

JOINT SOLAR PARTIES COMMENTS ON CHAPTER 9

TOPIC 1: Community Solar Providers Directly Managing Customer Utility Accounts

Questions

1. What other consumer protection concerns are presented by the model of having Community Solar Providers take over management of customer's utility accounts?
2. Are there concerns around billing transparency that may be particularly acute in ILSFA, where there are required minimum savings levels?
3. What are the benefits and/or drawbacks of prohibiting this model based on consumer protection concerns?

JSP RESPONSE: The Joint Solar Parties do not recommend prohibiting the model at this time, given the uncertainties associated with the ComEd and Ameren net crediting programs. While Ameren has yet to deploy their program, and likely will not do so until November of 2023, ComEd has administered the net crediting arrangement required under 16-107.5(l)(4) in a way that introduces substantial risk for system owners within the ABP and Solar for All. Under ComEd's program, subscription payments are the last utility receivable to be paid if the customer pays less than their entire bill. In other words, a customer with arrears—perhaps the most in need of subscriptions to allow the customer to pay down their arrears at a discount—will not generate a single dime of subscription fees for the system owner until at minimum the customer is out of arrears, and only then if the customer fully pays their bill. If the IPA agrees that a mechanism whereby a customer receives a single consolidated bill is preferable, the Joint Solar Parties recommend that the IPA work with utilities, the solar industry, and other stakeholders to encourage the utilities to modify their programs or tariffs to better design the implementation of net crediting.

4. 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?)

JSP RESPONSE: Under ComEd's Rider SBO (the ARES single billing option), one of the requirements of the ARES is to:

list the individual charges and credits applicable to delivery service and other information provided by the Company on each bill the RES issues to the Company's retail customers for which the RES is providing billing of the Company's delivery service, with the understanding that exact duplication of the Company's delivery service bill is not required

(IL C.C. No. 10, Original Sheet No. 366.) The Joint Solar Parties note that if the IPA is concerned about demonstrating 50% savings, the utility-issued bill credit could be required (itself or as part of a broader set of required disclosures) to be placed on any bill issued to a customer.

TOPIC 2: Restitution Fund for Harmed Customers

Questions:

1. What are the advantages and disadvantages of developing a restitution fund for Illinois Shines and Illinois Solar for All?

JSP RESPONSE: A restitution fund would help when an Approved Vendor or an installer becomes insolvent or abruptly withdraws from the market to ensure that a new Approved Vendor or installer can take over with minimal impact to the customer. At the same time, the existence of a restitution fund does not guarantee that a new Approved Vendor or installer will want to take over an unknown and potentially partially installed project. In addition, funding of a restitution fund is a critical question. Diverting funds available for REC payments will obviously diminish those funds, which would compound budget concerns. The Joint Solar Parties also recommend that a different state agency administer the restitution fund if one is created.

2. Do other states have restitution funds related to renewable energy programs that work well and/or could be used as a model in Illinois?

In 2021, the California budget trailer bill, AB 137, authorized \$5 million from the general fund for at “Solar Energy Restitution Fund” program at the Contractors State License Board (CSLB). These funds are available for restitution to consumers who have been financially harmed by a contractor (CSLB can use up to \$1 million for administration costs). Similar to California, if the General Assembly deems this type of restitution fund would be needed, the Joint Solar Parties recommend that it comes from other revenue sources and does not take away from RPS budget. It should also be managed outside of the Agency, and more with a state agency that deals with contractor licensing and complaints.

3. Are there restitution funds in other contexts that might provide useful lessons?

4. What eligibility requirements and proof of validity of claims would be appropriate for determining which customers could receive a payment from a restitution fund?

JSP RESPONSE: In California, the AB 137 restitution fund would provide restitution in the event of a primary harm to the customer (i.e. a direct damage related to the installation) or fraud/predatory practices by the contractor (as opposed to a lender) that were not corrected by the contractor. The Joint Solar Parties agree with California’s approach.

5. How could a restitution fund be designed to avoid creating perverse incentives?

JSP Response: The actual damage or misrepresentation/fraud requirements eliminate most perverse incentives, especially if the restitution fund at most compensates the customer’s actual damages (in other words if it reduces customer losses and does not go above and beyond addressing the installation issue(s)).

TOPIC 3: Reassignment of Individual Projects

Questions

1. What are the advantages and disadvantages of allowing individual projects in a batch to be reassigned?

JSP RESPONSE: Especially prior to the initial payment, if the original batch would be above the minimum threshold for batch size and the receiving batch would not exceed the maximum, reassignment of systems makes sense not only for customer management purposes but also for financing purposes.

2. In what circumstances would it be appropriate to allow individual projects to be reassigned? What procedural requirements would be appropriate?

JSP RESPONSE: Execution by the customer of a consent to assignment or an assignment of the underlying contract that implicates REC payments (i.e. the customer’s contract with the Approved Vendor that entitles the customer to the REC payments). Such assignments should be limited to mutual agreement among the parties and when the customer (or affiliate of the customer) owns the system (as opposed to financing under a PPA or lease model)—or for community solar if the system owner is unaffiliated with the Approved Vendor. In the event that an Approved Vendor is non-responsive to both the customer and the IPA, perhaps an additional exception can be created when compelled assignment is in the best interests of the customer/system owner.

3. Are there other types of flexibility around batching that should be considered?

4. In what other circumstances would flexibility with batching be helpful?

5. How would flexibility around batching be incorporated into the REC contract?

JSP RESPONSE: Updates to the Product Order and ensuring that payment takes into account any prior payment(s) under any previous REC Contract (which would be the case for any Large DG systems, including on the smaller end that must be batched with others).

6. Could flexibility be applied retroactively to projects under earlier versions of the REC contract?

JSP RESPONSE: The Joint Solar Parties believe that some of the batching rules are likely to be outside of the REC Contract or susceptible to reliance on program documents rather than the REC Contract language itself. The Joint Solar Parties continue to review the issue.

TOPIC 4: Assisting Stranded DG Customers

Questions

1. What methods could the IPA use to incentivize Approved Vendors and Designees to assist stranded customers?

JSP RESPONSE: There are three essential problems with an Approved Vendor or Designee taking over a stranded customer. First is the balance between securing more payment from the customer (particularly Designees) to complete scopes of work. Second, particularly for Approved Vendors, is that an Approved Vendor takes the risk that the project was developed and constructed (prior to the Approved Vendor taking over) in compliance with program guidelines. If the previous Approved Vendor made undisclosed, unknown, or impossible to remedy errors, the current Approved Vendor may have taken on a project with plenty of risk and limited upside. Third, the new Approved Vendor may not be familiar with the components the prior Approved Vendor quoted or even partially installed, leaving the new Approved Vendor unsure of what it’s getting into when taking over a project or forced to restart the disclosure process and incur additional costs in serving the customer under the contract.

As a result, if the IPA seeks to incentivize Designees and Approved Vendors, at minimum (1) the new Designee must be able to charge for services (or otherwise be compensated) and (2) the Approved Vendor must have a degree of protection (or at least leniency) for non-compliance caused by the previous Approved Vendor or their designees. Otherwise, Designees and Approved Vendors may

feel compelled to extensively diligence each project, reducing the upside and making a bad customer experience, before taking on stranded projects.

2. What are the advantages and disadvantages of offering economic incentives to companies that help stranded customers, such as a REC monetary “adder” that would apply when an Approved Vendor takes on a stranded customer?

JSP RESPONSE: The incentive will depend on the financing structure. If the customer owns the system and the Approved Vendor is simply a passthrough, the adder may have more value to the customer than the Approved Vendor but a direct payment to the Approved Vendor may be more valuable. For a lease or PPA, a REC Contract adder may have more value.

3. How would the correct incentive level be determined? Would it depend on the specific circumstances of the customer?

JSP RESPONSE: Yes, especially for Designees, where substantial work may need to be done (or redone) if the Designee must complete construction.

4. If economic incentives were provided, what requirements would prevent “gaming” (such as the intentional stranding of customers in order for another entity to receive additional economic incentives)?

JSP RESPONSE: If the IPA provides sufficient discipline for the Approved Vendor or Designee that abandoned the customer(s) in the first place, gaming is less likely to occur.

5. What are the advantages and disadvantages of creating flexibility in the REC contract and Program requirements so that customers could directly sell RECs to the utility?

JSP RESPONSE: That would be a major program change and would require substantially more input and consideration for its positives and negatives. Such an approach would run contrary to the carefully crafted and elaborate statutory framework as added by FEJA and amended by CEJA. Also, such an approach may not be compatible with a PPA or lease model.

6. What are the advantages and disadvantages of creating a process where the IPA acts as an Approved Vendor / Aggregator of last resort for stranded customers who are unable to find an Approved Vendor to assist them?

JSP RESPONSE: It is unclear how the IPA would manage a scenario where the previous Approved Vendor or Designee caused a fatal flaw under the Adjustable Block Program or Solar for All program that required clarification with the applicable Program Administrator, putting the IPA in the position of appealing to the very Program Administrator that the IPA hired (not to mention that the IPA would hear appeals from the Program Administrator). Also, it is not clear what the contracts would look like between the IPA and individual customers under such an arrangement. Fulfillment of statutory reporting requirements (including the MES or prevailing wage Certified Transcripts of Payroll) may also present practical problems. These are not necessarily a fatal flaw that could not be addressed, but it emphasizes the challenges with the IPA serving as an Approved Vendor when the IPA (through the Program Administrators) manage and impose requirements on Approved Vendors.

7. What barriers or complications might arise in a model where the IPA acts as an Approved Vendor / Aggregator of last resort?

JSP RESPONSE: Please see above.

8. Are there timing considerations that would affect whether this would be an option for specific customers, and if so, what are they?

JSP RESPONSE: Yes, it would create substantial challenges for the IPA (if it were to be an Approved Vendor of last resort) to retain Designees when the IPA (through the Program Administrators) register and impose requirements on Designees. This not only impacts the Designee-IPA relationship but also the Designee-customer relationship to the extent that the IPA is not able to actively or effectively manage the Designee relationship for the customer's benefit.

9. What other approaches to assisting stranded customers should be considered?

JSP RESPONSE: While the Joint Solar Parties do not oppose having insolvency being an event of default under the REC Contract in principle, in practice it means that if an Approved Vendor goes under, the value under the REC Contract may be destroyed. A process that automatically assigns the REC Contract to the Approved Vendor of last resort (or one within a pool) subject to the automatic stay would protect customers who may not be in a position to evaluate at the front end or monitor on an ongoing basis their Approved Vendor's solvency (or do anything about it if the Approved Vendor is teetering on insolvency but the customer's system is stuck in a batch that cannot or will not be assigned).

TOPIC 5: Escrow Process for REC Incentive Payments

Questions

1. What are the advantages and disadvantages of developing an escrow process for the disbursement of REC incentive payments?

JSP RESPONSE: For both Approved Vendors using on a voluntary basis or Approved Vendors that are financially struggling and need to maintain customer confidence to recover, an escrow system could provide customer and Approved Vendor benefits. However, the Joint Solar Parties caution against the Program Administrator taking on yet another new program when some current programs and obligations are running behind schedule.

2. What considerations should be contemplated if the IPA developed an escrow process?

JSP RESPONSE: Some contracts where the Approved Vendor acts as a passthrough involves the customer receiving some percentage (say 90%) of payments but the Approved Vendor maintaining some payments as a fee. Any escrow process should take that potential into account. For avoidance of doubt, if there is no direct passthrough to the customer (i.e. a PPA or lease or other arrangement) then the escrow would not be applicable at all.

3. If an escrow process is adopted, and in cases where it is used, what information or notice should be provided to the customer?

JSP RESPONSE: If an Approved Vendor is exhibiting sufficient concerns to involuntarily be placed into the escrow program, the Joint Solar Parties fear there are likely to be wider disciplinary issues and concerns about ongoing participation by that Approved Vendor in the program. Stated another way, the Joint Solar Parties recommend escrow as an involuntary program only when an Approved Vendor has been or is in danger of a permanent or extended suspension. In such a case, the customers should be notified of the suspension and the escrow.

4. How could an escrow process be incorporated into the REC contract?

JSP RESPONSE: Essentially as a term related to payment that payment goes to the account designated by Seller *except for* Designated Systems where: (1) the Approved Vendor is passing through REC payments (which could be added to the disclosure form), and (2) the IPA has made the appropriate disciplinary finding (whether of a founded complaint or an emergent concern).

The Joint Solar Parties note that a voluntary escrow process might benefit both customers and some Approved Vendors to give customers more peace of mind—but without the specter of disciplinary processes.

5. What types of circumstances would justify the use of an escrow process?

JSP RESPONSE: As noted above, a permanent suspension or an extended suspension. In addition, Approved Vendor insolvency to the extent it is not (yet) an Event of Default.

6. What criteria would be used to determine if specific situations trigger an escrow process?

7. Should the escrow process be triggered on a project-by-project basis, or should the trigger apply to specific Approved Vendors, such that the escrow process would be triggered for all of the Approved Vendor's projects?

JSP RESPONSE: Assuming this question means all Approved Vendor projects for which the customer is entitled to receive a passthrough (in whole or in part) of the REC Contract payments, the Joint Solar Parties note that their recommended criteria is based on Approved Vendor-level issues (permanent or extended suspension) and not project-level issues. Thus, the Joint Solar Parties recommend the trigger for across the portfolio.

8. Would it be appropriate for the IPA or Program Administrator to serve as an escrow agent?

JSP RESPONSE: The Joint Solar Parties recommend a third-party administrator, freeing the Program Administrator to focus on core program operations.

9. If a third-party entity acted as escrow agent, how should the escrow fee be determined and which entity should pay it?

JSP RESPONSE: The IPA could bid a contract for the escrow agent.

10. How would an escrow agent determine the appropriate disbursement of REC payments if the Approved Vendor and customer disagree?

JSP RESPONSE: The IPA could provide the ultimate decision, following information in the Standard Disclosure Form (which would have to be revised to include sufficient information such as whether the customer is entitled to a passthrough and if so then what amount (all, a percentage, etc.).

TOPIC 7: Claw-Back of Incentive Payments

Questions

1. In situations where there is a project malfunction or underperformance that is *not* due to the customer's actions, what are the advantages and disadvantages of potential restrictions on allowing Approved Vendors to pass through the financial risks of underperformance to customers?

JSP RESPONSE: In cases where the Approved Vendor is not the installer—for instance, if the Approved Vendor is an aggregator—the customer may have recourse for underperformance against the installer. Performance guarantees and how to make a claim are required disclosures in the solar sale contract and the Standard Disclosure Form. The Approved Vendor in that case may have even less of an ability to manage the risk than the customer.

When the Approved Vendor is also the installer (or at least the Approved Vendor entered into the sales contract with the customer and the Approved Vendor retained the installer), the customer contract will still govern the risk allocation between the customer and Approved Vendor/installer. The marketplace is likely to have a number of different approaches to that risk allocation.

Finally, there are many reasons a system may underperform, from weather to Smart Inverter Rebate curtailments to manufacturers defective equipment. The Joint Solar Parties note that making an Approved Vendor or Designee take on all of that risk is commercially unreasonable as a requirement for all market participants and the Joint Solar Parties fear the market will suffer from resulting price increases.

TOPIC 8: Approval Process for IL Shines Designees

Questions

1. What are the advantages and disadvantages of increased requirements for Designee participation in Illinois Shines?

JSP RESPONSE: “Increased requirements” in a vacuum is impossible to engage as a concept. Each requirement should be evaluated for what issue(s) it is trying to address and the benefits, weighed against the costs (including barriers to entry or increasing risks to small and emerging businesses or EECs). The Joint Solar Parties respectfully note that the ABP already has significant requirements. Any additional requirements, particularly those not accurately targeted to address specific problems, will increase participation risk and cost and likely deter some entities from participating. Reduced participation will in turn hamper achievement of the State of Illinois’ renewable energy goals.

2. What additional requirements would be appropriate? What requirements would be burdensome?

JSP RESPONSE: The Joint Solar Parties do not have particular ideas in mind for additional regulation of Designees. While the Joint Solar Parties have an open mind to any particular proposals, even the background (which cites the number of customer complaints) does not tell the full story because in any customer-facing business complaints are likely. Without details (for instance, finding out how many were founded and what the primary issue was), it is impossible to evaluate whether particular requirements are tailored to the issues faced in the market. Rather than require additional approval or vetting of all Designees, the IPA should consider investigations of Designees meet qualitative or quantitative thresholds set by the IPA for investigation of complaints or analysis of founded complaints.

3. What are the advantages and disadvantages of requiring explicit “approval” and/or vetting of Designees before they may participate in Illinois Shines?

JSP RESPONSE: It depends on what is evaluated and how vetting takes place—especially for what purpose.

4. If additional requirements are created for Designees, should there be a distinction between Designees that are directly linked to an Approved Vendor account and “nested Designees” (which are Designees subcontracted by another Designee)? If so, what differences in requirements would be appropriate?

JSP RESPONSE: The Adjustable Block Program and Solar for All have certainly grown much more complex over time. The Joint Solar Parties recommend reviewing new administrative burdens not just for impact on the market and customers (both good and bad) but also on whether the new requirements will add an extra layer to the Program Administrator’s responsibilities, potentially to the detriment of existing core responsibilities (such as project selection, managing the disclosure form platform, and managing the remaining submissions and filings).

TOPIC 9: Disciplinary Action for Violators of Program Requirements

Questions

1. What are the advantages and disadvantages of applying disciplinary action or other responses to violations to close affiliates of the entity being disciplined?

JSP RESPONSE: It depends on the nature of the violation—some of which may well be project-specific but others are more systemic. For instance, failing to have customers sign Standard Disclosure Forms prior to the subscription is a systemic issue, while problems with a particular Part I or Part II application—even if discipline-worthy—are not necessarily systemic.

The Joint Solar Parties further note that whether or not Approved Vendor status is a property right, revoking Approved Vendor status may create notice issues, particularly where the Approved Vendor aggregates many systems owned by others or the Approved Vendor is affiliated by reason of two completely independently operating batches of systems sharing the same third-party financing.

2. How would close affiliation be defined or determined?

JSP RESPONSE: In this case, a common staff and common management.

3. Should common staff or management be required? Would common ownership be sufficient?

JSP RESPONSE: Yes, common staff should be required.

TOPIC 10: Timing of DG Disclosure Form Signing

Questions

1. What are the advantages and disadvantages of continuing to use the customer acknowledgment form?

JSP RESPONSE: The IPA should consider whether requiring generation of disclosure forms only through the portal (and API) in advance of the customer signing a contract (PPA/lease/sale contract/subscription) provides more benefits than costs over a system where the Approved Vendor presents a disclosure generated on the IPA’s form but outside the portal and uploads that form.

2. What value does the acknowledgment form provide to the customer?

3. Does requiring the use of the customer acknowledgment form encourage compliance with the Disclosure Form timing requirements?

JSP RESPONSE: The acknowledgement form keeps the customer whole (by not invalidating their application) except for the inconvenience of reviewing and executing another form while incentivizing the Approved Vendor or Designee to not obtain late signing because of the reputational damage.

4. Are there other approaches for encouraging compliance?

JSP RESPONSE: Fully implement the API and other methods to generate Standard Disclosure Forms other than the currently slow and buggy (and more manual) portal.

5. Would identifying late-signed Disclosure Forms at the Part I application stage, but not requiring the acknowledgment form to be submitted until the Part II application, create application processing delays, and if so, in what way?

JSP RESPONSE: In either event, review of the acknowledgement is likely to be a delay unless it can be reviewed in between the Part I and Part II applications. Delays of the Part I and Part II application reviews both harm the customer.

TOPIC 11: Consumer Education

Questions

1. In what ways can the current Program consumer education material be improved?

2. What additional educational resources should the IPA consider developing?

JSP RESPONSE: The educational materials should continue to focus on common elements across all offers, such as how net metering works (for both BTM and community solar), the overall application and approval process (so customers know what a particular project went through/is going through), and the like. And, to the extent that solar is to reach all communities (including communities with average lower English proficiency), given the consumer protection involving the language of the solicitation (if the customer cannot transact in English) the Standard Disclosure Form should be offered in many more languages.