US Solar – Feedback re LTP Chapter 10 (Diversity, Equity, and Inclusion)

Dear IPA,

US Solar respectfully submits this feedback regarding the IPA's June 8, 2023, request for stakeholder feedback on the 2024 IPA Long-Term Plan. As an active developer of distributed generation and community solar projects under the Illinois Shines program, we based these comments on our experience in Illinois and several other states.

Chapter 10: Diversity, Equity, and Inclusion

TOPIC 1: Definition of "project workforce"

As most approved vendors and designees have only just recently entered the MES planning process (and will be asked to submit their first report next year), it seems premature to consider modifying the new system. It is not reasonable for the IPA to think it can continually change any and all program rules and guidelines each and every year. Each change might seem small, but the cumulative impact at the program level can quite substantial, in terms of increased uncertainty and aggregate complexity of the program and program compliance.

For example, as to the idea of requiring all solar contractors and workers to begin tracking their work days in 1-hour increments, that would be just an incredible amount of red tape, adding zero value to the employee's workday while imposing the burden of hourly work tracking. Developers have employees working on multiple projects across a single state and multiple states. The administrative burden on approved vendors and their employees to track each hour worked on each individual project would be massive and also, because Illinois is the only state that would require such specific tracking, overly burdensome. There would also be additional complexity as to how to count hours worked on a task that benefits multiple projects and approved vendors at the same time. If each approved vendor is a single-project entity, then certain tasks, such as customer service calls or subscription marketing could vary project to project from one call to another, requiring time tracking in incredibly small increments in order to accurately portray any hours-worked compliance requirements. Moreover, unlike contract workers, salaried professional employees may work more than 40 hours in any given week, complicating efforts to establish an hours-based ratio.

Meanwhile, the current MES approach enshrined in the LTP and program guidelines appears to be working fairly well. Changing to an hourly basis could also have unintended consequences that undermine policy goals, for example by unintentionally incentivizing managers to *restrict* the work scope and promotional opportunities available to a employee or subcontractor that qualifies as an equity eligible person (EEP). To give an example, under the current MES approach, an Illinois based EEP civil engineer could get hired to work on IL projects, over time build a strong relationship with a developer, and then expand to doing work for that developer in other states. But if an EEP only gets MES credit for work done on IL projects, then the manager's incentive would be to keep them on Illinois work 100% of the time – effectively denying EEPs access to a key pathway to additional growth.

TOPIC 2: Certifying Equity Eligible Persons

In considering any of the changes proposed under this topic, the IPA should keep in mind the two different type of EEPs that could be impacted by such changes. In terms of MES planning, the EEP is likely an employee or contract worker. But an EEP could also participate in the program through partial ownership of an EEC approved vendor. These are two very different use cases, so any rule changes should consider the impact on both. For example, regarding question 2 above, it may be reasonable to put notice conditions on the ability of an EEP owner to move to a non-qualifying geography, because project ownership is supposed to maintain its EEC status during the first six years project operation.

But it would not be reasonable to put additional program-compliance obligations on individual EEP employees that simply wants to move into a different apartment. If an employee chooses to move, they already provide notice to their employer (for paycheck reasons). So when the employer goes to submit its next MES plan and/or report, the employer can provide current data at that time. By the same token, discussions around placing any additional registration and reporting burdens directly on EEP employees (or their employer) should take into consideration the inequitable burden that the proposed change may ironically impose on employees living in qualified eligible communities.

With those cautions in mind, we do support further evaluation of the idea floated in question #3, under which the standards for an EEC Approved Vendor would be tightened as to qualification based on primary residency. As explained by the IPA in its question, "To qualify . . . an entity [would have] 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)." We think that approach would be supported by both the language and the spirit of the Climate Equitable Jobs Act. The approach is also flexible enough that current EEC AVs that do not yet meet the requirement could come into compliance simply by bringing in additional EEP owners that meet the 5-year test.

TOPIC 3: Certifying Equity Eligible Contractors (EECs)

Regarding question #1, such partnership structures can and do help further the objectives of the Equity Accountability System, by creating a workable pathway for EEP qualified individuals and/or households to access and establish capital ownership in project companies established to participate in the EEC category. As we explained in our earlier feedback on May 5th, we know EEC joint ventures of this type are allowed because CEJA specifically established a 51% minimum ownership threshold. It was thus contemplated that a new-entrant EEP could and most likely would want to partner with other entities or persons who provide skills or resources required for successful development and ownership of these projects, that the EEP owner itself doesn't possess. For example, if a given EEP "has been excluded from economic opportunities in the energy section", then almost by definition that EEP does not have access to the many resources and experience staff required to successfully site, permit, interconnect, finance, equip, construct, and operate a megawatt-scale solar plant.

The IPA should also consider that the first and highest goal of the ABP is to efficiently develop solar and other renewable energy resources across Illinois in order to achieve the state's climate and renewable energy goals. Of course CEJA also includes equity goals that must be pursued, but as long as the EEP participants are *bona fide* EEPs, the IPA should take care not to put up additional roadblocks that diminish the program's ability to bring sufficient levels of solar online in a timely and cost-efficient manner.

Regarding question #2, we would not be opposed to requiring the company name of registered EECs to be listed publicly.

TOPIC 4: Minimum Equity Standard for Non-Illinois Shines Procurements and Programs

No comment at this time.

TOPIC 5: Other Minimum Equity Standard Issues

As to question #2, the Agency should not create different standards for projects based on location. Employers and developers do not work this way and their workforce is often the same throughout their state portfolio of projects. This would overly complicate the requirements and make compliance incredibly difficult. Hiring decisions are not made on a project by project basis and could have unintended negative consequences, for example hiring an EEP to work on a project in an area with a higher standard and then letting them go when the project is complete as this proposed change could discourage employers from retaining the employee for other work outside of the specific area.

As to question #4, other types of subcontractors (that don't interact with customers) should be allowed to register as designees, but should not be required to do so. We would support creating an option for non-customer facing contractors to apply as designees to track and report their own compliance with the requirements. This would help contractors to understand the requirements and make contracting more uniform across the state instead of outlining the entire MES process in each individual agreement with contractors and subcontractors. However, this should remain an optional path as some contractors may prefer to report their MES data to the AV or designee they are directly working with instead of to the administrator.

As to question #5, yes, it would appropriate for the IPA to require EEC approved vendors to participate in the MES compliance plan and reporting requirements – especially if the IPA is concerned that some EEC approved vendors may be failing to deliver sufficient benefits to those "persons who would most benefit from equitable investments by the State designed to combat discrimination", as implied in the prompts for Topics 2 and 3 in the request for feedback.

That said, however, if the IPA were to require EECs to meet the MES standards, an exception should be made for projects that were awarded and applied for in prior program years (*i.e.*, before this potential new requirement went into effect), since those projects were not required to meet the standards. This is only fair from a workability perspective, since projects awarded in earlier years have likely already entered into third-party EPC contracts (Engineering, Procurement, and Construction), and therefore missed the opportunity to build this heightened level of contractor data tracking / reporting requirement into those contracts. In other words, if MES compliance requirements were added retroactively to projects that have already been awarded, that would put EEC AVs in a difficult position of having to either cancel or renegotiate executed construction contracts or fail to comply with the program requirements.

TOPIC 6: Equity Eligible Contractor Category in Illinois Shines

Regarding question 1, while developer caps may make sense when a program category is immediately oversubscribed, they should only be implemented when the category is oversubscribed on the first day of the program year. In fact this is the approach that was ordered on May 4, 2023 by the administrative law judge (ALJ) in ICC docket #22-0231, and which applied to the EEC category for the second program year. We respectfully suggest the IPA should keep that approach in place.

The first day is an important marker, because it represents the point in time that all outstanding eligible project applications (*i.e.*, all the projects that started pre-development in the prior 12 months) are submitted to the program. Especially in program categories that are not oversubscribed on the first day, it would promote additional development in these areas if developers were not subjected to an arbitrary cap on the amount of projects they could submit in a program year when there is available capacity available. This could prevent customers from having to sit and wait for another year before their projects could be approved, even if there is remaining capacity for allocation, just because the approved vendor had reached the arbitrary 20% limit for the year.

Regarding question 2, to the best of our knowledge, we do not believe the applicants for the EEC category exceeded capacity on the first day in either of the first two program years. So there is no demonstrated need to develop a process to prioritize some eligible EEC applications over others. That said, if the IPA does feel there's a need to articulate an additional process to address the hypothetical situation where the EEC category is over-subscribed on the first day of the program year *even with* the 20% developer cap being in place, we recommend the following approach: In that scenario, the Administrator should first calculate each AV's proportionate share of all qualified MWs submitted on the first day. That proportionate share should then be multiplied against the number of MWs available to the category on the first day, resulting in each AV's awardable share of the category MWs available. If that results in one or more AVs exceeding the 20% developer cap, those AVs should have their share reduced to the 20% limit, with the reduced MWs reallocated proportionately to the remaining AVs that have not hit the 20% limit. Any qualified EEC applications that are not awarded after this initial analysis should be transferred to the waitlist as per usual.

TOPIC 7: EEC Requests for Advance of Capital

Regarding question 1, there are numerous barriers that EECs may face in accessing the capital necessary to develop and build megawatt-scale solar farms For example, if EEPs in general "[have] been excluded from economic opportunities in the energy section", then almost by definition EEPs don't have access to the many financial resources it would need to develop a megawatt-scale solar plant (*i.e.*, because third-party financiers reasonably prefer to focus on solar development projects lead by experienced developers and managers with a solid track record of timely project completion and loan repayment). Add to these general barriers the frequently shockingly high cost of executing an interconnection agreement ("IA") in ComEd's service territory (often several million dollars) and the fact that ComEd currently requires those funds to be paid upfront in cash at the time of IA execution, even when ComEd communicates an estimated interconnection construction timeline of 9-12 months or much longer. Add in the multiple application fees, REC Agreement collateral requirement, and many other upfront costs associated with brining a community-scale solar plant from idea to reality, and there is strong justification for enabling qualified EECs to a 50% advance of capital.

Regarding question 3, we agree the current limit of 50% advance of capital is reasonable.

Regarding question 4, it may be premature to say whether the current process for requesting REC advances is working under the current program, because the Administrator has not yet fully processed and approved any EEC project applications, let alone any processed and approved any advance-of-capital requests that may be associated with those project applications. Stakeholders may have more feedback to provide in the future once the Administrator has processed and approved (or denied) the first round of requests. If the IPA were to explicitly spell out what types of costs should be eligible for REC advances, it should at a minimum include interconnection agreement funding requirements, REC award deposits, and equipment procurement deposits, in addition to other cost categories expressly allowed by statute.

TOPIC 8: Demographic and Geographic Data Collection

No comment at this time.

Thank you for your consideration in this matter.