Community Solar Providers. As discussed in that response, the benefits of limiting any

[1] Perhaps the friend is Nate Silver.

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such arrangement would depend on the specifics of the arrangement and the potential abuses that a ban or incremental restrictions would prevent or deter. We also believe that it would be a serious mistake to ban the use of third-party billing as part of an incremental restriction on certain agency arrangements. Third-party billing is a subset of the services that might be provided under an agency arrangement and there is no reason to believe that it is inherently harmful to consumers. To the contrary, for many years the market has been seeking business models that lessen the burden on consumers from the multiplying numbers of bills they may be receiving from a wide range of service providers.[2] There is no reason to ban this option outright for community solar subscribers. Moreover, the availability of a consolidated utility bill does not negate the possible benefits of third-party billing arrangements in terms of convenience and an enhanced customer experience. Billing services generally, and billing for community solar specifically, is in no way the kind of natural monopoly such that it should be limited to a single entity. We note that in retail electricity, commercial customers may choose to receive a consolidated bill from their third-party retail supplier that includes both utility and supply charges. The Agency should avoid taking actions that would make this or other currently available options for third-party billing unavailable to all Illinois electricity customers.

d. What restrictions or requirements, if any, could ameliorate consumer protection concerns? (For example, would requiring the Community Solar Provider to provide the utility bill, utility notices, or other information to the customer; requiring separate explicit permission to change utility account credentials; or requiring the Community Solar Provider to share updated/new utility account credentials with the customer, address consumer protection concerns?)

As discussed above, incremental restrictions or requirements should follow directly from and hew closely to the goal of addressing legitimate, demonstrated concerns that arise from specific behavior that might result from certain kinds of agency arrangements. Ampion makes no specific recommendations in this regard but we do recommend that the Agency work with all interested and affected stakeholders before taking actions that might have broad effects in the Illinois community solar market.

2. TOPIC 2: Restitution Fund for Harmed Customers

Ampion appreciates the IPA's consistent effort to protect consumers. As a member of the Consumer Protection Working Group, we have seen that the Distributed Generation (DG) category has left some customers stranded by failing businesses and never made whole. Ampion agrees that there should be a better mechanism to protect participants, however, we do not think this is necessary or useful for Traditional Community Solar (TCS) participants. Participating in TCS provides savings for the consumer, and a subscriber does not need to

[2] "One bill for everything" is the retail services version of a unified field theory in physics.

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invest their own capital in order to join the program. Ampion strongly believes that stranded DG losses of personal finance is a significantly bigger consumer protection risk than a customer receiving reduced savings from a TCS subscription, especially when utility consolidated billing for community solar customers is being implemented. The idea of making a TCS subscriber whole does not apply the same way as when a consumer invests their own money and does not receive the promised goods and services. Ampion believes that harms caused by DG and TCS should not be treated the same for the purposes of a restitution fund and recommends that if a restitution fund for harmed customers is created, it should only apply to the DG categories of Illinois Shines.

3. TOPIC 8: Approval Process for IL Shines Designees

Ampion understands the IPA's general concern with consumer complaints and shares the desire to decrease them. However, as a customer-facing Designee who works with other customer-facing Designees, we understand why more consumer complaints might be made against Designees than against Approved Vendors. The nature of the service offered by subscriber acquisition and customer management companies like Ampion is that we interface with customers on behalf of the Approved Vendors we are nested under. Due to this reality, the proportional breakdown does not surprise us, nor does it inherently mean there is a major complaint issue. Furthermore, as a registered Designee who has helped other Designees register under Ampion and our Approved Vendor clients, the IPA already has broad authority to regulate all registered program participants. We see the remedies the IPA has at its disposal to impose restrictions on both Designees and the Approved Vendors they might be nested under as sufficient and, based on the information presented in the request for feedback, we do not believe the benefits of an additional registration and approval process would outweigh the costs and operational barriers introduced by such a measure. Without understanding the actual scale and content of complaints as well as trends over time, it is difficult to comment on what appears to be the issue that the IPA is attempting to address with Topic 9. Ampion would appreciate it if the IPA could expand upon their rationale with more detailed complaint data and their reasoning, so better feedback can be provided.