

Date: 5/5/2023
To: Illinois Power Agency
From: Members of the Illinois Clean Jobs Coalition's Inclusive Finance and Jobs & Economic Justice Subcommittees
Re: ICJC Response to Stakeholder Feedback Request - Eligibility Criteria for Equity Eligible Contractors and Equity Eligible Contractor Category

The below-listed Joint Commenters, including many members of the Illinois Clean Jobs Coalition's (ICJC's) Inclusive Finance and Jobs & Economic Justice Committees, thank IPA for the opportunity to provide input on the Eligibility Criteria for Equity Eligible Contractors (EECs) and the Equity Eligible Contractor Category. The Illinois Clean Jobs Coalition (ICJC) is made up of hundreds of environmental advocacy organizations, businesses, community leaders, consumer advocates, environmental justice groups, and faith-based and student organizations working together to improve public health and the environment, protect consumers, and create equitable, clean jobs across the state.

The Joint Commenters include:

A Just Harvest
Central Road Energy LLC
Central Illinois Healthy Community Alliance
Clean Power Lake County
Earthjustice
Illinois Environmental Council
Illinois People's Action
Little Village Environmental Justice Organization
StraightUp Solar
Vote Solar

We share ICJC's goal of ensuring that Climate and Equitable Jobs Act (CEJA) goals with respect to EECs are realized. Illinois' continued and accelerating transition to a clean energy economy provides an opportunity to reduce pollution and increase economic opportunity in communities that have long been overburdened with environmental harms and shut out of economic opportunities. As IPA knows, CEJA is designed to help EECs overcome barriers to entry and growth in the clean energy economy through a variety of supports. The Equity Eligible Contractor block of capacity in the Adjustable Block Program (ABP) established under CEJA plays a critical role in this effort, ensuring that EECs can both enter and grow in this valuable market. The opportunities for wealth creation created by this program have the potential to benefit EECs, their employees, and the communities in which they are rooted.

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We also share IPA's concern that the EEC block has fallen short of its potential and goals thus far. A small number of companies were able to access it in Program Year (PY) 5, and as the Stakeholder Feedback Request indicates, it is not being accessed by its intended beneficiaries, but is instead providing valuable RECs to companies who have figured out how to game the system without delivering on CEJA's goals and promise. Below we share our responses to the questions posed by IPA, along with additional recommendations that IPA should consider to address this problem. As always, we are eager partners in this work and welcome opportunities to work through these challenges and to provide insights from our many coalition members on current realities and how different potential solutions might play out.

In addition to the comments provided below, we would like to emphasize the importance of CEJA's disparity study process for determining the need and providing the empirical foundation for equity strategies that are directly targeted to contractors experiencing discrimination in the renewable energy market. It is critical that this process is done right. As IPA likely knows, targeted programs developed pursuant to disparity studies are often challenged in court. In litigation, the disparity study itself and any strategies adopted pursuant to it are subjected to heavy scrutiny. And by the time litigation is brought, it is too late to retain legal counsel to ensure that the entire process stands up to such scrutiny. To ensure that the disparity study is as effective as possible, and to minimize any legal risks should remedies pursuant to it be challenged, we urge IPA and other involved agencies to consult with legal counsel who has experience and expertise in guiding government bodies through this process successfully. Engaging such a legal expert as early as possible will ensure that no steps are taken that could inadvertently put the state at legal risk and jeopardize important remedies. If it would be helpful, we can provide information on individuals the state may want to consider for this role.

1. Should an Equity Eligible Person be able to serve as the qualifying EEP for more than one Equity Eligible Contractor?

a. The Agency is concerned that allowing a single Equity Eligible Person to serve as the majority-owner of multiple Equity Eligible Contractors could result in a concentration of the benefits of state incentives, where the benefits that are supposedly going to multiple companies are in fact benefitting a single person.

To ensure that the EEC ABP provides broad opportunities and benefits, we recommend allowing an Equity Eligible Person (EEP) to count toward the ownership of just one company applying for EEC RECs in a given PY.

In addition to allowing an EEP to count toward the ownership of only one EEC for purposes of the ABP, we recommend that IPA consider capping the amount of EEC RECs that an EEC can obtain in a single PY. Any RECs desired beyond that cap can be sought through the general pool. Allowing one or a few players to dominate the EEC category, particularly if those players are not its intended beneficiaries, is antithetical to the goals and spirit of CEJA. As noted by the IPA, the

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goal of the EEC designation and EEC REC program is “advancing 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.” (20 ILCS 3855/1-75(c-10))

We also recommend that IPA consider a cumulative cap on the number of RECs awarded to any one EEC or EEP over the life of the EEC ABP program. This program is intended to benefit EEPs launching new businesses and to enable the growth and stability of existing small EECs that have struggled. If an EEC is flourishing in the EEC ABP, the program has served its purpose and that contractor should make way for others seeking the same opportunity. If IPA adopts a point system for prioritizing EECs, a modification that we support, we recommend that this system includes consideration of the number of MWs obtained by each EEC to date to ensure that those most in need of access to the EEC REC pool benefit. To prevent gaming under this approach, IPA would also need to track individual owners to ensure that an EEP is not creating new EECs over time in order to circumvent this limit.

2. Should the Agency require additional demonstrations of equitable impact for companies seeking EEC certification based on majority-ownership of a silent partner Equity Eligible Person? If so, what might those entail?

a. The Agency is concerned about ownership arrangements that may enable large, established, non-EEC companies to access state incentives intended to support companies facing barriers to business opportunities. The statutory requirement that an Equity Eligible Contractor be majority-owned by eligible persons loses its meaning if the minority owner is a large company and the majority-owner eligible person is a silent partner that would otherwise have no involvement in the solar sector – neither party is a person seeking to access the economic opportunities created by CEJA and facing discriminatory barriers in doing so. Below are some potential strategies for preventing such gaming, with the Agency open to implementing one or all of them, depending on stakeholder feedback.

We recommend that IPA consider additional requirements for all companies seeking EEC certification, not just those with silent partners, in order to best achieve CEJA's goal of enabling marginalized individuals and companies to enter and flourish within the renewable energy economy. If successful, CEJA's EEC provisions have the potential to generate significant wealth and economic opportunity for individuals and communities that have borne and continue to bear the brunt of pollution from dirty energy generation, and that have and continue to face barriers to entering and growing within the renewable energy economy. This wealth accumulation will provide multi-generational benefits to families and communities.

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The full potential to advance equity through the EEC ABP will not be realized unless IPA evaluates the degree to which EECs are engaged in and benefitting from entire projects, not just the extent to which EECs serve as the Approved Vendor for projects. We view this as an essential modification. It is the only way to ensure that project value significantly transfers to EECs and to guard against EECs serving as limited pass-through companies with little to no investment in the clean energy economy. To do so, we recommend that IPA develop a minimum EEC participation threshold that applies to entire projects. Ways to accomplish this that should be considered include requiring EECs to occupy a certain number of parts of the value stack and requiring a certain percentage of contract/subcontract dollars on a project to go to EECs. Such a threshold would help ensure that EECs are substantially engaged in these projects and gaining opportunities to grow their experience and capacity, as CEJA's goals envision. Beyond this minimum threshold for participation in the EEC ABP, we also recommend that IPA prioritize REC bids according to the degree to which they advance equity goals above the minimum standard, which can be done through a point system, as proposed by IPA. Doing so ensures that all projects that participate in this program meet a meaningful standard of equity and incentivizes companies to make even stronger commitments to equity.

The need for such an approach can be illustrated through the example of a community solar project. Community solar projects often have an Approved Vendor or Aggregator, a developer, an installation contractor or EPC, a customer acquisition and management service, and other involved companies. Under the current approach, it is our understanding that only the Approved Vendor is required to be an EEC and who owns the remainder of the value stack and/or receives the bulk of the project revenue is irrelevant to their qualification for the EEC ABP. Under such an approach, a project can successfully obtain EEC RECs even though only a small fraction of the project's economic benefits are realized by an EEC. And as IPA points out in its request for comments, an EEC can serve this limited role even if it has no intention of investing and growing in the clean energy economy. We suggest that the IPA establish identify set contractor or designee roles within the development process and require that at least 50% of the value stack and/or project revenue go to EECs. For example, the IPA could require that at least three project roles are performed by EECs and demonstration of this commitment could be a requirement in applications.

This approach would benefit the many EECs that do not currently have the capacity to function as fully-fledged AVs that develop and build projects. IPA could further spur the growth of EECs if it provided points to projects in which established companies have made concrete, firm commitments to partner with EECs in a manner that provides meaningful learning opportunities and mentoring. Partnering with an established AV can provide seed capital to an EEC allowing it to, for example, increase its capacity to develop helioscope designs and proposals by hiring qualified personnel to work in-house. Continued growth and partnership could allow the EEC to hire designers to develop one-line drawings and submit interconnection agreements (or pay for services that do the same). These steps will enable an EEC to grow into viable, successful businesses that can undertake the entire AV scope of work.

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Under a points/prioritization system, we also recommend that IPA consider the degree to which an EEC's EEP ownership exceeds 51% and projects where more than 51% of the value stack/project revenue is going to EECs. The most points/highest priority should go to projects that achieve 100% EEC participation. To prevent against the involvement of companies with token EEP involvement, IPA should also consider assessing whether owner EEPs can demonstrate meaningful control of the company. This could be shown where owner EEPs serve as the final decision maker for key aspects of the business – financial, production, contracting, etc. – or have delegated that authority to an employee manager or another partial owner. It can also be demonstrated by the EEP owner serving as the general partner (or the managing general partner if there is more than one general partner) of a limited partnership or limited liability company; and if the EEP serves as the sole manager, or is able to appoint unconditionally the majority of managers, of a manager-managed LLC.

- b. For companies where the minority share is owned by another company, not a natural person, should the agency require that the applicant must demonstrate one (or more) of the following:***
- i. There is a contractual agreement guaranteeing the eventual increase in ownership share of the Equity Eligible Person.***
 - ii. The company is located in an equity investment eligible community.***
 - iii. The company is also a small and emerging business.***
 - iv. The company employs local residents.***
 - v. The company employs dislocated energy workers.***
 - vi. The company employs an elevated percentage of EEPs above the minimum equity standard.***

We support the development of additional criteria to ensure that the EEC ABP serves those intended to benefit from it, including the IPA's proposal to favor projects that involve a contractual agreement to increase the eventual increase in ownership share of the EEP, a consideration that compliments our recommendation above related to mentoring. We also believe that prioritizing small and emerging businesses, as proposed in item b(iii) above, could avoid the scenario where large national companies are utilizing pass-through entities to compete in the EEC category. Our earlier recommendation that IPA also favor projects that are above the 51% threshold compliments this recommendation.

We recommend against any criteria that focus on EEP participation as employees rather than EEP participation as contractors and owners. A significant aim of CEJA's equity provisions is to build wealth, and the economic stability that comes with it, in marginalized communities. While job opportunities are also essential, and addressed elsewhere in CEJA, allowing contractors to qualify as EECs in whole or part based on who they employ risks undermines this wealth generation goal. Illinois' experience with cannabis licensing is instructive on this point. As originally drafted, the Cannabis Regulation and Taxation Act (CRTA) allowed applicants seeking

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licenses to qualify as Social Equity Applicants (SEAs), an analog to the EEC category, if they had at least ten employees and at least half of those employees met the definition of Social Equity individuals. Established cannabis companies, companies not intended to benefit from the social equity system, took heavy advantage of this path to SEA designation because it allowed them to secure a license worth millions of dollars by committing to hiring as few as five or six Social Equity individuals at modest wages. This “promise to hire” criterion, as it came to be known, was heavily and rightly criticized for its failure to ensure that the tremendous wealth creation opportunities of cannabis legalization accrued to communities impacted by the War on Drugs and otherwise economically marginalized. It has since been eliminated.

We also recommend against treating a company's location as an indicator of its equity commitment. There is a long history and current practice of disproportionately siting industry in low-income communities and communities of color. In addition to the unfair environmental harms this places upon such communities, companies sited in environmental justice communities are most often owned by individuals who do not live in the community and often do not employ residents of these communities or employ them in the least skilled, lowest paying positions. Given this, we recommend against any consideration that assumes that a company's location in a marginalized community translates to actual benefits to members of that community.

c. If the Agency does require one or more of the above additional showings for companies seeking EEC-certification, should it do so only where the minority owner is a large company or where EEP owns less than a certain percentage of the company?

We recommend against this approach as noted in our answer to 2. b. Above, and instead recommend a whole project approach that applies to universally. Rather than using these criteria as requirements for EEC certification, we encourage the IPA to consider using the priorities expressed in 2.b. as potential point adders in the prioritization of bids.

3. To increase the transparency regarding companies that qualify as an Equity Eligible Contractor and submit projects to the Equity Eligible Contractor Category, what information might the Agency require be published on the ABP website?

a. Name of companies certified as EECs?

b. Ownership structure and shares?

c. Basis upon which the majority-owner(s) qualified as EEP?

We support an increase in transparency regarding the award of incentives in this category but strongly urge the IPA to keep the basis of qualification confidential as it may reveal personal details.

4. What forms of documentation could IPA require all companies applying for certification as an Equity Eligible Contractor to submit that would verify the claimed ownership structure? Options include, but not limited to:

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- a. Articles of incorporation*
- b. Governance documents*
- c. Tax documents*

At a minimum, we think an EEC should be required to submit the pages from its operating agreement that specify ownership and ownership percentages and identify which owners are EECs. Regardless of the ownership structure, the percentage of EEP ownership throughout the structure should be calculated and used to determine qualification for EEC status and prioritization for EEC RECs. Not taking this approach could lead to unintended consequences. For example, someone could request an EEC designation for an entity (entity A) that is 51% owned by an EEC company (entity B). If Entity B is only 51% owned by an EEP, that EEP would only own 26% of entity A. In this scenario, entity A should not qualify as an EEC. We also recommend that an EEC be required to promptly report any changes to its corporate or ownership structure during its participation in the program. These tax documents should not be posted publicly but rather used as part of the EEC verification and application process.

Beyond the minimum ownership information, we would like to see a more rigorous process for EEC applications. We recommend that the IPA utilize some of the criteria used to vet and verify Minority-Owned Business Enterprises through the [Minority Supplier Development Council](#) without considering minority status. In particular we think IPA should consider requiring sole proprietors to submit:

- Driver's license or currently valid picture ID
- Applicable Operating Business License and/or permits (if applicable)
- Occupational Licenses (if applicable)
- Resume(s) of owner(s), partners, or shareholders (to include the definition of the role each is serving in the company)
- Bank Signature Card (or letter from bank identifying signatures on the account and type of account)

IPA should consider requiring business partnerships¹ to submit the information required for sole proprietors as well as:

- Articles of Partnership (for LLP/Ltd)
- Certificate of limited partnership or certificate of formation (for LLP/Ltd)
- Partnership Agreements (to include buy-out rights and profit sharing)
- Proof of Capital Investment (e.g. both sides of canceled checks, initial deposits, bank statements)

¹ If the company is a LLP or Ltd., IPA should require applicants to submit the legal documents for all companies involved. For example, if the GP is a LLC, the applicant should be required to submit documents for the Partnership and the LLC.

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IPA should consider requiring corporations to submit the information required for sole proprietors as well as:

- Assumed Name Certificate (filed with the Secretary of State) (if applicable)
- Certificate of Corporation
- Article of Incorporation or Certificate of formation (stamped copy from the Secretary of State)
- Articles of Amendment or Certificate of Amendment (if applicable)
- Corporate Bylaws or Governing documents
- Proof of Capital Investment (i.e. both side of canceled checks, equipment receipts, initial deposits, bank statements)
- Current Stock Ledger

IPA should consider requiring limited liability corporations (LLCs) to submit the information required for sole sproprietors as well as:

- Assumed Name Certificate (filed with the Secretary of State) (if applicable)
- Certificate of organization
- Articles of Organization or Certificate of Formation (stamped copy from the Secretary of State)
- Articles of Amendment or Certificate of amendment (if applicable)
- Operating Agreement
- Copies of both sides of all certificates of ownership issued (no specimen)
- Copy of ownership transfer ledger or copy of membership transfer ledger
- Copy of any membership unit options or other ownership options outstanding as well as agreements which restrict ownership or control of minority owners (if applicable)

While somewhat burdensome, much of the information requested is focused around processes and structures that are necessary for a company to conduct business legally and successfully. To the extent that required documentation may prove burdensome for small EECs, IPA should provide or ensure the availability of application assistance . CEJA's Clean Energy Contractor Incubator Program and Clean Energy Primes Contractor Accelerator Program should also take an active role in assisting with EEC structuring and the EEC application.

5. Are there variations on the above that strike a better balance? For example, the Agency could implement a prioritization system within the Equity Eligible Contractor category based on the above factors, providing bonus points for EECs that meet one or more of those criteria and selecting projects based on points received. Alternatively, the Agency could reserve a portion of that capacity for entities that meet some of the above factors - what might be a reasonable reserve portion to ensure state incentives benefit the intended actors?

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As discussed above, we strongly support IPA developing a multi-factored point system that sets minimum qualifications for participating in the EEC ABP and incentivizes companies to exceed these minimums. In addition to the additional factors we have recommended above, we believe that IPA should consider reserving a portion of the EEC allocation for behind the meter DG projects for a certain amount of time to ensure that the benefits of the EEC subcategory aren't only realized by community solar projects.

We would welcome the opportunity to work with the Agency to further refine the allocation process in either a new stakeholder process or with the opening of the Long Term Renewable Resources Procurement Plan in PY6.

Additional recommendation to address the complications of community transition and gentrification.

In its Feedback Request, the Agency indicates that it is “grappling with the question of whether qualification on the basis of residency alone truly advances the statutory purpose” of CEJA. IPA notes that in communities experiencing gentrification, residency may be a “misleading indicator of one’s access to capital or vulnerability to discrimination.” We share this concern and support IPA’s consideration of additional criteria that will allow it to better identify individuals and corporations intended to benefit from CEJA. In addition to the recommendations above, we recommend that IPA consider adding length of residency to the EEP eligibility criteria, a feature that exists in the state’s criteria for determining Social Equity Applicants (SEAs) in the licensing of cannabis businesses.

In Illinois, cannabis licenses are awarded via lottery and to qualify for the lottery, an entity must demonstrate that it satisfies the SEA criteria, one of which is that a majority of the Applicant’s owners “have resided for at least 5 of the preceding 10 years” in an eligible Census tract.² This does not require that the individual live in the same Census tract for 5 of those years, but rather that they have spent 5 of the last 10 years in any qualifying tract. We recommend that IPA evaluate whether a similar length of residency requirement applied to Equity Eligible Persons that are included in an EEC’s ownership structure would help advance CEJA’s goals for EECs. In doing so, we further recommend that IPA consider whether a lengthier residency requirement would be more effective. We recommend this because we have heard from those working to advance equity in the cannabis industry that a five year requirement may be too short as it allows, for example, a student who attends a college in an eligible Census tract (such as the University of Illinois-Chicago) to meet this SEA qualification solely by remaining in the area for an additional year after college.

² See Illinois Department of Financial and Professional Regulation, Social Equity Criteria Data Point Primer, p.2 (Jan. 18, 2023). Note that applicants do not have to have resided in the same eligible Census tract for five years, but can have resided in any eligible Census tract for five of the preceding ten years.