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 the Large Customer Self-Direct RPS Compliance Program.

The Joint Solar Parties note that while there is precedent for self-direct programs under Illinois law (specifically in the efficiency sector), the IPA will be creating a completely new program that relies on utility administration of bill credits. The Joint Solar Parties note that this program—unlike several others—has a longer lead time and gives the opportunity to spend additional time to help the program work from when it starts.

CUSTOMER ELIGIBILITY

Section 1-75(c)(1)(R)(1) allows for "multiple retail customer accounts under the same corporate parent" to be aggregated to meet the law's 10,000 kilowatt peak demand participation threshold.

1. How should the IPA determine whether multiple retail customer accounts indeed connect back to the same corporate parent?
   a. What documents would constitute appropriate proof of such affiliation, and allow that affiliation to be understood as connecting back to that customer's utility account?
   b. For multiple aggregated accounts, should the 10,000 kW threshold based on coincident or non-coincident "total highest . . . demand" peak demands?

JSP RESPONSE: In determining whether affiliated accounts have the same parent for the 40% limit to satisfy the definition of "subscription" in Section 1-10 of the IPA Act, the Joint Solar Parties understand that ComEd looks at Tax ID numbers for each entity. The Joint Solar Parties believe that is reasonable. In addition, if a customer has a more complex structure, the Joint Solar Parties believe a customer should have the ability—but not obligation—to demonstrate that each account holder is directly or indirectly majority-owned by the same entity in lieu of a common Tax ID.

In addition, while Section 1-75(c)(1)(R)(1) requires a 10,000 kilowatt aggregate peak demand to establish eligibility, it is important that the program not require a customer or aggregated customers to remain above that threshold in order to maintain eligibility. Program rules should make it clear that a customer will not lose eligibility if it implements demand response, energy efficiency, or onsite generation, or makes other operational changes that drops its aggregated peak demand below 10,000 kW.

PROJECT ELIGIBILITY

Section 1-75(c)(1)(R)(2) requires that RECs "be sourced from new utility-scale wind projects or new utility-scale solar projects," but "new" is not defined within Section 1-75(c)(1)(R). The Agency is proposing to utilize the "new" project definition found in Section 1-75(c)(1)(C)(iii) (energized after June 1, 2017) in applying subparagraph (R), with geographic eligibility determined by the application of Section 1-75(c)(1)(I) of the IPA Act as interpreted through the Agency's Commission-approved Long-Term Renewable Resources Procurement Plan in place at the time of contract execution (with the IPA's Initial Long-Term Plan's determinations applicable to contracts executed before that Plan's formal approval).

2. Is this approach to determine whether a project is "new" the correct approach?
    a. Should the Agency instead consider "new" as a facility that had not yet been energized as of the effective date of P.A. 102-0662?

JSP RESPONSE: Section 1-75(c)(1)(R)(2)(vii) requires that any *contract* for RECs entered into after September 15, 2021 have requirements including the Project Labor Agreements pursuant to Section 1-75(c)(1)(Q) and use of Equity Eligible Contractors pursuant to Section 1-75(c-10). In other words, even if a system was energized on June 1, 2017, if the qualifying self-direct contract—compliant with Section 1-75(c)(1)(R)(2)—is entered into after September 15, 2021 then additional requirements attach. Given the challenges of retroactively these requirements, a system energized between June 1, 2017 and September 15, 2021 is unlikely to qualify.

3. For geographic qualification, would facilities qualifying under Section 1-75(c)(1)(I)'s new provisions for electricity transmitted to Illinois-based HVDC converter stations also qualify (once such converter stations are built and qualified)?

JSP RESPONSE: The Joint Solar Parties do not have a comment on this section and suggest that the IPA reserve judgment until one or more Illinois-based HVDC converter stations begins construction.

PROGRAM SIZE

Section 1-75(c)(1)(R)(3) requires that the Agency "annually determine the amount of utility-scale renewable energy credits it will include each year" from the program, with that determination made through evaluating "publicly available analyses and studies of the potential market size for utility-scale renewable energy long-term purchase agreements by commercial and industrial energy customers." Program size should also take into consideration the overall market size or share of eligible self-direct customers—but that market size has proven difficult to determine, as many smaller retail customer accounts may qualify once aggregated through corporate affiliation.

4. How should the IPA handle this requirement for establishing program size?
    a. What such publicly available analyses and studies are available to the Agency in determining self-direct program size?

b. By when each year should the Agency make this determination, and using what process?
c. Should the Agency publish the initial delivery year self-direct program size as part of its upcoming Long-Term Plan?
d. Given that customer account size does not account for permitted account aggregation by corporate affiliates, how can the IPA best assess the size of the retail customer market eligible for self-direct RPS compliance?

JSP RESPONSE: Given that the program will not be operational for over 18 months, the Joint Solar Parties recommend the IPA conduct outreach and have a formal date by which interested parties should express non-binding interest. While that non-binding expression of interest should not be a prerequisite to participation, it will be in the interest of potential customers and developers to express interest given that failure to do so risks a program too small for their participation.

Section 1-75(c)(1)(R)(3) also provides provisions for ensuring that "participation is evenly split between commercial and industrial users" in the case of more applicants than the program size could accommodate.

5. If the IPA receives applications for the program which exceed the amount of RECs it will include each year, how should the Agency choose between competing applicants?
   a. While the law indicates that the Agency "shall ensure participation is evenly split between commercial and industrial users," how should the Agency choose between individual commercial or industrial users within that category should applications exceed program capacity?
   b. Should the Agency maintain a program waitlist for qualified applicants, with preference for waitlisted applicants when the program next reopens for applications?

JSP RESPONSE: Generally speaking, the Joint Solar Parties do not support random selection or lotteries and prefer first come/first served approaches or, alternatively, scoring based on clear, measurable criteria known in advance.

<u>BILL CREDITING</u>

The amount of avoided RPS costs credited back to the customer shall be "equivalent to the anticipated cost of renewable energy credit deliveries under contracts for new utility-scale wind and new utility-scale solar entered for each delivery year after the large energy customer begins retiring eligible new utility scale renewable energy credits for self-compliance." The Agency understands this to mean that it would be providing credit levels each year for the upcoming delivery year, which vary by the delivery year in which the customer begins self-compliance REC retirements. Thus, for a customer which begins retiring RECs for self-compliance in 2023, an individual rate would apply and would change year-over-year as anticipated new utility-scale wind and solar costs grow (as additional contracts are entered into and additional retirements occur). Alternatively, for a customer which begins retiring RECs for self-compliance in 2024, a different rate would apply, as only contracts entered into after the "delivery year after the large energy customer" began retiring RECs for self-compliance would count toward the anticipated cost rate.

Thus that 2024 customer's annual self-direct credit rate would be almost certainly be different than the 2023 customer's annual self-direct credit rate.

The phrasing "entered for each delivery year" found in Section 1-75(c)(1)(R)(4) contains some ambiguity, and the IPA believes that the most appropriate approach is to interpret this passage as a) meaning "entered into for" and b) not counting costs from those contracts until such costs occur (i.e., not until the delivery year in which deliveries from those contracts are expected to commence). This reading is further supported by statutory language on what costs are excluded as well.

6. What is the correct approach to determining bill credit levels? Do commenters agree with the IPA's statutory interpretation? What other interpretations could be offered to this language?

JSP RESPONSE: The Joint Solar Parties note that REC prices will not only vary by procurement results but also wholesale energy markets, because utility-scale RECs going forward are to be procured on an indexed REC basis the REC prices will not be known or knowable in advance. The Joint Solar Parties note that this may lead to a fair amount of noise in the credit rate, and in fact will lead to the highest credit rate in the years where the indexed RECs have the biggest impact on the RPS budget. Taken together, the payment would either have to be in arrears or based on estimated REC pricing during a delivery year. Because of the dual challenge of high indexed REC prices and higher credits when wholesale prices are lower in addition to the challenges of providing bill credits in arrears, the Joint Solar Parties recommend the IPA consider developing an estimated REC price for indexed RECs based on a forward energy price curve.

The law further provides that while the Agency shall ultimately determine the self-direct credit amount(s), it should be filed with the Commission as a compliance filing—but must be approved by the Commission by June 1 of each year beginning in 2023.

7. Given that the Commission does not normally approve compliance filings, how should the Agency comply with this provision?
    a. What process should the Agency propose for the Commission's review and approval of self-direct rates?
    b. What information should the Agency include in such a filing to a) assist the Commission in making that determination and b) provide interested parties with visibility into how self-direct crediting rates are being set?

JSP RESPONSE: Setting aside whether this language should be subject to cleanup in future legislative efforts, the Joint Solar Parties recommend that in its consideration of procedural mechanisms that the IPA petition the Commission to approve its *methodology* in advance and provide the end result as a compliance filing in the approval docket by June 1 (assuming the Commission has timely ruled on the methodology petition). The Joint Solar Parties believe the actual values will fall out from a properly designed methodology and it allows parties to the docket to raise any perceived errors (in the unlikely event any are identified) in application of the methodology in a pre-established docketed proceeding.

APPLICATION PROCESS

Section 1-75(c)(1)(R)(5) could be understood as envisioning a two-step application process. First, the customer must demonstrate that it qualifies as a self-direct customer, generally by a demonstration of usage above 10,000 kilowatts by that customer or its affiliates. Next, the customer must demonstrate that its contract with a new utility-scale renewable energy facility qualifies for self-direct bill crediting (e.g., from contracts of at least 10 years and in volumes that are at least 40% of the customer's annual consumption).

8. How should the application process operate?
    a. Should these steps be completed contemporaneously?
    b. By when should applications open?
    c. For how long should the application window stay open for a given delivery year? Section 1-75(c)(1)(R)(5)(ii)-(v) references "proof" or "supporting documentation" required for compliance demonstration.

JSP RESPONSE: The Joint Solar Parties do not have a strong preference, but note if a customer is pre-qualified that customer is able to then negotiate with multiple developers for the best deal rather than placing both themselves and a developer at risk by agreeing to a contract first and applying with that contract in hand (and taking on the risk that there is insufficient program capacity). Conversely, it is risky to develop a utility-scale system in hopes that the requisite amount of customers can apply and be qualified for the self-direct program, meaning pre-self direct program application (by the customer) agreements may have additional risk.

9. How should the Agency determine whether an applicant is indeed compliant?
    a. What types of documentation should the Agency seek?
    b. For the prevailing wage and equity standards requirements in 1-75(c)(1)(R)(2)(vii), how might the applicant prove compliance?
    c. What confidentiality considerations apply to the receipt of this information?

JSP RESPONSE: In terms of compliance, the IPA should require documentation to establish the minimum requirements in Section 1-75(c)(1)(R)(2). For the contract itself, redacted version (or separately signed exhibit) that establishes volume (for comparison with customer usage to confirm 40% threshold) and retirement of RECs on behalf of the customer should be sufficient. Prevailing wage should be demonstrated in the same way that (or at least consistent with) a utility-scale project developer will under typical utility-scale procurements.