

June 29, 2023

Illinois Power Agency
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Via email: IPA.ContactUs@Illinois.gov

Re: ISEA Feedback 2024 IPA LTP Chapter 10: Diversity, Equity, and Inclusion

The Illinois Solar Energy Association (“ISEA”) appreciates this opportunity to provide feedback in response to the Illinois Power Agency’s (“IPA”) request for input on various issues raised through the June 8, 2023 announcement related to Chapter 10 in the next iteration of the Long-Term Renewable Resources Procurement Plan (“LTP”). While ISEA provided feedback in response to the IPA’s May 26, 2023 request for comment as a member of the Joint Solar Parties (“JSP”), ISEA is separately submitting additional comments in response to the June 8, 2023 request. ISEA generally supports JSP’s comments pertaining to Chapter 10, but wishes to emphasize and/or elaborate on certain questions posed by the IPA.¹

As a preliminary matter, ISEA wishes to comment generally on the variety of new compliance and reporting obligations referenced under each chapter in the May 26, 2023 and June 8, 2023 requests for feedback. While ISEA shares the IPA’s goals of a vibrant and diverse solar industry in Illinois serving all consumers and generally supports improvements to the programs aimed at achieving those goals, ISEA is concerned that recent history since transitioning to the current program administrator warrants caution. As all participants recognize, since the latter half of 2022, several wrinkles in the administration of the programs impeded developer and consumer participation. Such impediments continue to this day. ISEA realizes that particular questions or proposals under each chapter do not necessarily mean that the IPA will take a specific approach in the upcoming LTP, but nonetheless respectfully suggests that the 2024 LTP may not be a suitable vehicle for implementing any significant changes. Rather than attempt to make any measurable changes to the programs, ISEA urges moderation and generally maintaining the status quo to ensure that administration of the programs is on a solid foundation. Once a sure footing is reliably confirmed, changes to the programs that impose additional obligations and burdens on participants could be considered for implementation in subsequent years.

TOPIC 3: Certifying Equity Eligible Contractors (EECs)

Background

¹ In the interest of avoiding unnecessary duplication, ISEA will omit from its comments topics on which it has no additional input beyond that provided by JSP.

The IPA issued a [request for stakeholder feedback](#) on the criteria for certifying Equity Eligible Contractors in April 2023, with [responses](#) due on May 5, 2023. These questions build on the responses to that request and seek additional perspectives.

Questions

1. Some commenters raised the potential for “sleeving” and “pass throughs” in EECs - where a nonEEC company partners with an EEP as the majority owner, but that EEP has little involvement in of the management of the company, or where an EEC subcontracts out most of the development and construction, such that only a small portion of the state incentives flow to the EEP.

a. Do such structures further the objectives of the Equity Accountability System, which is to advance “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”? If so, how?

ISEA RESPONSE: No. An EEP serving as a pass-through entity with an established industry participant does not serve the goals of the statute and may even deprive the intended communities of the benefits the law is intended to provide because they take advantage of the limited capacity within the EEC block.

b. If they do not, how might the Agency prevent such structures?

ISEA RESPONSE: Within the traditional community solar block, Approved Vendors are able to earn points by contracting with an EEC for at least 50% of the development work. However, nothing in the LTP or Guidebook prevent that EEC from subcontracting the entire value of the contract to an established construction firm. ISEA recommends that the agency also require that the EECs substantially participate in the construction of the project and meaningfully perform duties ordinarily performed by a Prime EPC contractor.

c. Are there other states or local government programs that have model requirements to verify disadvantaged business that the IPA could look to?

2. What benefits or risks might be posed by requiring that registered EECs be listed publicly, even if only by company name? (Currently, EECs can decline to be listed on the Illinois Shines website.)

ISEA RESPONSE: EECs should be listed publicly, similar to how Approved Vendors are listed publicly. Listing EECs publicly will provide visibility as to which companies are approved and help provide accountability to the industry to ensure proper compliance with the guidelines for

EEC requirements. ISEA is supportive of redacting contact information if desired by a listed EEC.

TOPIC 5: Other Minimum Equity Standard Issues

Background

Integrating the Minimum Equity Standard into existing programs and procurements has required significant new reporting and verification processes. Entities must provide a Compliance Plan and Year-End Report to the Program Administrator, the latter of which demonstrates that the entity in fact met the Minimum Equity Standard (MES). The Agency has developed [significant guidance](#) on how to calculate which employees or contractors make up the project workforce, how to count Equity Eligible Contractors (EECs) within the MES, requesting a waiver of the MES, and the potential disciplinary consequences of failing to meet the MES. As a new program requirement, the Agency seeks feedback on potential levers to make the MES more effective while accounting for practical realities faced by entities with diverse structures and resources. In designing the program rules for the first year of implementing the MES, the Agency has encountered several issues where the practical, on-the-ground process of developing and constructing a solar project may not align with the broad language of the statute, or may not be addressed by the statute.

Questions

1. The 2022 Long-Term Plan proposed to increase the MES for the 2024-2025 Program Year from 10% to 12%. Is this increase still reasonable?

ISEA RESPONSE: While ISEA generally supports increasing the percent to achieve the statutory requirement by 2030, ISEA asks that going forward the IPA be mindful of whether training programs are operating and graduating students. When determining when and in what amount to increase the MES, the IPA should consider whether training program graduating classes align with the IPA's plans.

a. If so, should the Agency increase the MES to 15% for the 2025-2026 Program Year? Or would another level be more appropriate?

2. Should the Agency create different Minimum Equity Standards for projects in different areas of the state? If so, which areas?

a. If the Agency were to adopt differing MES for distinct geographic areas, what criteria or factors should the IPA consider in setting those Standards?

ISEA RESPONSE: The IPA should not create different MES for different areas. Ensuring compliance with regional MES standards would create yet another layer of complexity to an already complex program, imposing a burden on developers and the

program administrator to know what standard applies in which area. The only circumstance under which a regional MES should exist is if job training programs do not exist and/or are failing to produce qualified candidates. In that situation, maintaining the status quo in a region, rather than increasing the MES, is warranted simply because qualified candidates arguably do not exist to hire.

3. The current MES of 10% may result in fractional targets, especially for small businesses (<10 employees). How should the Agency calculate a company's MES in that case? Should the Agency round to the nearest whole number?

4. Current Illinois Shines guidance requires that entities interacting directly with customers should register as Designees. Designees must submit their own Compliance Plan and Year-End Report and must meet the MES for their workforce. Given the variety of entities that might employ the majority of workers on a given project, should the Agency allow a wider range of firms to register as Designees in order to allow subcontractors that do not interact with customers the ability to report on MES compliance?

a. If so, how should the Agency define which entities must register as a Designee?

b. Should that registration be mandatory?

c. Would subcontractors without direct interaction with end-use customers be required to meet the same requirements applicable to current Designees?

5. Currently, the Agency considers EECs to be in compliance with the MES by virtue of their ownership. Should the Agency narrow or adjust that interpretation, and if so, how? Should the Agency require that EECs also submit Compliance Plans?

ISEA RESPONSE: EECs participating in a Joint Venture with a non-EEC should be required to comply with the MES. This structure would ensure the intended benefits of the MES flow to the intended people and communities without allowing the majority of the project value to be siphoned off to an established industry participant.

TOPIC 6: Equity Eligible Contractor Category in Illinois Shines

Background

Illinois Shines includes a project category reserved for projects submitted by Equity Eligible Contractors. Section 1-75(c)(1)(K)(vi) of the IPA Act required that 10% of the total program capacity be reserved for this category, with that percentage increasing to 40%. In the 2022-2023 Program Year, the applications submitted to the EEC Category Group A exceeded the available

capacity on day one, and Group B also filled its capacity. The Agency is considering various methods for prioritizing or differentiating projects when applications exceed available capacity.

Note: Some of these items are also included in the request for feedback on Chapter 7 regarding Illinois shines. Commenters do not need to provide the same comments to both chapters.

Questions

1. Considering that the Category received more applications than available capacity in the 2022-2023 Program Year, the IPA seeks feedback on a potential developer cap of 20% across all project types applicable for the entire Program Year, to mirror the developer cap in the Traditional Community Solar category.

a. Is 20% the right level?

ISEA RESPONSE: Rather than impose a developer cap of 20% in the Small DG category, a better allocation of capacity between Group A and Group B can avoid the need for a developer cap. (See ISEA Chapter 7, Topic 3 comments.)

b. One stakeholder responded to the IPA's request for feedback on May 5, 2023, that the IPA should apply a cumulative cap on the amount of capacity awarded to a single developer (and its affiliates) across the life of the EEC category. What would be the advantages and disadvantages of that approach?

ISEA RESPONSE: Lifetimes caps are not appropriate, particularly for EECs. Lifetime caps will discourage EECs attempting to grow in the Illinois market, which is contrary to the goals of Public Act 102-0662. Caps of any sort should only be imposed as a method to control gaming in the EEC category.

2. Also due to the oversubscription in PY 2022-2023, the Agency seeks to develop a method for selecting projects should applications exceed capacity on the first day. The Traditional Community Solar category uses a point system to prioritize projects with qualitative aspects that reflect policy objectives in the IPA Act. Would it be appropriate to use a similar scoring system for project selection in the EEC Category?

a. If so, what would be the advantages or disadvantages of awarding points based on elements such as:

- i. Status as a small and emerging business or MWBE
- ii. Number of EEPs employed
- iii. Amount of capacity awarded to the EEC AV in previous program years (providing points to those that have not previously received a REC contract)
- iv. Whether the majority-owner EEP qualifies under multiple criteria
- v. Amount of REC contract value flowing to EECs

b. Another option would be to create carveouts or “lanes” for certain project types or EECs, similar to the point categories listed above.

c. Are there other characteristics that the Agency should or could prioritize in such a project selection method for the EEC category?