

Chapter 10

TOPIC 1: Definition of “project workforce”

Questions

1. If the Agency were to refine or change the definition of project workforce, what factors should it consider? Are there types of work that should be excluded?

JSP RESPONSE: In ICC Docket No. 22-0231, the Joint Solar Parties recommended that “project workforce” include not just construction but also sales, development, and operation. The IPA agreed with the proposal in litigation, which was ultimately adopted by the Commission.

After submitting the first round of MES compliance plans, the Joint Solar Parties wish to note the challenges associated with some of the reporting. On one hand, the Joint Solar Parties and member trade associations strongly support the goals of the MES and ongoing efforts by member companies to create opportunities for Equity Eligible Persons and historically disadvantaged communities (to the extent not captured in the race-neutral definition of Equity Eligible Person). On the other hand, the alignment of project-specific and annual reporting requirements have made the broader definition more burdensome on administration.

As a result, the Joint Solar Parties recommend a two-tiered definition of project workforce. For the project workforce for Approved Vendor-level compliance, the Joint Solar Parties recommend that the definition stay the same and obligate use of increasing percentage of Equity Eligible Persons in all stages of the project lifecycle (or at least those undertaken by the Approved Vendor and not transferred or outsourced to Designees or Approved Vendors that meet those obligations). On the other hand, for project-specific reporting, similar to utility-scale projects the MES reporting should exclusively be for construction activities.

By bifurcating the obligations by entity-level reporting, the IPA ensures that Approved Vendors are providing economic opportunities to EEPs but that administratively the need to track individual EEP involvement for a specific project (as opposed to across all projects) is reduced. Because many EEPs may have small touches on many projects for those involved in sales, administration, and operations, focusing these categories on reporting at the Approved Vendor level better recognizes the commercial impact than a project-by-project allocation.

Additionally, because there are different reporting requirements, and that MES is reported on a portfolio level for Small DG, JSP continues to recommend that the Small DG workforce reporting should now also be done on portfolio level instead of on a project-by-project basis. This would make it consistent with MES reporting.

2. What would be the benefits or risks of moving to a hours-worked basis instead of a total number of individuals basis for the MES?

a. Would some combination of hours-worked and number of individuals be possible or preferable?

JSP RESPONSE: The Joint Solar Parties do not suggest a move to hours-worked for either project-level or Approved Vendor-level reporting. Particularly for functions like sales, administrative, and operations, EEPs are more likely to be salaried and thus hours worked on individual projects or the ABP generally is not going to always tell an accurate economic story (especially because many projects do not make it to ABP or ILSFA submission, but the employees working on those projects very much have real jobs related to Illinois incentive programs). In addition, most such professionals do not account for their time on an hourly basis and (according to outside counsel to the Joint Solar Parties, which like most legal practices does track hours) it is a substantial burden to require workforces to track hours that are not currently required to do so. Furthermore, adding an hours-worked obligation for the construction workforce on a project-by-project basis would be a substantial administrative burden on Small DG in particular. All prevailing wage projects disclose Certified Transcripts of Payroll so the IPA can track over time to see the relationship between hours worked by EEPs on construction and the number of EEPs claimed on a particular project.

TOPIC 2: Certifying Equity Eligible Persons

Questions

1. IPA currently only requires supporting documentation to verify two of the bases for qualifying as an Equity Eligible Person: primary residence in an equity investment eligible community and former or current participant in a listed workforce training program. Should the Agency also require documentation to support certification for the other two criteria: formerly incarcerated and former participant in the foster care system? If so, what documentation should the Agency accept?

JSP RESPONSE: While the Joint Solar Parties support reasonable measures to ensure the integrity of the Minimum Equity Standard and prevent gaming by individuals or entities, the Joint Solar Parties are unclear as to what the appropriate documentation would be and suspect that documentation will vary depending on when/where an individual was incarcerated or a participant in the foster care system. The Joint Solar Parties recommend that to the extent that an individual has registered in the Energy Workforce Equity Portal and has self-attested, the Program Administrator should have the ability to audit some portion of self-attestations and request additional information that the EEP has available. The Joint Solar Parties strongly believe that it is inappropriate for Approved Vendors to compel employees of vendors or their subcontractors (or to an extent Approved Vendor employees or independent contractors) to provide proof of EEP status or for Approved Vendors to the Program Administrator and instead encourage limitation of passing PII, confidential information, and personally sensitive information between the EEP and the Program Administrator.

2. Individuals that qualify as EEPs based on a “primary residence in an Equity Investment Eligible Community” (EIEC) may move residences over time.

a. How could the Agency track any changes in residence?

b. What would be the advantages or disadvantages to allowing a “grace period” so that an individual that qualified as an EEP based on primary residence in an EIEC but subsequently moved remains EEP-certified for a certain amount of time?

JSP RESPONSE: The Joint Solar Parties appreciate ongoing conversation about the question in (b)—particularly because one of the benefits of enhanced economic opportunity potentially provided through hiring in compliance with the MES is that EEPs will have the option to move if they so desire. The Joint Solar Parties neither encourage nor discourage an individual EEP’s choices in the matter, but merely wish to not have the ABP encourage or require individuals to remain indefinitely in communities specifically identified as adversely impacted as a condition of compliance.

The Joint Solar Parties note that individual EEP participants in the Energy Workforce Equity Portal must recertify to their address every three years. Requiring EEPs (through the portal) or Approved Vendors/Designees that individually submit proof to track changes more frequently is likely to be a substantial burden. Given that leases (at least in the Chicago area) tend to be September-September terms—which does not match the MES reporting timelines—more granular tracking of workforce residence is particularly problematic.

For comparison, the IPA does not require homeowners that qualify for the Solar for All program to remain in their home for a certain period of time, because that requirement would make the program more burdensome and unworkable. The Joint Solar Parties encourage IPA to take similar approach here.

For the foregoing reasons, the Joint Solar Parties support a reasonable grace period as beneficial to all stakeholders.

3. Relatedly, stakeholders have expressed concern that the “primary residence” criterion is too broad, given the rapid change in demographics in many EIECs. To prevent gaming or benefits flowing to those that do not actually face barriers to entering the solar market, one stakeholder proposed learning from the Social Equity Applicant model in the cannabis sector. To qualify as an SEA, an entity had to demonstrate that a majority of its owners had lived in a qualifying community for at least 5 of the last 10 years (though it did not need to be the same address or community for all 5 years).

a. What could be the benefits or risks of such an approach?

b. What would be a reasonable threshold or minimum number of years?

JSP RESPONSE: While that approach (perhaps using different numbers) might be acceptable for EEPs seeking to qualify as owners of EECs, it is unduly burdensome for EEPs whose sole participation in the ABP is as an employee or contractor under the MES. Checking back ten (or some other value) years of residence and providing that information

to the IPA—especially when the program is continually shifting definitions of EIECs and the concept of EIEC has only existed since September 2021—is a substantial burden on EEPs and any other entities working with EEPs. Generally speaking, imposing significant burdens on EEPs seems to counteract the goals of the MES in uplifting EEPs.

4. The map of EIECs is a combination of the Illinois Solar for All (SFA) Environmental Justice Communities and the R3 Communities. The IPA has recently updated the SFA Environmental Justice map based on 2020 census data and other updated sources of data. The Agency will accept EEP certification requests based on the previous map for the 2023-2024 Program Year.

a. Is one year of accepting both maps sufficient?

b. How should this transition work for utility-scale projects with longer timelines?

JSP RESPONSE: One potential option could be one year of accepting both maps with an allowance for multiple years of overlap for projects that demonstrate longer development timelines. In addition to utility-scale projects, it is common for community solar project development timelines to extend longer than one year while sales cycles for Large DG and Public Schools frequently extends beyond a single compliance year.

5. Individuals may use the Energy Workforce Equity Portal to receive certification as an Equity Eligible Person without disclosing sensitive information to their employer or to potential employers. To verify the EEP status of the minimum number of individuals in their project workforce to satisfy the MES, entities will submit a Year-End Report that includes either the certification from the Portal or an EEP application for each individual EEP. a. What would be the advantages or disadvantages of moving all EEP certification to the Energy Workforce Equity Portal?

JSP RESPONSE: The Joint Solar Parties initially note the potential disclosure is not just to employers but also to their employers' clients if the EEP works for a vendor of the Approved Vendor (or Designee) but is still part of the project workforce. That creates the highly awkward situation where an EEP provides their information to their employer (or the entity with which they have an independent contractor or co-employment relationship) for the purpose of the employer to turn around and provide it to the Approved Vendor/Designee to provide to the IPA. Using the Energy Workforce Equity Portal is far more protective of EEP interests.

TOPIC 3: Certifying Equity Eligible Contractors (EECs)

Questions

1. Some commenters raised the potential for “sleeving” and “pass throughs” in EECs - where a non-EEC 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?

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

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

JSP RESPONSE: As the Joint Solar Parties indicated at the time, a completely passive EEP or EEPs in a joint venture with a non-EEC does little to advance the goals of the MES. However, to the extent that EEP is entitled to valuable experience, commercial opportunities, or both as part of the joint venture, the joint venture strategy advances the goals of distributing benefits to the EEP community and providing EEPs with valuable technical assistance and risk management.

To the extent that one or more EEPs have entered into a joint venture with a non-EEC, the IPA should allow that joint venture to be certified as an EEC and participate in the EEC Block to the extent that the EEP(s) or a company owned in part by the EEP(s) meets at least one of the following criteria:

- **Developed or substantially participated in the development of the system prior to the Part I application**
- **Receives an exclusive EPC bargaining window**
- **The non-EEC JV member provides the EEP(s) with training and experience in the transactions involving sale, financing, and/or operation of the project according to a written plan provided by the EEC.**
- **For Approved Vendor services, receives at least [25%] of REC Contract value during the time the EEC-Approved Vendor is “Seller” under the REC Contract.**

For an EEC that seeks to contract with (but not serve as) an Approved Vendor, TCS points for EEC participation should not apply if both of the following criteria are met: (1) the EEC is a joint venture, and (2) one of the members of that joint venture is the Approved Vendor applying the TCS project. This helps prevent Approved Vendors from artificially creating Approved Vendors while allowing for EEPs to learn about the industry from working with established service providers.

Additionally, the Joint Solar Parties recommend the Agency update Section 3 of the TCS scoring matrix to facilitate greater participation by EECs. Under the structure currently in place, the minimum threshold (50% of the “all project development work”) is too high to allow many new EEC businesses to gain entry into the market. The Joint Solar Parties recommend the IPA implement sliding scale of EEC involvement that allows measurement and recognition of smaller roles appropriate for many newer market participants in the construction of the project. In addition, taking away the more binary approach and using a sliding scale will encourage all developers to value contributions by EECs that would not have considered 50% of REC Contract value.

Under such a structure, a project that commits to using EEC(s) should receive proportional points relative to the amount of construction work performed by the EEC.

- **>10%: 1 point**
- **20-40%: 2 points**
- **40-60%: 3 points**
- **60-80%: 4 points**
- **80-100%: 5 points**

The Joint Solar Parties recommend the Agency seek input from stakeholders on the definition of “construction work” for the purposes of the relevant calculations and how to appropriately audit applicants to ensure compliance in a rigorous but straightforward to administer manner (to avoid unnecessary impositions on Approved Vendors and the Program Administrator).

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.)

JSP RESPONSE: The Joint Solar Parties take no position on this issue.

TOPIC 5: Other Minimum Equity Standard Issues

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?

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

JSP RESPONSE: At this point, the individual companies members of the trade associations that comprise the Joint Solar Parties have only had an opportunity to submit initial compliance plans. The form for the mid-year and end-of-year reports have not even been released, much less have any Approved Vendors or Designees attempted to comply. Additionally, to the knowledge of the Joint Solar Parties, the CEJA-authorized training programs have yet to fully gear up and produce graduates, which was expected as an opportunity to add potential EEPs. Until the market begins to get experience in the MES as a compliance matter, the Joint Solar Parties do not have a position on subsequent increases. Once again, the Joint Solar Parties support the goals of the MES and oppose efforts to slow down the increase except to address structural issues such as worker availability, implemented training programs, and a robust portal for EEPs.

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?

JSP RESPONSE: The Joint Solar Parties do not support regional MES due to the administrative burden of tracking and potential unintended consequences on project development and use of workforce near regional boundaries.

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?

JSP RESPONSE: In addition to small businesses, the Joint Solar Parties note that even established participants with a large workforce that is not physically located in Illinois (and that does not travel to Illinois) would also have a small target. The Joint Solar Parties suspect this will be an ongoing issue for the IPA to address. The Joint Solar Parties recommend that a participant with a fractional obligation round to the nearest whole person.

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?

JSP RESPONSE: The Joint Solar Parties suggest creating a voluntary category of Designee for community solar installers, community solar O&M providers, and entities that visit customer sites for site assessments (such as environmental assessments, testing, or other evaluations) but that are not required to register as Designees under the current approach. By "voluntary category" the Joint Solar Parties mean that the IPA should create this category and allow (but not require) registration from such entities.

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?

JSP RESPONSE: No, additional requirements should not be imposed on EECs. A small or emerging business that is an EEC in particular should not be subjected to additional reporting burdens.

TOPIC 6: Equity Eligible Contractor Category in Illinois Shines

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?

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?

JSP RESPONSE: 20% is the right level, particularly for Group A. However, the Joint Solar Parties are open to revisiting of the Group B cap if additional participants join the market.

The Joint Solar Parties strongly oppose lifetime limits on awards to a single EEC. Such an approach would disincentivize the growth of an EEC's expertise and prevent them from continued participation in the program at potentially just the moment when they have developed sufficient expertise to best participate. While the Joint Solar Parties supported the IPA's proposal in the reopening of the most recent LTRRPP to use previous capacity awarded as a tiebreaker (entities with less historic capacity would be awarded better tiebreaker positioning) because it balanced ensuring newer entrants receive awards without artificially excluding repeat participants. That way, demand in excess of available capacity would have otherwise prevented new entrants from participating, those new entrants will benefit from a tiebreaker.

The Joint Solar Parties wish to emphasize that nothing in its opposition to point systems alters the Joint Solar Parties' previous comments about avoiding pass-through and rent-seeking behavior. However, the Joint Solar Parties believe those should be gating criteria and not points criteria.

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?

JSP RESPONSE: The Joint Solar Parties strongly oppose adding points to EEC project selection, for reasons explained in response to questions in Chapter 7. To summarize, point-scoring will not only slow down review—to the knowledge of the Joint Solar Parties, awards are at best only just starting to be made for systems that applied on November 1, 2022 *without* the need to review scoring—but also introduce risk to capital of applying EECs. While the Joint Solar Parties support use of previous capacity awarded as a differentiator (such as a tiebreaker), the Joint Solar Parties do not support broader approaches to a scoring system.

With regard to (b), it is impossible to address without a sense of what types of “lanes” the IPA has in mind. The IPA Act does not differentiate between different EECs as more or less meritorious.

TOPIC 7: EEC Requests for Advance of Capital

Questions

1. What types of barriers might EECs face in accessing capital?

JSP RESPONSE: Respectfully, the major EEC problems with accessing capital cannot be addressed by the 50% accelerated payment. Development of large systems is a significant upfront cost, with interconnection costing from thousands to tens of thousands (for larger behind-the-meter and front of meter systems), plus the costs of site control and permits (for front of meter) and the costs of setting up and executing on ABP-compliant marketing, contracts, system design, and other steps (for behind-the-meter) in order to even make it to a Part I application. While that void can be filled by many entities, including established developers, the IPA appears to discourage participation of established developers in supporting EECs through investment, joint ventures, or other structures.

2. How could an EEC demonstrate “need” for an advance of capital? Should that need be tied to the AV’s status as an EEC?

3. The 2022 Long Term Plan allows for up to 50% of the contract value to be paid before energization. Is this a reasonable amount?

4. The 2022 Long-Term Plan requires that applications for an advance of capital include a list of expected costs that would be met by the advance. Should the Agency limit the types of costs that may be included in the request for advance of capital? If so, what types of costs should or should not be eligible? Note that Section 1-75(c)(1)(K)(vi) of the IPA Act expressly allows the advance to cover "increase[s] in development costs resulting from prevailing wage requirements or project-labor agreements."

TOPIC 8: Demographic and Geographic Data Collection

Questions

1. Are there other workforce characteristics or data that the IPA should collect and monitor? For example, veteran-status, disability, other?

JSP RESPONSE: In consideration of the administrative burdens identified throughout these LTRRPP questions as well as in the Joint Solar Parties' responses and without any identified benefit to balance the additional burden, the IPA should not collect additional workforce data beyond current practices at this time. Further, the Joint Solar Parties note that collecting demographic data per project for Small DG category is inefficient and does not provide the full picture of the diversity within Approved Vendor's workforce and employees - for example it does not contemplate the employees' time on projects that never make it across the finish line to be submitted to ABP, nor does it account for warehouse employees, permit workers or O&M employees on service calls to existing fleets. The Joint Solar Parties encourage annual or portfolio reporting of demographic data instead of project by project for Small DG category at minimum and consider the same for other categories.

2. Are there ways the Agency could streamline the data collection on these topics?

JSP RESPONSE: Yes—the workforce and vendor workforce diversity reporting, the Minimum Equity Standard plan, Annual Report, and Approved Vendor Renewal should be consolidated and due on or about July 1 of each year. This consolidation would create a larger report but a single report for each Approved Vendor to respond to rather than a number of piecemeal and almost-but-not-quite contemporaneous obligations. While such consolidation is unlikely to require legislative change, the Joint Solar Parties recommend that the IPA consider supporting legislation that would streamline and consolidate reporting requirements.