RESPONSE TO DRAFT LONG TERM RENEWABLE ENERGY RESOURCES PROCUREMENT PLAN ON BEHALF OF THE JOINT SOLAR PARTIES

The Solar Energy Industries Association, the Coalition for Community Solar Access, and the Illinois Solar Energy Association (collectively "Joint Solar Parties" or "JSP") appreciate the opportunity to respond to the draft Long-Term Renewable Energy Resources Procurement Plan for public comment dated August 15, 2019 ("LTRRPP" or the "Plan").

The Joint Solar Parties note that the LTRRPP comes at a time of substantial uncertainty. First and foremost, the Joint Solar Parties interpreted the information in Section 3 of the LTRRPP, particularly toward the end, to indicate that the IPA has concluded there is insufficient budget to open new capacity not already allocated under the Adjustable Block Program ("ABP").[1]

This initial conclusion leads to a cascading effect for the rest of the Plan. The Joint Solar Parties recognize that many issues with regard to the ABP are moot (at least for the time being with the present funding constraints) and may be subject to legislation. The Joint Solar Parties appreciate that the IPA provided its reaction to several comments made by the Joint Solar Parties and others despite the lack of available funding.

Nonetheless, the Joint Solar Parties recommend the Agency continue to develop the Plan and file it with the Commission for approval. Although present funding limitations likely prevent the IPA from procuring significant new renewables under this Plan, developing *a* plan for procuring renewables is still a worthwhile exercise for the Agency, Commission and stakeholders to engage, as the adjudication of the issues will make future plans easier to adjudicate.

COMMENTS

I. Procedural Comments

A. The Joint Solar Parties Continue to Support Procedural Delays

In comments following late-June workshops submitted to the IPA on July 22, 2019 ("Post-Workshop Comments"), the Joint Solar Parties recommended that the IPA file the LTRRPP with the Commission in late September, concurrent with the IPA's 2020 energy procurement plan. The Joint Solar Parties further recommended that the IPA immediately seek a stay effective until at least a status hearing on or after November 19, 2019 in order to grant sufficient time after the second week of Illinois General Assembly's scheduled veto session. The Joint Solar Parties appreciated the IPA's inclusion of this concept in the LTRRPP for further stakeholder feedback. (*See* LTRRPP at 21.)

Since that time, the IPA has pushed back the anticipated date of filing of the LTRRPP until October 21. However, the announcement implicitly suggests that the IPA believes there are statutory deadlines for the filing and each subsequent event that would not allow the IPA to further modify the schedule.

[1] The Joint Solar Parties understand that the IPA plans for other procurements already approved to go forward.

The Joint Solar Parties continue to recommend that the IPA work with stakeholders to delay proceedings such that meaningful litigation waits until after Veto Session.

The Joint Solar Parties acknowledge that all of these proposals would be highly unusual procedural maneuvers by the Commission and the IPA. Nevertheless, the Joint Solar Parties believe that the present circumstances—namely pending legislation that could render work in the docket a waste of state and stakeholder resources litigating the LTRRPP—warrant consideration of unusual procedural approaches.

B. The IPA Should Immediately Take Several Actions Outside the LTRRPP Process and Consider Following Up in the LTRRPP

While the Joint Solar Parties continue to recommend that the IPA file the LTRRPP for Commission approval in late September and seek an immediate stay, there are several items covered in the LTRRPP that the IPA can and should immediately address outside the LTRRPP process. The Joint Solar Parties believe these changes will improve functioning of the ABP if the IPA addresses the issues now rather than wait for a final order from the Commission.

1. *The IPA Should Immediately upon Requesting a Stay or Dismissal Work with Stakeholders on REC Contract Revisions and Other Processes*

In Post-Workshop Comments, the Joint Solar Parties recommended that the IPA engage in a workshop process to clarify and revise the REC Contract. The Joint Solar Parties did not provide a particular timeline. The LTRRPP adopted the Joint Solar Parties' request but proposes workshops for "early 2020." (*See* LTRRPP at 124-25.) The LTRRPP specifically requested feedback regarding timing. (*See id.* at 125.)

Having reviewed the LTRRPP and further considered its proposal, the Joint Solar Parties recommend that the IPA use the time in between these comments and filing the draft LTRRPP for Commission approval (including, perhaps, the time between filing of the Plan and the due date for Objections) to hold a stakeholder process to revise the REC Contract. To the extent that changes are agreed upon in that process, the IPA can make those changes immediately and the utilities can begin offering a new REC Contract immediately. To the extent that there remain disputes, stakeholders of all varieties will have the opportunity to litigate their concerns in front of the Commission.

While the Joint Solar Parties understand that the REC Contract is normally not approved by the Commission—a practice that the Joint Solar Parties are not attempting to change—the Commission has historically directed general or specific modifications to similar standard contracts in other contexts. In the original LTRRPP approval docket, the Commission approved several aspects of the REC Contract including collateral.

Whether the IPA convenes a stakeholder process as recommended or the contract is exclusively addressed in the LTRRPP approval docket, the Joint Solar Parties at minimum will address four substantive issues:

- First, there is an excessive delay between Energization, the end of Quarterly Periods, and payment—the timeline should be substantially compacted. Payment should accordingly be reduced from quarterly to bi-monthly if not monthly.
- Second, the REC Contract should provide for dispute resolution before the IPA prior to alternative forms of dispute resolution and a provision explicitly making IPA interpretations binding on both parties.
- Third, the REC Contract should explicitly allow for the collateral to be withheld from the *last* REC payment as performance assurance, which is required by the current LTRRPP (but conflicts with the current REC Contract and Program Guidebook). (*See* LTRRPP at 147 (recommending this change to REC Contract).)
- Fourth, the REC Contract should allow an Approved Vendor in the event of REC production below the required deliveries to choose between: (A) the current approach of collateral drawdown, and (B) extending the REC Contract for up to two years to deliver sufficient RECs to make up for such shortfalls.[2]

The Joint Solar Parties understand that this process will likely lead to at least two (current and post-2019 stakeholder process) and perhaps three (post-Commission approval of LTRRPP) versions of the REC Contract. The Joint Solar Parties recommend that the IPA include in the LTRRPP the option of any Approved Vendor with multiple REC Contracts with a single utility to transfer Product Orders from an older REC Contract to an updated REC Contract then in effect. The Joint Solar Parties are still considering this position and are open to proposals from other stakeholders. However, the Joint Solar Parties do not at this time support delays in the utility offering a REC Contract to an Approved Vendor for a successfully-selected batch. Earlier improvements will allow for more efficient allocation of capital and better financing terms, which the Joint Solar Parties expect to lead to more competitive offers to customers.

2. *The IPA Should Revise the Guidebook or Take Other Actions to Reflect Certain Changes Immediately*

The Joint Solar Parties strongly applaud the IPA's clarification in new Section 6.3.3.3 of the LTRRPP that explicitly permits and creates a mechanism for an Approved Vendor to transfer a waitlisted project that has not yet been approved by the Commission to another Approved Vendor. (*See* LTRRPP at 116.) However, the Joint Solar Parties believe that the IPA can and should accomplish this clarification quicker through a modification to the Program Guidebook. Subject to the minor modification that the transfer should be batch-specific and not project-specific (for when behind-the-meter reaches a waitlist as anticipated), the IPA should make this clarification immediately and allow efficient transfer of projects to developers who intend to do so.[3]

The Joint Solar Parties recommended in Section V *infra* that the IPA immediately work with stakeholders on simplifying and shortening the disclosure statement. The Joint Solar Parties

[2] The Joint Solar Parties note that such an approach is consistent with the requirement of Section 1-75(c)(1)(L)(i) and (iv) because the contract would be "at least 15 years in length" and would require the system to provide all RECs delivered during that time period.

[3] Delay creates an advantage for entities that set up a separate Approved Vendor for each project or batch, which the Joint Solar Parties understand to have been allowed under the ABP but contrary to informal requests by the Program Administrator.

believe that work during the stay could narrow—if not eliminate—issues to be litigated before the Commission. However, to the extent that the IPA has insufficient internal resources to complete both this and the REC Contract revision process during the stay the Joint Solar Parties request that the IPA prioritize the REC Contract revision.

The Joint Solar Parties also support the IPA's proposal in new Section 6.3.3.2 of the LTRRPP to consider behind-the-meter batches on a first come/first served basis once a waitlist develops for the under 10 kW (AC) and above 10 kW (AC) categories. (*See* LTRRPP at 116.) Once again, the Joint Solar Parties recommend that the IPA immediately modify the Program Guidebook. If parties disagree, the LTRRPP approval docket before the Commission is the appropriate venue to seek modification(s) to this approach.

In addition, the IPA should revise its Brochure and Program Guidebook consistent with its well thought out analysis regarding reasonable limitations on assignability and portability. (*See* LTRRPP at 38.) The Joint Solar Parties noted that the IPA addressed both issues of impossibility—for instance, if the move or transfer would violate the applicable utility's usage screen—and impracticality such as the assignee's creditworthiness. (*See id.*) Even if the IPA continues to seek additional feedback and ultimately Commission approval, the Joint Solar Parties recommend changes to the Brochure to reduce potential customer confusion and changes to the Program Guidebook—or at minimum an FAQ—explaining that the IPA does not foreclose all limitations on assignability and portability and more direction is forthcoming.

II. Waitlist Management/Project Selection

A. Community Solar Waitlist Management and Project Selection

Community solar had far more demand than available capacity. The LTRRPP noted that 215 MW (AC) of projects were selected for REC Contracts but 1,562 MW (AC) of projects remain on the waitlist as of the release of the LTRRPP—over 7.25 times more waitlisted projects than contracted projects. (*See* LTRRPP at 113.) As of the date these comments were submitted, according to the IPA's online capacity dashboard, less than 8 MW (AC) have been taken off the waitlist in both Group A and B combined. In other words, there remains and is expected to remain far more projects ready, willing, and able to move forward than are slots available.[4]

In Post-Workshop Comments, the Joint Solar Parties recommended project readiness criteria for taking projects off of the waitlist. In response, the LTRRPP concluded that using project-readiness criteria—specifically date of interconnection application—would lead to selection of more, rather than less, speculative projects. (*See* LTRRPP at 114-115.) As an initial matter, the Joint Solar Parties respectfully disagree that early market entrants were inherently speculative. In most renewable energy markets, projects enter the interconnection queue early to *avoid* speculative investment, because there is an assumption that a high queue position (i.e. the first applicant) will result in lower interconnection costs and more certain project economics.

[4] While not all projects may go forward for a variety of reasons, an unreasonably large percentage of waitlisted projects would have to drop out—unlikely in the short- to medium-term as legislation remains possible and given the large sunk costs—to align available capacity with waitlist demand.

In any case, the Joint Solar Parties believe the best way to select the least speculative projects is to select projects with a firm understanding of their costs.

The most rational way to achieve this goal is to implement a waitlist/project selection system that addresses the inherent misalignment between the utilities' interconnection processes and the REC awards. In Phase I of the Adjustable Block Program, projects that had completed the interconnection process and received cost estimates were then subject to a random lottery which frequently rendered their interconnection estimates not only void pending a restudy but also not particularly useful for determining likely interconnection costs. Addressing this misalignment is essential to creating a functioning marketplace going forward where developers submit projects that are most likely to be developed. However, the IPA also wants to set up a program that doesn't incent developers to resubmit hundreds of projects to the queue at the exact same time, or reward projects for queue squatting.

In ComEd territory in particular, where multiple projects on a single feeder led to wildly inaccurate estimates for later projects, the problem was particularly vexing. The only way to address this risk is to select the projects that are earlier in the interconnection queue. The Joint Solar Parties offered one approach in our post-workshop comments, but in response to the LTRRPP's request for "actual implementable approaches" the Joint Solar Parties have modified our proposal below.

Above all, the Joint Solar Parties urge IPA not use the ordinal waitlist. Using the current waitlist order will only exacerbate the misalignment between the REC awards and the interconnection queue,[5] require a new utility waiver, and create more market instability. First, projects currently on the waitlist in Ameren or early enough in the queue in ComEd already have to pay or get out of the interconnection queue. If the ordinal waitlist is used, projects will have to reapply for interconnection based on uncertain selection timing and there is no longer a waiver in place to address the interconnection queue waitlist. If REC Contract selection is based on ordinal waitlist position, project selection is virtually guaranteed not to align with the order of the interconnection queue, meaning the studies that developers receive will once again likely be inaccurate (and not necessarily directionally accurate) and would almost certainly require another interconnection waiver to properly function.

In addition, there are not material, objective development milestones in the current interconnection process to prevent projects from reapplying and "queue squatting" (i.e. signing an interconnection agreement but providing a construction date so far in advance that the project stalls and incurs only minimal costs) until they are chosen. A glut of constantly reapplying projects (to the extent the IPA allows multiple interconnection reapplications) could prevent the timely interconnection of many projects and create the same issues with cost estimates. There is a lot of confusion in the market now, created by this disconnect, and developers are going to hedge their bets and reapply to the interconnection process again and again, continuing the cycle of misaligned interconnection and program queues. This must be corrected now, or Illinois will have a very chaotic and expensive market that will ultimately deter development.
Second, because of the size of the waitlist, using the ordinal rank also pre-determines that the IPA could spend years picking projects off the waitlist and that no new projects will be able to apply.

[5] This is because the Ameren has completed and ComEd is in the process of completing interconnection restudies, triggering the pay or get out

It is inefficient to expect developers to pay lease options for several years, waiting for their projects to come up for a contract, nor is it fair to ask local zoning officials to hold hearings about zoning extensions for several years for projects with uncertain futures.

Therefore, the Joint Solar Parties suggest an alternate approach that will ultimately get the two tracks in better alignment. This would involve clearing out the waitlist entirely and reopening the program on a first-come, first-served basis with increased application criteria related to project readiness and including an up-front deposit that would be applied to the project's collateral. The IPA would have to provide a date certain far enough in advance to allow planning, and finalize procurement rules several months in advance to allow developers to plan and apply the most meritorious (under the program's new selection criteria) projects. All projects on the waitlist that already faced a pay-or-get-out decision and elected "get out" would simply begin the interconnection process anew. Once a project receives its upgrade cost estimate, pays the initial deposit and signs the ISA, it will be eligible to reapply to the Adjustable Block Program (once it is open). Once the capacity of all available blocks is filled, the Agency will close that market segment until the following year. This approach will allow predictability and known targets so the market is responding to a single application window each year.

We recognize that there are problems with the interconnection process that affect the program in any form and that addressing these problems are outside the scope of this Plan. We provide this commentary on the interconnection process for context. Most problematic is there are not material, objective development milestones in the current interconnection process to prevent participants from submitting innumerable projects into the queue – not even site control is required. In a world where queue position becomes important, this is a problem. Second, there are loopholes and underenforcement of timelines that allows projects to queue squat until they are chosen. These issues create the same issues around cost estimates and could prevent the timely interconnection of many projects. There is a lot of confusion in the market now, created by this disconnect, and the industry plans to work with the utilities – and the IPA to correct these and make the interconnection process more orderly.

In a first-come, first-serve world, a developer with a signed ISA can make educated decisions whether the REC prices for the particular open block(s) will bear the interconnection costs projected by the utility. If the project economics do not pencil, the developer can choose not to sign the ISA, withdraw from the interconnection queue and not apply to the Adjustable Block Program (especially if fees or deposits increase). The utility will then restart and refresh studies for projects behind in queue, giving those projects an accurate view of their projected upgrade costs once they reach IA. Ultimately, this process will help winnow down the existing waitlist because existing utility grids simply cannot handle the number of projects on the list. At some point, feeders and substations will reach capacity, upgrade cost estimates will become untenable, and developers will kill projects and find other locations.

For projects that do choose to apply to the ABP, the Agency should require an up-front, meaningful collateral payment as a requirement of the application. If selected for RECs, the vendor would have 18 months to reach commercial operation (with clauses for force majeure, utility delay, and other extensions currently allowed in the REC Contract). If the developer builds the project within the allotted timeframe, it would receive 100% of the collateral back (or could elect to roll the funds

into performance collateral). If the developer fails to meet those deadlines, it could pay for an additional fee for a one-time extension. If the developer fails to meet that final deadline, it would lose the collateral. This requirement ensures that speculative projects with questionable economics do not apply to the ABP because vendors will not risk capital on risky projects.

To provide protection against a "gold rush" where a single developer (or developers) submit numerous projects, the IPA should implement a developer cap for the community solar program. A clearly articulated and enforceable developer cap for community solar can ensure developers avoid sinking resources into projects that would never be chosen (i.e. culling projects from the waitlist once they reach or near the cap or removing less viable projects). However, it is imperative that the IPA announce any developer cap proposal as soon as possible. Like all procurement rules, the earlier the IPA proposes an initial value (for instance, the October 21, 2019 LTRRPP for Commission approval) and the number is finalized, the sooner the market can allocate capital efficiently. Including a cap proposal in the next LTRRPP proposal will resolve this primary concern and allow the Commission to approve any cap proposed. The Joint Solar Parties note it that this developer cap proposal is specifically related to (and only intended for) the community solar program.

Additionally, the IPA should recognize that the fastest way to clear the existing waitlist of projects would be to preference projects that participated in Phase I of the ABP over new projects. A preference would recognize the significant capital and effort that developers put into these projects, while also preventing communities and landowners across the state from a needless round of project development and permitting.

The waitlist preference would be executed with a pre-application window, with IPA opening Block 1 for a certain term, solely for projects that were on the Phase I waitlist. The project's place on the ordinal waitlist would be immaterial, only the project's inclusion on the waitlist. After the initial term, any eligible project could apply. This approach would help clear the backlog of projects without preventing new market entrants from participating.

While surely the Agency and stakeholders will need to work out some of the details, taken as a whole, the First-Come, First-Served system would be a fair, transparent and implementable approach to project selection that would bring stability to the market.

Finally, the Joint Solar Parties supported the LTRRPP's proper rejection of the various recommendations to include factors other than project readiness such as geographic location or community involvement. In addition to the reasons the LTRRPP stated (at 115), this approach would suffer from the same misalignment between REC award and interconnection queue position articulated above. Further, it is important to note that waitlisted projects applied under program rules that emphasized project readiness—not location, community involvement, or other factors. As a result, waitlisted projects do not have an opportunity to conform to new expectations. Instead of selection based on merit as defined at the time of application (i.e. project readiness), applicants will instead be evaluated on criteria that never could have been predicted at the time of application.

As noted in Post-Workshop Comments, the Joint Solar Parties anecdotally understand that a developer will typically expend between $50,000-100,000—to say nothing of internal resources—

to develop a community solar project to the point where it is eligible for the Adjustable Block Program. Developers on the waitlist have played by the rules and invested substantially in Illinois. (*See* LTRRPP at 115 (in different context, noting investments made by developers whose projects are on the waitlist in response to ELPC/Vote Solar recommendation).) Their investment should not be rendered valueless in order to allow newer entrants an advantage. The Joint Solar Parties believe that their recommended approach to waitlist selection based on first-come, first-served is an appropriate way to filter projects that concurrently apply in the future.

B. Behind-the-Meter (All Sizes) – Waitlist Only

As noted in Section I.B.2 *supra*, the Joint Solar Parties support the substance of the IPA's proposal regarding the waitlist for behind-the-meter systems both above and below 10 kW (AC). As noted above, the IPA should make this change immediately and allow parties to litigate the issue if they disagree with the IPA's decision in the Commission's LTRRPP docket. The Joint Solar Parties fear that at minimum the over 10 kW (AC) category—and perhaps both categories—will run out of capacity and be forced to form a waitlist before the Commission issues a final order. Moreover, clarity now will allow the solar industry to have more accurate and precise conversations with their customers about the procedure for system approval (either alone or in a batch) and thus the timeline and likelihood of development. The more information the solar industry has, the better the industry can inform potential customers and update customers under contract.

In addition, to the extent the narrative in Section II.A *supra* does not make it clear, the requests in Section II.A are specific to both community solar as a project category as well as the waitlist situation facing community solar. While the Joint Solar Parties do not support a lottery in any context, the Joint Solar Parties note that solutions for the community solar waitlist are specific to that segment and the particular history of the community solar lottery and waitlist.

C. ABP Technical Requirements (Section 6.12.1)

In apparent response to a post-workshop comment, the LTRRPP proposed increasing the requirements for submitting a project to the Adjustable Block Program. (*See* LTRRPP at 136.) Generally speaking, the Joint Solar Parties agree with designing a program with high barriers to entry to ensure that real, developable projects are submitted to (and ultimately selected by) the program. However, those barriers should be tailored to the requirements that are likely to prevent a project from being developed. In the opinion of the Joint Solar Parties, the three primary categories of showings currently required—zoning permits, interconnection, and site control—are the primary categories that tend to cause fatal project flaws.

The new requirements involve a SHPO Phase I, a DNR Letter of Termination, and a Phase I ESA with no recognized environmental conditions for all ground-mount systems over 25 kW (AC) (systems that are not ground mounted are exempt). The Joint Solar Parties oppose these new requirements.

The Joint Solar Parties' primary concern is the requirement for the Phase I ESA with "no recognized environmental conditions." The primary purpose of a Phase I is for owners (or potential owners such as lenders who may foreclose) of a site to have undertaken All Appropriate

Inquiry ("AAI"), which is a defense to liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (also known as "CERCLA"). Under CERCLA, current owners and operators on a site are jointly and severally liable, along with other potentially responsible parties (known as "PRPs").

Recognized environmental conditions can take a wide range of forms, from evidence of potential onsite contamination to offsite contamination that may migrate onsite. In urban areas—particularly Chicago—there are few sites available of any size or in areas suitable for solar (close to a substation, workable cost for land) without any recognized environmental conditions based on onsite or offsite conditions. If the IPA wishes to increase geographic diversity, requiring no recognized environmental conditions would be counterproductive.

The Joint Solar Parties assume that the IPA included the "no recognized environmental condition" requirement because a developer may not go forward if a recognized environmental condition is found. However, a Phase I without any recognized environmental conditions is not a prerequisite to the innocent landowner defense (which also can apply to lessees)—instead, the owner or lessee is protected against conditions *with the exception of* recognized environmental conditions. Recent guidance from U.S. EPA suggests that a lessee can also rely on a Phase I undertaken by the property owner in some circumstances in establishing the innocent landowner defense. Even to the extent there are recognized environmental conditions, many insurers offer "pollution legal liability" or "PLL" insurance for known environmental conditions. At a more fundamental level, simply having a recognized environmental condition is insufficient to prevent a project from going forward—especially if the recognized environmental condition is determined to be minor or an acceptable risk based on the judgment of the developer.

The Joint Solar Parties note that a SHPO and DNR termination letter are discretionary in nature and are not required to be issued on a particular timeline. While the Joint Solar Parties understand why the IPA may wish that developers assume the risk of these reports turning up potential issues, it would needlessly delay otherwise viable projects to require them to wait for these discretionary issuances to be released.

In addition to concerns about a Phase I ESA with no recognized environmental conditions and the other documentation, the Joint Solar Parties are concerned about requiring the new level of diligence for all systems over 25 kW (AC). It is not industry standard to undertake a Phase I ESA and the equivalent to a SHPO for projects of this size. The industry standard varies from state to state, but in the judgment of the Joint Solar Parties is approximately 250 kW (AC).

The Joint Solar Parties recommend that the IPA—instead of requiring more paperwork upfront—simply insist that for systems of a certain size (over 250 kW (AC)) that the IPA will only accept post-award termination with a collateral refund in limited instances, such as the IPA did with interconnection in the current REC Contract. For an abundance of clarity, the IPA could set out in the Program Guidebook that it *expects* projects to have undertaken certain steps (*e.g.*, Phase I, EcoCAT informational request, SHPO) by the time of Adjustable Block Program application and the Approved Vendor applies at their own risk *on those issues*.

III. REC Model

In Post-Workshop Comments, the Joint Solar Parties made several observations regarding the costs of developing systems, recommending changes to the REC Model. The IPA considered but did not adopt those changes based on a desire to conserve resources. (*See* LTRRPP at 117.) While the Joint Solar Parties disagree with the IPA's conclusion, the Joint Solar Parties understand the IPA's viewpoint.

Within that context, the Joint Solar Parties wish to make the following observations with regard to the REC Model for community solar: The Joint Solar Parties made the point in Post-Workshop Comments that the best way for the IPA to incentivize development in urban areas—similar to how the IPA successfully incentivized commitments to small subscribers—would be an adder for targeted communities recognizing additional costs to develop. The Joint Solar Parties' intention was to narrowly tailor a new incentive to achieving a policy goal (geographic diversity) that is currently disincentivized by equal pricing across geographies despite unequal costs. To the Joint Solar Parties, the IPA's summary of "Likewise, in some areas land costs are higher" does not capture the Joint Solar Parties' proposal. (*Compare* LTRRPP at 117 *with* Post-Workshop Comments at 7.)

The LTRRPP specifically asked whether if new blocks are opened if the price decline should be more than 4%. The Joint Solar Parties are comfortable with a 4% reduction as a baseline but oppose a rigid preset approach to Block 5; instead, price-setting should be based on circumstances at the time on issues including the ITC, changes to net metering and the DG Rebate, import tariffs and equipment abundance or scarcity, and other relevant factors. A contemporary comment process would provide better information than a set amount that—while subject to ±25% adjustment—is likely to benefit from a broader review of external factors and not a simple bottom-line adjustment.

IV. Consumer Protections

As an initial matter, as the LTRRPP recognized, there is a pathway both for the IPA to shorten and simplify disclosure forms on its own or the Commission—upon the IPA's or another litigant's request—could order general or specific changes to the disclosure forms. To that end, the Joint Solar Parties believe an immediate process (ideally during a post-filing stay) to shorten and simplify the disclosure statement would allow stakeholders to achieve as much consensus as possible. To the extent consensus is not achieved, parties can litigate their own positions in the Commission's approval of the draft LTRRPP for Commission approval. Thus, the Joint Solar Parties recommend the IPA begin such a process no later than filing the LTRRPP with the Commission.

The IPA seeks in the LTRRPP approval from the Commission of four items: (1) consistency of the marketing guidelines with the Commission's order in ICC Docket No. 17-0838, (2) that the IPA may modify marketing guidelines without Commission approval, (3) the IPA should have some process to receive feedback before making many changes, and (4) Approved Vendors should be accountable for agents, subcontractors, and designees. (*See* LTRRPP at 141-142.) In addition,

the IPA appears to seek approval to update marketing guidelines based on Senate Bill 651 (now Public Act 101-0590). (*See* LTRRPP at 141.)

The Joint Solar Parties generally support the third and fourth requests for approval by the IPA. Of course, the application of these principles is perhaps more important than the principles themselves—a stakeholder process that leads to an end result without review or appellate rights can still lead to bad outcomes. Similarly, while the Joint Solar Parties, generally speaking, agree that Approved Vendors should be responsible for agents, subcontractors, and designees, the factfinding process and appellate rights from determinations are of critical importance.

While at some level process and appellate rights may be handled at least as well in the legislative forum, there are some steps the LTRRPP should take—whether the IPA's suggestion or pursuant to modifications by the Commission:

- Commit to a system with formalized requirements—perhaps even IPA-promulgated rules—setting procedures, obligations, and rights during complaint and Approved Vendor status investigations.
- Formalized requirements for IPA review of Program Administrator decisions should have a formalized process for rehearing so that an Approved Vendor may avail themselves of the Administrative Review Law (735 ILCS 5/3-101 *et seq.*)
- Formalized requirements for Program Administrator Decisions and IPA review that set out clear standards for decisions and the right to, at minimum, a telephonic hearing.
- If the Program Administrator or IPA identifies a global objection to, for instance, marketing materials or customer interaction materials, there should be a defined procedure for remedying the objection by the Approved Vendor rather than disciplining the Approved Vendor in the broadest range of scenarios where there is a good-faith difference of opinion on the requirements of marketing guidelines.

In addition, the Joint Solar Parties are particularly skeptical of the IPA's first request for approval. As the Final Order in ICC Docket No. 17-0838 stated: "The Commission does adopt one proposal of the Joint Solar Parties – to limit the application of the consumer protections to customers with subscriptions under 25 kW." (*See* ICC Docket No. 17-0838, Final Order dated April 3, 2018 at 108.) As the Commission found: "The Commission finds the Joint Solar Parties' proposal will result in a more targeted application of consumer protections for both distributed generation systems and community solar subscriptions." (*Id.*) The Joint Solar Parties reserve their right to argue that the marketing guidelines are inconsistent with the Commission's Final Order at minimum in that regard.

The Joint Solar Parties are also unsure of the basis for expanding consumer protections consistent with Public Act 101-0590 when the LTRRPP provided no justification for why the changes made by Public Act 101-0590 are applicable to the solar industry. Public Act 101-0590 primarily addressed two issues: prohibiting specific marketing practices (such as "teaser rates" that switch from fixed to above-market variable with minimal warning) and providing for an alternative to enforcement (through the Consumer Fraud Act) at the Commission. The IPA has presented no evidence or basis to suggest that consumer unfriendly products are being offered in the market. In addition, the Joint Solar Parties doubt that the IPA is making the case that its system of overseeing Approved Vendors is inadequate.

In an example of how markets are different, most contracts regulated by Public Act 101-0590 are shorter term contracts with renewal terms that are invoked every 1-3 years. While contracts tied to utility rates are available, many contracts are either fixed or variable but not tied to an index. In the behind-the-meter space, contracts are frequently at least 15 years (or else the Approved Vendor faces a loss under the REC Contract) and potentially longer with a known price term. In the community solar space, while there are a range of available products in other markets, contracts also tend to be longer than commodity energy contracts and frequently (though not universally) are tied to net metering credits (i.e. savings guaranteed under some or all circumstances). These are clearly very different products and services that should not be regulated the same way.

The Joint Solar Parties support robust consumer protections. However, consumer protections for the sake of consumer protections—rather than justified by a consumer benefit greater than the harm(s) from increased cost, decreased product availability, or other consequences—are inappropriate. Consumer protection imported from another sector without justification for why such protections are necessary or beneficial in the solar industry is similarly inappropriate. Instead, the IPA should continue to gather data and information from the market and consumer experiences to tailor consumer protection rules to actual issues in the marketplace.

V. Other Adjustable Block Program Issues

The Joint Solar Parties wish to raise other issues for consideration in the draft LTRRPP to be filed for Commission approval:

- The Joint Solar Parties recommend that the IPA allow for customized degradation factors consistent with system specifications, given that there is a wide range of degradation factors based on product type.
- The Joint Solar Parties recommend that to the extent the IPA eliminates the standard capacity factor (to which the JSP do not object) and the only options are PVWatts and a non-standard capacity factor to be approved, the LTRRPP should:
    - Create a safe harbor for custom engineer-stamped capacity factors; and
    - Provide much greater detail about how the Program Administrator will decide whether or not to approve a custom capacity factor that is not engineer-stamped, including required and optional information, the standard for approval, and other procedural criteria (i.e. will a methodology be approved, or must each system using the same methodology separately apply?).
- The Joint Solar Parties recommend against further regulation of Approved Vendor designees. Because the Approved Vendor's maintenance of Approved Vendor status is contingent on proper behavior of designees, Approved Vendors can (and should) include clear standards of behavior in their contracts with designees or other contractors such that the Approved Vendor status is maintained. However, the Joint Solar Parties do support the IPA providing information to Approved Vendors and the public about founded complaints or other concerns identified by the IPA or Program Administrator upon investigation. This additional information will help Approved Vendors avoid unwitting association with a designee that has been determined by the IPA to engage in detrimental conduct.

- The LTRRPP specifically asked how co-location price adjustments should be imposed when one system is selected from the Adjustable Block Program after the other (for instance, one was selected in the lottery while another was selected off the waitlist). (*See* LTRRPP at 162.)
    - The Joint Solar Parties agree with the IPA that a contract—even a signed Product Order—should not be disturbed by a later project being selected, especially when the REC Contract does not explicitly provide for such adjustment.
    - If the developer of the first system is not also its long-term owner/operator, the first system may have a different owner (or even EPC/installer) by the time the second system is selected, raising questions as to whether the co-location standard should apply in the first place.
- The IPA should allow for higher system nameplate capacity and capacity factor—leading to a higher REC payment—if the increase is within defined bands.
- The LTRRPP should move the batching process from the time of application to until after systems are approved by the Commission. Upfront batching leads to delayed consideration of batches if a few systems run had pre-development issues. Instead, the Program Administrator should review all systems individually, submit such systems to the Commission for approval, and allow the Approved Vendor to group the systems into a single Product Order after approval.

VI. Solar For All

The Joint Solar Parties have a keen interest in the success of the Solar for All program. While the Joint Solar Parties recognize the need for heightened standards for programs designed for vulnerable populations, the Joint Solar Parties are concerned that some aspects of program design have scared away market participants who otherwise would have made valuable additions to the LMI space.

At minimum, the Joint Solar Parties recommend the following changes to the Solar for All Program:

- The LTRRPP should require that single and multi-family incentives remain open on a rolling basis as opposed to a fixed window. Instead of a fixed window, these programs should be treated as constantly open (subject to funding), with a dashboard similar to the Adjustable Block Program. It's not practical (or consumer friendly) to have no better information to provide LMI customers than they "might" get an incentive in 6 months if they win a lottery when the window for applications is open for a few days.
- Unspent funds in each category should be rolled over into the same category for future years. The Joint Solar Parties support preserving the allocations between the three subprograms proposed by the LTRRPP. (*See* LTRRPP at 180.)
- The Joint Solar Parties strongly support providing opportunities for job training program graduates but recommend that the IPA scale obligations to recognize that fewer graduates are currently available but more graduates will be available in future years as more classes graduate. (*Cf.* LTRRPP at 198 (requiring 33% of hours worked in year 3 to be from job training program graduates).) Also, design and other “white collar” jobs related to development filled by job training graduates should count toward the goal. The Joint Solar

Parties note that in Sections 15.2 and 15.3 of the Solar for All Approved Vendor manual explicitly state job trainees could participate in development-related activities other than physical installation as long as it is related to a specific Solar for All project. (*See* SFA Approved Vendor Manual 2.1 at 101, 102.)

- The LTRRPP specifically asked for feedback on whether mixed-use residential buildings (e.g., with both residential and commercial tenants) should have additional considerations/restrictions to account for the portion of the building that does not serve residential tenants. (*See* LTRRPP at 187.) As long as the requisite benefits flow to the residential tenants, the building should remain eligible. Thought of another way, a commercial tenant should not *preclude* tenants of an otherwise eligible building from participating.[6]
- The LTRRPP specifically asked for feedback on whether Section 16-107.5(*l*)(1)(B) virtual net metering benefits should flow to all tenants of a qualified building, or only to the verified low-income tenants. The Joint Solar Parties believe that all tenants should be eligible. The building screening criteria should be sufficient to ensure low-income customers are participating. The Joint Solar Parties also note that the obligation to provide net metering pursuant to Section 16-107.5(*l*)(1)(B) is on the electricity provider. The Joint Solar Parties believe that electricity providers should not discriminate in providing those services based on income level as a general matter of statute and policy. (*See, e.g.*, 220 ILCS 5/16-115A(d)(1) (prohibiting ARES from offering different services based on income).)
- The LTRRPP included as a new requirement for the non-profit and public sector program in Solar for All that the project has: "project financing structured in such a way that the project is not able to make use of federal tax credits, and/or accelerated tax depreciation." (LTRRPP at 192.) The Joint Solar Parties are concerned on several levels and oppose this change.
    - First, the Joint Solar Parties oppose the IPA restricting otherwise lawful and customer beneficial financing approaches in either the Adjustable Block Program or Solar for All.
    - Second, at a more core level, the Joint Solar Parties oppose the change because the Joint Solar Parties understand that monetizing the Investment Tax Credit (ITC) is critically important to make non-profit and public sector projects pencil.
    - Third, the Joint Solar Parties further note that single-family and multi-family Solar for All programs do not (and should not) have this requirement.
    - Fourth, the Joint Solar Parties understand the Solar for All carveout for non-profit and public sector buildings to be designed to incentivize development at non-profit and public sector facilities—restricting the financing structures that otherwise make this sector attractive under Solar for All would undermine that goal.

[6] Theoretically, positive impacts on commercial tenants that serve the LMI community through access to solar should benefit the larger customer base and not just the residential tenants of that particular building.