RESPONSE TO ILLINOIS POWER AGENCY REQUEST FOR COMMENTS ON BEHALF OF THE SOLAR ENERGY INDUSTRIES ASSOCIATION, THE COALITION FOR COMMUNITY SOLAR ACCESS, AND THE ILLINOIS SOLAR ENERGY ASSOCIATION

December 3, 2021

The Solar Energy Industries Association, the Coalition for Community Solar Access, and the Illinois Solar Energy Association (collectively the Joint Solar Parties) appreciate the opportunity to respond to the Illinois Power Agency's most recent solicitation for comments for Consumer Protections.

1. Under Section 1-75(c)(1)(M)(i), the Agency may revoke an Approved Vendor's ability to receive program-administered incentive funding status upon a determination that the vendor "failed to comply with contract terms, the law, or other program requirements."

    a. Do the current disciplinary processes under the Adjustable Block and Illinois Solar for All Programs establish a sufficient process for revocation of the ability to receive state-administered incentives? If not, in what areas is the process outlined deficient, and how can the process be improved?

    JSP RESPONSE: The Joint Solar Parties understand and appreciate that the IPA prefers to keep the Approved Vendor/Designee discipline process on the informal side. However, the Joint Solar Parties believe that the IPA can maintain this approach as a general matter but perhaps add a few additional protections to Approved Vendors/Designees. First, the Joint Solar Parties recommend that an informal oral hearing be available at the Approved Vendor or Designee's request so that the Approved Vendor or Designee can make their case orally to the IPA. Second, the Joint Solar Parties recommend that any written determination explicitly include language that the decision is final, no rehearing is available, and the decision is subject to the Administrative Review Law (735 ILCS 5/3-101 *et seq.*).

    b. The Agency will include the names of entities whose status within the programs is revoked through inclusion in the disciplinary report. Should the Agency and/or Program Administrators also include the names of entities whose Approved Vendor applications are denied and are therefore unable to participate in the Program?

    JSP RESPONSE: The Joint Solar Parties note that if an Approved Vendor or Designee has an application denied and the Approved Vendor or Designee (or their affiliate) is approved, the IPA should either remove such Approved Vendor or Designee's name from the list or include additional language indicating that it or an affiliate was subsequently approved. From the Joint Solar Parties perspective, a better approach is to inform consumers that certain consumer-facing functions require registration as a Designee and the customer can confirm those entities are in good standing by looking at the Designee lookup page and the disciplinary action report.

c. Many of the entities participating in the Agency's programs that directly interact with customers are Designees; that is, subcontractors of Approved Vendors. Currently, the Designee registration process is a streamlined registration paired with approval by Approved Vendors to serve as their designees. The Agency is considering whether Designees shall also apply for program participation, using a similar application as Approved Vendors. The Agency seeks feedback on which items of the Approved Vendor application are inapplicable to the proposed Designee registration process.

JSP RESPONSE: The Joint Solar Parties do not take a position on this approach, other than to note that the more involved and complex the entry procedure the more pressure is placed on Equity Eligible Contractors that are Designees and small and emerging businesses that are Designees. In particular, because many (though certainly not all) Equity Eligible Contractors will be newer businesses, historic financial information is both intrusive and not reflective of current or future capability.

To the extent that the IPA does take this approach, the Joint Solar Parties suggest a process closer to registration rather than an application for small and emerging Designees. The Joint Solar Parties may want to provide additional input on this bifurcation if the IPA decides to take that approach.

2. Under Section 1-75(c)(1)(M)(ii), the Agency plans to expand the minimum contract terms and conditions found in the Marketing Guidelines of both the Adjustable Block Program and Illinois Solar for All in order to ensure that there are minimum contract terms in place for each sub-program (e.g., community solar subscriptions, etc.).

   a. In the development of minimum contract terms for community solar contracts, should the Agency consider differences between traditional and community-driven community solar terms and conditions?

JSP RESPONSE: The Joint Solar Parties note that customers of community-driven community solar contracts are no less deserving or in need of protection than consumers generally. The Joint Solar Parties also note that operation and management of Adjustable Block Program systems is complex and (if not aided by professional asset managers) there is an increased risk of some sort of default, loss, or impairment of value to customers due to the operation. Conversely, after a review of the minimum terms and conditions in the LTRRPP, the Joint Solar Parties were unable to identify a section that should be excluded for community-driven community solar but not for general community solar for the same reason.

   b. The Agency is considering including minimum system design criteria on customer disclosure forms for distributed generation projects. Should certain system efficiencies also be included in the minimum contract terms and conditions for distributed generation projects?

JSP RESPONSE: The Joint Solar Parties responded in depth to a similar prompt in the IPA's request for comments earlier this year regarding system design. To summarize, the Joint Solar Parties note that for residential and other smaller projects in particular, minimum system design

requirements only restrict customer access to solar—especially given that whether a system is beneficial to a customer depends not only on production but also the terms and conditions of the transaction (including price). Instead, the Joint Solar Parties suggested disclosures—rather than prohibitions—would arm consumers with the information they needed to make an informed decision.

3. Under Section 1-75(c)(1)(M)(ii), vendors who "have a disproportionately high number of deficient systems may lose their eligibility" to participate in the program. The Agency will require that repairs, alterations, and additions to remedy deficient systems be brought to the Agency's attention either through customer complaints or through on-site inspections. The Agency proposes that systems which are not meeting their expected output, cause damage to a customer's property, and/or are materially non-conforming with the REC Contract may be considered as deficient systems.

   JSP RESPONSE: The Joint Solar Parties do not support on-site inspections for general Adjustable Block Program participants.

   a. The Agency is interested in stakeholder feedback on what would be a "disproportionately high number of deficient systems." What percentage would warrant suspension from the program, and over what time period should it be calculated?

   JSP RESPONSE: The Joint Solar Parties appreciate the IPA looking to standards—something in many contexts the Joint Solar Parties support—but the standards should be a flag for further investigation rather than a bright line for suspension. For instance, issues primarily related to warranty claims for defective components or repairs due to customer action or inaction are not indicative of poor Approved Vendor or Designee performance. In contrast, situations where Approved Vendor or Designee actions or inactions led to a hazard, or an actual loss should be weighted more heavily against that Approved Vendor or Designee.

   In addition, Approved Vendors that use multiple Designees for installation should be able to cut ties with an under-performing Designee as long as the Approved Vendor is taking reasonable steps to make things right with the customers. It would be very difficult (even if some of those new entrants qualified as Equity Eligible Contractors) to justify working with Designees that had not yet had a chance to establish a track record in Illinois if the Approved Vendor would be penalized for their mistakes. That incumbent advantage is generally not consistent with the goals of Section 1-75(c-10).

   b. Are there additional categories of deficient systems which the Agency should consider?

   JSP RESPONSE: The Joint Solar Parties have no additions, and instead recommend that the IPA remove underperforming systems—at minimum if there is a production guarantee (which protects the customer), the issue is the inverter or module, or if the insolation during the relevant time period is below P50 (*i.e.* the insolation level at which half of years are expected to be higher and half of years are expected to be lower over time).

c. For purposes of this threshold, should the Agency consider valid complaints from a customer about a transaction (such as payment delays, lack of communication, hidden charges and fees) to constitute a "deficient" system?

JSP RESPONSE: The Joint Solar Parties do not agree that those types of complaints speak to the validity of the system. Setting aside that some of the delays are related to third parties (such as interconnection/permitting), a deficient system is different from underperforming customer service. Given that the public disciplinary reports and the complaint database were available during legislative negotiations, the General Assembly could have (but chose not to) expand the definition to bad customer experiences or customer complaints.

d. Should systems failing to meet baseline energy production levels (such as shaded systems and north-facing systems which meet expected output, but have unusually low expected output) be considered "deficient"?

JSP RESPONSE: No. The Joint Solar Parties have suggested disclosures to ensure the customer is informed about the system they are receiving and the anticipated benefits at that production level. A customer premises may only have non-ideal orientations available; making system production below some percentage of an ideal production automatically "deficient" would prevent these customers from obtaining value from solar. Nobody is harmed by a fully-informed customer making the decision to install a solar system that produces less than a hypothetical "ideal" system—ratepayers are not harmed (the RECs are the same price and the system is paid on a per-REC basis with a clawback if there is underproduction compared to estimates) and the customer is not harmed if they were informed and made the decision to go ahead anyway.

The Joint Solar Parties also note that rigid adherence to a minimum output is expected to impact LMI and Environmental Justice communities, shade and non-ideal roof sizes and orientations are more common. While the Joint Solar Parties strongly believe that that LMI and Environmental Justice community customers are entitled to top quality systems, the developer has a limited ability to alter the site (i.e. roof size/orientation or shading) to maximize the performance of the system. That has nothing to do with the workmanship of the installation or the quality of the components; it has to do with giving customers a benefit even though available rooftops do not provide ideal platforms.

4. Under Section 1-75(c)(1)(M)(iii), the Agency may require standardized customer disclosures. While this is already a requirement for participation in the ABP and ILSFA, the Agency is rethinking the format and scope of the disclosure forms.
   a. Should the standardized disclosure form take the format of a more limited document that contains necessary information specific only to the customer's system/subscriptions and the associated financial obligations? Under this scenario, the Agency would propose an accompanying document which explains the disclosure form and its contents also be provided to customers with the standard disclosure form.

JSP RESPONSE: The Joint Solar Parties strongly support a shortened standardized disclosure form. In the experience of the member companies of the Joint Solar Parties and

other members of constituent trade associations, the standard disclosure form is viewed as too lengthy and too dense for easy customer reference. The Joint Solar Parties reserve the right to comment on the content of any proposed accompanying document (to the extent it includes information not in the brochure) but do not object in concepts.

Responding further, the Joint Solar Parties also strongly recommend that the IPA consider two additional streamlines to the standard disclosure process that would make customer experience much better:

- *First*, to the extent that a customer's system or subscription changes more than 10% in size, the Approved Vendor should be able to inform using a standard form the customer of the changed size and provide the customer some time (for instance two weeks) to refuse or terminate along with proof that the information has been sent, rather than a newly signed disclosure form. This allows the customer to see the change—a standard form could include the change (the original and updated value, plus a narrative reason for the change) only and allow the customer to better understand what was changing and why. Moving from a signed re-disclosure to information with an opt-out right reduces customer intrusion but still puts the customer in control of the decision.
- *Second*, an Approved Vendor should be able to move a customer's subscription to a newer system managed by the Approved Vendor or its affiliate by informing the customer via a standard form, providing a reasonable opt-out window (for instance, two weeks), and uploading the standard form and proof that it was sent to the customer. However, this option should only be available if other terms and conditions of the subscription other than system-specific information remain the same. The customer benefits from moving to a system with enhanced features (such as universal utility bill credits from systems energized after September 15, 2021, or perhaps a system that will take service under utility net crediting) while keeping the same terms and conditions; the Approved Vendor and its affiliates will be able to better manage their subscription portfolio.
- *Third*, the Joint Solar Parties request that for any changes that do not affect eligibility or savings rates in the program: such as name change (for example a marital name change), contact information change, and any other changes that do not change the customers' eligibility or subscription size or basic economic terms—customers should not have to re-sign a disclosure form. Owner/operators can work with utility directly to make any necessary changes. In addition, because subscriptions are "portable," a change in the subscribers service address (perhaps due to a move) should not require a new disclosure if the customer can successfully transfer their subscription with the utility and the economic terms and conditions remain identical.

The Joint Solar Parties also believe the standard disclosure is too long and too verbose to provide the customer with the intended benefits (simplified view of the subscription terms); some subscriptions are shorter than the disclosure.

b. Is the current format of the distributed generation disclosure form, which varies by financing type, sufficient to educate customers? Is further differentiation between financing structures necessary? Is differentiation between project categories appropriate?

JSP RESPONSE: Differentiation is appropriate, and the current categories adequately reflect the structures available on the market. The Joint Solar Parties are unaware of products offered or that could be offered (subject to the limited information the three trade association members of the Joint Solar Parties can be privy to under Anti-Trust restrictions) in Illinois that are not adequately described by the three basic structures.

c. The Agency currently requires ILSFA disclosure forms to include price information on net metering rates, which are necessary for determining minimum savings requirements, while the ABP disclosure forms do not include these rates. Should the net metering rates be provided to Approved Vendors and Designees by the Program Administrators for all forms? Or should those rates be posted to the program websites for customer reference?

JSP RESPONSE: The Joint Solar Parties do not oppose either approach, although the Joint Solar Parties note that for systems other than Subtype (d) and (e) systems, estimating the net metering credit rate can be extremely difficult even for utility customers because of hourly netting. The Joint Solar Parties note that including net metering rates on forms could lead to a customer being misinformed of their rates and savings because net metering rates change from month to month for many supply options including the utility default supply option for small subscriber-eligible classes. In addition, ARES net metering rates—particularly for larger customers—are based on the contract between the customer and the ARES, which is not always available to the Approved Vendor (or the Program Administrator).

5. Under Section 1-75(c)(1)(M)(iv), the Agency shall establish one or multiple Consumer Complaint Centers and maintain a disciplinary database.
   a. The current disciplinary process includes the provision of warning letters to entities who have violated program requirements but do not warrant a suspension. The Agency proposes the database which the IPA maintains pursuant to 1- 75(c)(1)(M)(iv) be expanded to include identification not only of entities which have received a suspension but also entities that are warned for violations of program requirements. This would include a description of the type of violations and number of warnings received. The Agency seeks feedback on what additional information should be included in the complaint database.

JSP RESPONSE: The Joint Solar Parties oppose this approach. The purpose of the warning letter is to allow Approved Vendors or Designees to make changes short of a formal finding of a violation. This approach helps catch honest mistakes or misunderstandings and allows Approved Vendors to demonstrate a commitment to compliance by making the requisite changes (under penalty of actual discipline if they are not rectified). Making warning letters public would change their effective stance from warning letters to notices of violations without penalties. Of course, the IPA or its designee should have the ability to issue a notice of violation without proposed penalties, but not at the expense of unpublicized warning letters.

Responding further, if the IPA decides to implement this change the Joint Solar Parties recommend that it be applied prospectively only and not while the market was first scaling up post-FEJA and there were several learning experiences. The Adjustable Block Program and Solar for All are more established at this point, including expectations of Approved Vendors and Designees.

b. Should the ABP Program administrator develop a page on the Illinois Shines website to which Approved Vendors and Designees may provide standardized offers for distributed generation projects and community solar subscriptions, similar to the standardized offers posted under the ILSFA program? Such a "solar marketplace" may would allow customers to compare offers as well as receive information and education on solar development. The Agency seeks feedback on whether this approach would be valuable to entities participating in the program, from Approved Vendors/Designees to customers. Are there exemplary examples from other states?

JSP RESPONSE: As an initial matter, the Joint Solar Parties understand the proposal to be somewhere between ComEd's proposed community solar marketplace as rejected in ICC Docket No. 19-1121 (although presumably without the exorbitant warm lead fee) and PlugInIllinois.org for residential ARES rates. In any event, the Joint Solar Parties assume that such a website is geared toward residential customers and not commercial customers that tend to have access to brokers and consultants.

With those understandings and assumptions in mind, the Joint Solar Parties strongly oppose such an approach for behind-the-meter projects. Offering a solar marketplace restricted to standardized offers will make (no matter what disclaimers are used by the IPA) the offers look like they are endorsed by the IPA or Program Administrator. The primary issue is that non-standardized offers—particularly if the charge depends on customer-specific factors such as usage, system size, age of roof, etc., to say nothing of value added such as storage, a combined offer with a plug-in electric vehicle, or other hardware or features. In other words: while off-the-shelf offers are of course available on the market, the Joint Solar Parties understand that many products are not reducible to a standard offer and price.

The Joint Solar Parties do not recommend this approach for community solar either, but note most products are highly standardized because they are mostly retention of a fixed percentage of net metering credits. The Joint Solar Parties do not believe that it would significantly help either consumers or Approved Vendors to include a new page on Illinois Shines—at least without more information about the anticipated number of potential customers anticipated to view the information who are in the market for community solar but lack a subscription.

For both community solar and behind-the-meter, the Joint Solar Parties are also unsure what function or value such a marketplace would serve. At best, it provides a limited view on market offers on a website that has the imprimatur of the State. The Joint Solar Parties note that while there are certainly barriers to selling residential behind-the-meter systems and residential subscriptions, the marketplace does not address any of those barriers.

If the IPA decides to host or have the Illinois Shines page host a marketplace, the Joint Solar Parties respectfully request a stakeholder process regarding the content to be provided and the phrasing of the website. In addition, the Joint Solar Parties suggest that the stakeholder process cover terms and conditions of posting an offer.