



**OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS**

Lisa Madigan
ATTORNEY GENERAL

July 5, 2017

VIA ELECTRONIC MAIL

Anthony Star, Director
Illinois Power Agency
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**Re: Request for Comments, Long-Term Renewable Resources Procurement Plan
Corrected version**

Dear Director Star:

On behalf of the People of the State of Illinois, represented by Attorney General Lisa Madigan, we are writing to provide our response to the Illinois Power Agency's ("IPA") Request for Comments dated June 6, 2017, regarding the Long-Term Renewable Resources Procurement Plan (LTRRPP). These comments address the eligibility of renewable energy resources to participate in the LTRRPP and the effect of geographic proximity to Illinois and consumer protections in connection with contracts under the Adjustable Block Program and the Solar for All Program. They were prepared jointly with input from the Environmental, Public Utilities, and Consumer Protection Bureaus.

While the People have attempted to comprehensively address the issues, including consumer protections in the nascent solar power field, the People reserve the right to amend their comments and proposals in response to other parties' Comments. In addition, failure to comment on any particular matter should not be taken as agreement.

I. Renewable Energy Resources: Geographic Eligibility

The IPA should prioritize renewable projects in adjacent states that have the greatest propensity to displace fossil fuel generation, especially coal-fired power plants. One way to do this could be to ask each project applicant to use a power dispatch model to simulate the effect of adding their project to the grid and to summarize the resulting emission decreases shown by the model.

The IPA should expect that "[t]he larger the proportion of higher carbon-emitting resources in a region's [or an area's] existing generation capacity mix, the larger a role . . . renewable energy can play

in displacing CO2 emissions.”¹ In other words, renewable resources located in areas with relatively larger amounts of coal-fired generation could receive preference, or a higher score. Stakeholders in the renewable industry could be asked about what level of robustness they could reasonably provide in terms of power dispatch modeling, taking into account the cost and amount of time involved with different types of models.

The IPA should also consider whether the renewable projects, whether in adjacent states or within Illinois, are located at points in the distribution or transmission grid that where they can help relieve congestion on the grid or reduce distribution costs by reducing operation and maintenance or replacement costs. It will be necessary to use data from the applicable Regional Transmission Organization (RTO) and from the utility to identify points on the grid where renewable resources can provide distribution benefits. Generators should be asked to power flow model or provide similar information to show the effect of adding their project to the grid to identify these locational savings.

II. Consumer Protections in the Adjustable Block Program

Starting with the pending LTRRPP, the IPA is charged with with administering two state authorized programs to bring solar energy to Illinois. Specifically, the IPA Act directs the IPA to include an Adjustable Block Program (ABP) for solar renewable energy credits (SRECs)² and the Solar for All program.³ The Plan is required to provide for 2000 SRECs per year by 2020, including at least 40% (800 SRECs) from the ABP.⁴ The statute recognizes the need for oversight of the ABP, and provides that “[t]he Agency may define different block sizes, purchase prices, or *other distinct terms and conditions for projects located in different utility service territories* if the Agency deems it necessary to meet the goals in this subsection (c).”⁵ The IPA is directed to develop a process for submitting proposed contracts for the ABP, SRECs and the Solar for All programs to the Illinois Commerce Commission for review and approval as part of the procurement planning process.⁶ Parties must obtain Commission approval before they can begin to implement or receive payment for the ABP and Solar for All programs.⁷

While existing consumer protection laws⁸ are useful and powerful tools for protecting consumers, the IPA should supplement laws of general application with specific rules and requirements related to ABP and Solar for All programs. In order for the IPA’s solar REC procurement plan to successfully obtain the mandated number of SRECs and to integrate the ABP and the Solar for All programs, terms and conditions for participation need to be standardized and established by the IPA. Participants in these

¹ Synapse Energy Economics, Air Emissions Displacement Energy Efficiency and Renewable Energy, June 2015, available at http://www.synapse-energy.com/sites/default/files/Air-Emissions-Displacement-by-Energy-Efficiency-and-Renewable-Energy_0.pdf.

² 20 ILCS 3855/1-76(c)(1)(K).

³ 20 ILCS 3855/1-56(b)(2).

⁴ 20 ILCS 3855/1-76(c)(1)(C)(i).

⁵ 20 ILCS 3855/1-76(c)(1)(K) (emphasis added).

⁶ 220 ILCS 5/16-111.5(b)(5)(ii)(B)(cc): The IPA shall: “Identify the process whereby the Agency will submit to the Commission for review and approval the proposed contracts to implement the programs required by such plan.”

⁷ 220 ILCS 5/16-111.5(b)(5)(ii)(D): “Third parties shall not begin implementing any programs or receive any payment under this Section until the Commission has approved the contract or contracts under the process authorized by the Commission in item (D) of subparagraph (ii) of paragraph (5) of this subsection (b) and the third party and the Agency or utility, as applicable, have executed the contract.”

⁸ See, e.g., 730 ILCS 5/5/1 *et seq*

programs should be required to comply with IPA rules, disclosures and contract forms and requirements that cover, at a minimum:

- (1) registration and licensing, enforcement, and penalties,
- (2) public education,
- (3) disclosures and contract terms, including addressing consumer complaints,
- (4) data privacy and record retention.

The IPA should do as much as it can to ensure consumer protection without stifling the growth of solar energy generation in Illinois. The IPA has the authority to implement the Adjustable Block Program and the Solar for All Program. The IPA should include solar consumer protections in the LTRRPP to assure that these programs have a strong foundation, meet consumer expectations, can expand to meet the increasing need for SRECs in the Plan, and will reliably generate the promised SRECs.

A. Consumer Owned Distributed Solar Generation

The People make the following preliminary recommendations. This first set of requirements are designed for solar energy providers that obtain solar energy from “distributed renewable energy generation devices” owned by the property owner, located on properties owned by residential or small commercial utility customers, and that have a nameplate capacity that is less than or equal to 2,000 kilowatts.⁹

- 1. *Registration, Licensing and Enforcement and Penalties.*** The IPA should require that SREC sellers and the installers of distributed renewable energy generation devices that provide the energy for SRECs (referred to hereafter as “solar energy projects”) register and be in good standing with the IPA before they can participate in the LTRRPP, the IPA Adjustable Block Program, or the Solar for All Program. The IPA should expressly retain the authority to revoke a participant’s registration for violation of statutes, rules, and the mandatory terms and conditions associated with its participation in the LTRRPP.

Registration should include:

- a. Name of the SREC provider, street address, mailing address, electronic address and telephone number. If a corporation, the state of incorporation.
- b. The name and contact information for the registered agent, attorney, or any person designated to receive notices and other communications regarding SRECs.
- c. The Company’s last annual report.
- d. A statement identifying the programs and activities in which the registrant intends to participate, including whether the registrant intends to participate in the ABP and/or the Solar for All program.
- e. A statement identifying each jurisdiction where the registrant or its affiliates operates.
- f. A statement describing the financial, managerial, and technical qualifications of the registrant.
- g. A statement describing the source or form of the solar energy that will be the basis of the SRECs provided by the registrant.

⁹ 20 ILCS 3855/1-10, Definitions of Community Renewable Generation Project and Distributed Renewable Energy Generation Devices.

- h. A copy of the disclosure and contract forms to be used with buyers of solar energy projects, updated as necessary.
- i. A description of the registrant's process to address complaints connected with installation or operation of a solar energy project of less than 2,000 kilowatts;
- j. A statement that the registrant will comply with all of the statutes, rules, and standardized terms and conditions associated with its participation in the LTRRPP.
- k. Acknowledgement that failure to comply with all of the statutes, rules, and standardized terms and conditions associated with its participation in the LTRRPP may result in revocation of registration, cancellation of the license, and inability to participate in the LTRRPP.
- l. Any other information required by the IPA.

The IPA should establish a period of time prior to its annual or periodic procurements for registration to be complete, and require that registration information be updated at least annually or within 30 days if information in the registration changes. Incomplete registrations may be rejected by the IPA, prohibiting participation in a pending procurement.

In situations where the registrant has failed to comply with the statutes, rules, and standardized terms and conditions associated with its participation in the LTRRPP, the IPA must have the ability to cancel the party's registration. The IPA should establish a mechanism to review registrations so that it is informed of matters that affect the registrant's suitability for the ABP or the Solar for All program.

A key consumer protection is availability of a process to address consumer complaints or concerns. As part of registration, the seller should be required to agree to respond directly to consumer complaints within a reasonable time frame, and to respond to government officials, such as the Attorney General, local officials, and the Better Business Bureau or solar or trade organizations within the time frame requested so that disputes can be resolved expeditiously. Consumer complaints that result in outstanding disagreements should be reported to the IPA by the REC seller for consideration in connection with a registration revocation.

2. Public Education

Participants in the LTRRPP ABP that obtain SREC revenues are expected to obtain the solar energy underlying the SREC either by installing distributed generation directly on residential or small commercial properties (up to 2,000 kilowatts) or by building community solar facilities that will be open for subscription by parties that do not own the property where the system is located. In 2016, only 206 applications for solar energy interconnections were approved in the ComEd service area,¹⁰ and only 184 were approved in the Ameren service area.¹¹ Because solar energy is a relatively new product to Illinois consumers, customer education is a key factor for the IPA's LTRRPP to be successful.

¹⁰ ComEd Smart Grid Advanced Metering Annual Implementation Progress Report, April 1, 2017, Metric 10A, available at: <https://icc.illinois.gov/electricity/utilityreporting/InfrastructureInvestmentPlans.aspx>.

¹¹ Ameren Illinois Advanced Metering Infrastructure (AMI) Annual Update, April 2016 at App. 2 (page 33): Level 1 solar projects including less than or equal to 10 kilovolts as of February 10, 2016 (Ameren reports 50 customers at Level 2, with nameplate capacity less than or equal to 2 MVA), available at: <https://icc.illinois.gov/electricity/utilityreporting/InfrastructureInvestmentPlans.aspx>.

The People recommend that the IPA maintain a public information and education resource, similar to the Illinois Commerce Commission's "Plug-in Illinois" page, to provide unbiased and disinterested information to solar energy consumers.

The IPA should establish a webpage focused on resources for consumers interested in installing solar energy projects on their property. A key element would be savings calculators for solar energy projects and information about net metering. As a point of reference, Go Solar California, a joint effort of the California Energy Commission and the California Public Utilities Commission, has a list of solar savings calculators that can be used as references or models for an Illinois-utility specific calculator.¹²

The consumer education page should include, at a minimum:

- a. Different Charges on Consumer Bills. A description of the difference between *distribution* charges and services, *supply* charges, and *other* fees, taxes and surcharges appearing on the electricity bills of Commonwealth Edison and Ameren. Many consumers do not understand the various components of their bills, making this information critical for an accurate understanding of how solar energy contributes to the grid and its effect on a consumer's bill.
- b. Current Charges. The IPA should display current distribution charges, supply charges, and other fees, taxes and surcharges for Commonwealth Edison and Ameren residential customers, updated on January 1, June 1 and October 1, using the supply charges for default supply service. This could be done with an annotated sample bill. An interactive savings calculator where consumers could see the effect of various usage and solar energy levels is necessary to enable customers to understand the effect of a solar energy project on their bills.
- c. Effect of Subscribing to an ARES. While some Illinois consumers pay for supply on the default rate, many others use an alternative residential electricity supplier (ARES) and pay the rate established by the ARES or municipal aggregation contract. The IPA should include in its public information the role of ARES in the provision of electricity and the effect that using an ARES for electricity supply will have on the consumer's bill and on compensation for excess energy produced by a solar energy project.
- d. Future Costs and Savings Estimates. Many consumer solar energy proposals include an estimate of future increases in electricity costs as a way to show that a solar energy project is economical in the long run. It is important for there to be a standardized estimate that all participants in the solar market consistently use. To meet this need, the IPA should post a good faith estimate of changes in distribution charges and changes in supply charges over five years, with the caveat that the estimates could be wrong. The assumptions for the good faith estimates should be clearly stated, maintained by the IPA, and subject to review every 12 months.

¹² <http://www.gosolarcalifornia.ca.gov/tools/calculators.php>

- e. Net Metering. The IPA should include in its consumer information a description of how net metering works and the changes authorized by the law.¹³
- f. Effects on Property Values, Taxes, Insurance. Factors consumers should consider when installing a solar energy project on their property, such as the impact of the installation of the solar energy project on the value of the property or home, on property taxes, and on insurance rates and coverage, as well as the effect of the solar energy project on the value and sale of the property.
- g. SRECs. An explanation of SRECs and how SRECs incent the development of solar energy projects.
- h. Description of the ABP and Other Solar Programs. A description of the ABP, community solar, and the Solar for All programs authorized by statute,¹⁴ including participation and income requirements,¹⁵ “shar[ing] program activity with stakeholders on a regular basis,¹⁶ and posting reports from the Solar for All program administrator.¹⁷

It is important that an objective and consistent source of information be available to both consumers and installers of solar energy. This information could then be used by external groups such as community organizations, legislative offices, local officials, and industry to offer educational materials, workshops or other events for potentially interested consumers.

3. Standard Disclosure and Contract Forms for Solar Energy Projects.

As mentioned above, the statute authorizing the ABP and the Solar for All Program recognizes the need to establish standardized term and conditions for these programs.¹⁸ In fact, the IPA has established standard contract terms for participants in its procurement plans since its inception.¹⁹ By standardizing contracting, the IPA can base its procurement “solely on price”²⁰ and can rely on the performance of the bidders to both treat consumers fairly and produce the promised SRECs.

The legislation authorizing the LTRRPP and the ABP and the Solar for All Program direct the IPA to “identify the process whereby the Agency will submit to the Commission for review and approval the

¹³ See 220 ILCS 5/16-107.5(j) and 16-107.6.

¹⁴ 20 ILCS 3855/1-75(c)(1)(K) & (L) &(N)(community solar).

¹⁵ 20 ILCS 3855/1-56(b)(2).

¹⁶ 20 ILCS 3855/1-75(c)(1)(M).

¹⁷ 20 ILCS 3855/1-56(b)(5)

¹⁸ 20 ILCS 3855/1-75(c)(1)(K) & (L) &(N)(community solar); 220 ILCS 5/16-111.5(b)(5).

¹⁹ 220 ILCS 5/16-111.5(e)(2) provides: “The procurement administrator, in consultation with the utilities, the Commission, and other interested parties and subject to Commission oversight, shall develop and provide standard contract forms for the supplier contracts that meet generally accepted industry practices. Standard credit terms and instruments that meet generally accepted industry practices shall be similarly developed. The procurement administrator shall make available to the Commission all written comments it receives on the contract forms, credit terms, or instruments. If the procurement administrator cannot reach agreement with the applicable electric utility as to the contract terms and conditions, the procurement administrator must notify the Commission of any disputed terms and the Commission shall resolve the dispute. The terms of the contracts shall not be subject to negotiation by winning bidders, and the bidders must agree to the terms of the contract in advance so that winning bids are selected solely on the basis of price.”

²⁰ *Id.*

proposed contracts to implement the programs required by” the LTRRPP.²¹ Once the IPA adopts standardized contracts and disclosures for the acquisition of SRECs and participation in the ABP and the Solar for All Program, the Commission must approve them as part of the LTRRPP.²² Standardization is especially important in an industry as complicated for the consumer as solar energy. The rapid growth expected due to the ABP, community solar, the Solar for All program, and the increased demand for SRECs in the LTRRPP may result in unforeseen issues that harm consumers and undermine the solar programs.

Many SREC sellers may be the same entity that installs the distributed generation or the same entity that owns the community generation project which is the source of the SRECs. In those cases, the disclosure requirements and mandatory contract terms will directly apply to registrants for the SREC procurements. Parties that fail to comply with the disclosure and contract rules could face the loss of their ability to participate in the solar REC ABP and Solar for All program and the loss or clawback of SREC revenues.²³

If the REC seller is not the same entity as the solar energy seller or installer, REC sellers found to be consistently working with installers or project owners that fail to comply with the mandatory disclosures and contract terms should be subject to scrutiny and loss of the right to participate in the LTRRPP.²⁴

In order for the ABP and the Solar for All Program to reliably provide SRECs, it is necessary that consumers are consistently given information that is relevant and necessary to making an informed decision. The IPA should require the following disclosures and contract terms. The Solar Energy Industry Association (“SEIA”) currently has prepared standard solar purchase and solar lease disclosure forms. These forms appear to contain several of the necessary elements and may be good templates for the IPA to use as models for the disclosure and contract form.

Mandatory disclosures and contract terms include the following:

- a. System Description. The size of the system (kilowatts) and the expected amount of electricity (kilowatt hours) that will be produced by the solar energy system are key factors that must be disclosed. The seller should provide a good faith estimate of the number of kilowatt hours that will be delivered by the solar electric system on a monthly and annual basis, together with a description of the warranties and limitations, if any, affecting the estimate. The description should include:
 - (i) The estimated size of the system in kilowatts.
 - (ii) Estimated gross annual electricity production in kilowatt-hours in Year 1.
 - (iii) the estimated annual electricity production decrease due to the natural aging of the system.
 - (iv) the percentage of time that the system is expected to produce electricity, reflecting normal weather conditions and the location of the project.
 - (v) what portion of the customer’s peak demand the system is capable of meeting.

²¹ 220 ILCS 5/16-111.5(b)(5)(ii)(B)(cc).

²² 220 ILCS 5/16-111.5(b)(5)(i)(D).

²³ SRECs for these programs are paid out in advance of the production of the SRECs, making long term production critical. See 20 ILCS 3855/1-75(c)(L).

²⁴ 20 ILCS 3855/1-75(c)(1)(L)(iv).

- (vi) whether the customer will continue to be dependent on the grid.
- (vii) whether the utility will provide a bill credit for excess energy generated by the system, and

b. Effect on Electricity Bills. The seller should provide:

- (i) a good faith estimate of the reduction in the buyer's electricity bill including the rate used in the estimate, how the estimate was calculated, including whether it is based on estimated prior electricity use, actual prior electricity use, or estimated future electricity use.
- (ii) the costs, expenses, rebates, and incentives utilized in the estimate.
- (iii) the effect of net metering, and the effect on distribution charges, fees, surcharges and taxes and the fact that net metering rates can change.
- (iv) If the seller relies on future savings, it shall use the estimate of the future price of electricity provided by the IPA in its customer education materials.
- (v) Whether the installer is guaranteeing the savings, and if so, how under-performance will be compensated.
- (vi) How long the system is expected to produce savings and the estimated annual decrease in electricity production due to the natural aging of the system.

c. Excess Energy. If the system is capable of selling excess energy to the grid, the seller should disclose the expected manner and rate of compensation for electricity produced by the solar energy system and sold to the customer's electric utility, including the current reimbursement rate at the time of signing a contract. The contract should also include a statement that the current reimbursement rate is subject to changes in the law or regulations and whether the customer subscribes to an ARES or uses default utility supply. Use of the explanation of net metering provided by the IPA in its customer education materials should be required.

d. Price. In addition to displaying the purchase price, the seller should itemize all of the costs associated with installing the solar energy system and list all factors included in the purchase price. Disclosure should include but not be limited to:

- (i) the purchase price,
- (ii) equipment charges,
- (iii) document charges,
- (iv) metering or other charges, such as charges for interior electric work, to connect the solar power system to the home or grid,
- (v) labor charges,
- (vi) license, permit or zoning fees,
- (vii) homeowner association restrictions or fees,
- (viii) utility fees,
- (ix) taxes, and

e. Incentives. The seller should itemize each financial incentive or benefit associated with the solar system, including all federal, state, and local tax credits, electric utility rate credits, Renewable Energy Credits, incentives, rebates or other benefits, and the allocation of those benefits between the seller and the buyer. If there are credits, incentives, taxes, or other adjustments reflected in the purchase price, they must be itemized and the associated costs or credits disclosed.

f. Financing. The seller shall conspicuously disclose the payment schedule. If the purchase of the solar energy facility is financed by the seller, the seller should disclose the total amount financed, the interest rate, the monthly payments, and the total payment including the principal and interest through the payment term.

g. Installation. The seller must certify that the solar energy system will be installed by a qualified person in compliance with the requirements of Section 16-128A of the Public Utilities Act²⁵ and any rules or regulations adopted thereunder. The approximate start date for the installation and the approximate end date should be disclosed. Buyer responsibilities should be disclosed prior to the initiation of installation.

h. System maintenance, upkeep and repair. Solar systems are new to most Illinois consumers, requiring that maintenance responsibilities be clearly described.

(i) The seller must disclose whether the buyer or another party is responsible for system maintenance and/or repair.

(ii) If the buyer is responsible for system maintenance, required maintenance activities and time frames should be provided.

(iii) If the installer or another party is responsible for maintenance and/or repair, the terms of the maintenance contract should be disclosed, including:

- a. the period of time covered by the maintenance and repair commitment,
- b. the terms of the upkeep and repair responsibilities including what maintenance is covered and what maintenance the buyer provides,
- c. The coverage limits or deductibles, if any, for hardware and labor or workmanship,
- d. Whether unusual repairs resulting from accidents or other unforeseen events are covered (e.g. a fallen tree, wind storm, house fire),
- e. contact information

i. Warranties. An explanation of the terms of the warranty for the solar energy system, including but not limited to:

(i) whether there is a full or partial warranty, and whether it includes a production guarantee.

(ii) the date through which the warranty applies.

(iii) if a partial warranty, the parts and/or labor covered by the warranty.

(iv) whether the warranty includes coverage for roof leaks and for what period of time if different from the warranty term.

(v) whether the warranty is transferable.

(vi) how under-performance or under-production will be remedied.

(vii) the contact information for obtaining service and/or parts under the warranty, including the telephone number, electronic address, mailing address.

j. Insurance and Casualty. The installation of a solar energy system may affect insurance coverage. The seller should disclose:

²⁵ 220 ILCS 5/16-128A.

(i) Whether the solar energy project agreement insures the solar energy system against damage or loss, the period of time covered by the insurance, and under what circumstances the seller does not insure or cover damages or loss of the system,

(ii) A statement that the consumer has been informed that he or she should determine whether homeowner insurance rates or coverage will be affected by the installation of the solar energy system, and

(iii) The seller must disclose information on the potential fire and other home safety risks of a solar energy system, actions to minimize risks, and an explanation of how operations of the solar energy system could affect home appliances and equipment in the event that the system is operating without backup or support from the utility grid.

k. Roof Repair. If a solar energy system is installed on a roof or other consumer building, a statement that there are costs for the removal or temporary removal of the solar energy system in case of roof or building repair or replacement due to weather, wear and tear, or other events. The consumer shall be given information on the costs the company will cover and will not cover in the event the roof needs maintenance and the solar energy system must be disturbed.

l. SRECs. Information explaining the consequences for SREC delivery in cases of inoperability.

m. Customer data. A statement of the company's policy on the use of customer data as it relates to electricity usage, production, and personal information and whether such information is or could be shared with any additional parties, with the conditions and methods of such sharing identified.

n. Sale or Transfer of Property. Information regarding

(i) the effect of the solar energy system on the sale of the home or property.

(ii) ownership of the solar energy system upon the death of the owner,

(iii) whether the generation of electricity from the solar energy system stays with the property upon sale or other transfer.

(iv) the cost, if any, if the solar energy project is transferred to a new owner or removed.²⁶

o. Provisions for resolving consumer inquiries and complaints. Contracts should include a process for addressing consumer inquiries, complaints or concerns. The contract should include where complaints are to be addressed, the time frame for seller response, and disclosure that consumers can contact the IPA, the Attorney General's Office, local officials, the Better Business Bureau or solar or trade organizations for further assistance. Consumer should be informed that they can report complaints that result in outstanding disagreements to the IPA, which registers and licenses sellers and generators of SRECs.

In addition to the substantive terms and disclosures identified above, the contract should conform to the following requirements:

²⁶ Barbara R. Alexander, *Solar Power On The Roof And In The Neighborhood: Recommendations For Consumer Protection Policies*, March 2016, pages 28-30, available at <https://www1.maine.gov/ag/news/FINAL%20Solar%20Power%20Consumer%20Protection%20Report.pdf>.

1. The contract should be signed and dated by the person buying, financing or leasing the solar energy system. Any Disclosure Statement or contractual agreement that contains blank spaces affecting the timing, value or obligations of the agreement in a material manner when signed by the buyer or lessee is voidable at the option of the buyer or lessee until the solar energy system is installed.
2. The name and contact information for the sales person, the solar energy or SREC provider, the installer, and warranty information should be included in the contract.
3. The contract should be in at least 12 point type.
4. The contract should include a provision granting the buyer or lessee the right to rescind the financing, sale or lease agreement for a period of not less than three business days after the buyer or lessee signs the agreement and before the solar energy system is installed.

B. SPECIAL PROVISIONS FOR LEASE AGREEMENTS, PURCHASED POWER OR COMMUNITY SOLAR AGREEMENTS.

The above disclosures and terms need to be supplemented by additional disclosures in cases where the solar energy project is not owned by the property owner, e.g., it is leased, subject to a purchased power agreement, or subject to a community solar agreement. In lease agreements the solar energy project is owned by a third party and the consumer pays a monthly “lease” or rental charge and retains the benefit of the solar energy project output. In purchased power agreements and community solar, the solar energy project is owned by a third party and the consumer pays the provider a price per kilowatt-hour for electricity consumed on the premises and might face other fees or charges. These types of agreements require additional disclosures and terms:

1. Lease Agreements for Solar Energy System on Consumers’ Property

- a. Lease Fees or Price. Consumers of solar energy projects that are owned by third parties but installed on the consumers’ property need to be informed of the terms governing the lease fee, including:
 - (i) What is the monthly fee and how many months is the lease term;
 - (ii) Is the monthly fee subject to change, and if so, by how much can the fee change, how much notice is given, and does the consumer have the option to cancel and have the project removed without penalty or fee;
 - (iii) Is the monthly fee waived, pro-rated or lowered if the solar energy system does not produce energy or produces a reduced amount of energy due to maintenance, if the solar electric system is inoperable, or due to roof maintenance or other factors?
 - (iv) Who owns the solar energy system at the end of the lease term and will it be removed or left on the property?
- b. Maintenance of the Solar Energy Project. The provider must disclose whether the monthly fee covers maintenance, the maintenance schedules, and contact information for ordinary maintenance and for emergencies, and whether the lease agreement covers damage to the consumer’s real or personal property.

- c. Condition of property at termination of lease. The provider must provide a good faith estimate of the anticipated value of any assets that remain with the property at the end of the lease agreement, including installation of replacement parts, removal, repair, or maintenance and cleaning after construction, installation, and removal.
- d. Sale or transfer of property. The provider must disclose whether the system can be transferred to a new property owner and whether there are fees or other charges associated with a sale or transfer. The terms governing lease obligations (including payment of fees) upon the death of the consumer must be provided.
- e. Termination of the lease agreement. The conditions upon which the lease agreement can be terminated must be disclosed, including notice, fees if any, and responsibility and costs for removal of the solar energy system, including warranties covering the condition of the property upon removal of the system.

2. Purchased Power Agreements based on Solar Energy Systems

In addition to ownership and lease models, some solar companies have offered purchased power agreements (PPA) where the consumers authorize the installation of a solar energy system on their property and then purchase all of their electricity supply from the company associated with the system. This model usually does not require any payment from the property owner, but the property owner provides the use of the property for the system.

Because the solar energy system is on the consumers' property, the disclosures and contract terms described for consumer owned systems should apply, with particular emphasis on the effect on the consumers' billing, maintenance and repair, insurance, and transfer rights. Additional disclosures include:

- (a) All charges paid to the provider other than the purchased power price;
- (b) The current supply charge paid by the consumer (before the PPA);
- (c) The supply charge under the PPA, how many months the charge will be in effect, and the conditions under which the charge can change;
- (d) Whether the consumer can cancel the agreement, e.g., if power prices are lower than the PPA price, and on what terms can the agreement be cancelled and the solar energy system removed.

3. Community Solar Projects.

While some SRECs may come from solar energy systems mounted on the rooftops of residential or commercial buildings, the IPA Act also provides for the solar energy systems that are built at a location other than the customer's premises. These systems are referred to as "community renewable generation projects" and are designed to allow utility customers who cannot install renewable energy on their own properties to subscribe to the project. The utility is to "provide a monetary credit to a subscriber's subsequent bill for service for the proportional output of a community renewable

generation project attributable to that subscriber as specified in Section 16-107.5 of the Public Utilities Act.”²⁷

Participants in community renewable generation projects should receive the same disclosures and contract terms as described above. However, they will require additional disclosures to address the unique characteristics of community renewable generation projects.

- f. Party responsible for determining credit allotment. Section 16-107.5 provides that the owner or operator of a community renewable generation project is responsible for determining the amount of credit each subscriber to the project receives.²⁸ As a result, a critical and unique disclosures and contract terms in community solar transactions are:
 - (i) what portion of the system output the each participant is entitled to claim on his or her electricity bills,
 - (ii) who is responsible for determining the credit and contact information, and
 - (iii) how much energy (kwh) the participant can expect to receive as a credit on an annual and monthly basis.
 - (iv) If there are changes to the credit size or allocation, the contract should contain clear notice provisions including when the change in credit amounts becomes effective and why the change occurred.

- g. Portability. In order for a community solar project to be eligible to sell SRECs, the owner-operator of the project and the seller of the SRECs (if not the same entity) must comply with the IPA Act, requiring that subscriptions to community solar energy system be portable. The statute defines "portable" to mean that subscriptions may be retained by the subscriber even if the subscriber relocates or changes its address within the same utility service territory.²⁹ Each contract for a community renewable generation project should include notice of this requirement and the definition, whether there are notice requirements associated with portability, whether there are minimum stay requirements, and whether there are fees upon relocation or change of address. Fees associated with portability must be reasonable with reference to the subscriber’s monthly savings.

- h. Transferability. In order for a community solar project to be eligible to sell SRECs, the owner-operator of the project and the seller of the SRECs (if not the same entity) must comply with the IPA Act, requiring that subscriptions to community solar energy system be transferable. The statute defines "transferable" to mean that a subscriber may assign or sell subscriptions to another person within the same utility service territory. Each contract for a community renewable generation project should include notice of this requirement and the definition, whether there are notice requirements associated with transfer, whether there are minimum stay requirements, and whether there are fees upon transfer of ownership. Fees associated with transferability must be reasonable with reference to the subscriber’s monthly savings.

²⁷ 20 ILCS 3855/1-75(c)(1)(N).

²⁸ See 220 ILCS 5/16-107.5(l)(3): “For the purposes of facilitating net metering, the owner or operator of the eligible renewable electrical generation facility or community renewable generation project shall be responsible for determining the amount of the credit that each customer or subscriber participating in a project under this subsection (l) is to receive in the following manner:...”

²⁹ *Id.*

- i. Right to transfer subscription to the project owner. Each community solar contract should include the right to transfer the subscription to the project owner upon no more than 60 days notice. This provision is important both to protect consumers from having to find a buyer for their community solar subscriptions upon a change in circumstances (e.g. moving out of the service area) and to require the community solar operator to remain responsible for the success of the project.
- j. Subscription Fees. Participants in a community solar project need to be informed of the terms of the subscription fee, including:
 - (v) Whether and what is the monthly fee;
 - (vi) Is the monthly fee subject to change, and if so, how much notice is given and does the subscriber have the option to cancel without penalty or fee;
 - (vii) Is the monthly fee waived, pro-rated or lowered if the solar energy system does not produce energy or produces a reduced amount of energy due to maintenance or other factors?
- k. Deposits and Fees. Is a deposit required, and if so, how is it calculated? On what terms is it returned or retained? If there are any fees other than the subscription fee, the fee must be explained, including the purpose, the amount, and whether it is mandatory. All fees are subject to review for reasonableness and cannot exceed \$50.00.
- l. Selection of Supplier. The amount of the credit received for excess energy provided to the grid is determined by whether the supply portion of the subscriber's electricity bill is provided by an ARES or at the utility default rate. The subscriber should be informed that depending on the selection, either the ARES or the utility will determine the size of the credit for the excess energy (kwh) provided to the grid. If the subscriber uses an ARES, the ARES will determine the amount of the charges for power and energy to be applied to the subscriber's bill.
- m. Utility bill information. The subscriber may authorize the utility to provide the operator of the community renewable generation project with the following information associated with the subscriber's service: the bill credit rate, total kilowatts used, total monetary credit value applied to the subscriber's bill. However, the subscriber should not be required to provide this authorization.³⁰
- n. System Operating Information. The subscriber should receive the following documentation:
 - (1) a warranty of the number of kilowatt hours to be produced over the life of a subscription and the compensation to be paid for any underperformance;
 - (2) an explanation of the future costs and benefits of subscription, including the number of kilowatt hours that will be allocated to the subscriber and the effect of the allocated kwh on the subscriber's electricity bill;
 - (3) the owner-operator's production projections and a description of the methodology the owner-operator used to develop those projections;
 - (4) proof of insurance;

³⁰ *Id.*

- (5) proof of a long-term maintenance plan;
- (6) proof of funds dedicated for project operation and maintenance expenses through the term of the contract;
- (7) opinion letters from an attorney and a tax professional on the legal and tax benefits of subscription;
- (8) a statement on data privacy and a consent form for subscribers to sign;
- (9) a statement clarifying that the community solar owner-operator is responsible for resolving disputes over the accuracy of production data and that the utility is responsible for resolving disputes about the applicable bill-credit rate;
- (10) contact information for the community solar owner-operator including a phone number and website or email address if available.³¹

III. Consumer Protection in the Illinois Solar for All Program

The General Assembly authorized the IPA to use funds from the Renewable Energy Resources Fund (RERF) to create the Illinois Solar for All Program in order to provide incentives to bring distributed generation and community solar projects to low-income populations.³² The objectives of the Illinois Solar for All Program are:

to bring photovoltaics to low-income communities in this State in a manner that maximizes the development of new photovoltaic generating facilities, to create a long-term, low-income solar marketplace throughout this State, to integrate, through interaction with stakeholders, with existing energy efficiency initiatives, and to minimize administrative costs.³³

The statute provides guidelines for contracting and direction on the administration of the program, intended to “ensure the wholesale market value of the energy is credited to participating low-income customers or organizations and to ensure tangible economic benefits flow directly to program participants, except in the case of low-income multi-family housing where the low-income customer does not directly pay for energy.”³⁴

Under the statute, priority is given to “projects that demonstrate meaningful involvement of low-income community members in designing the initial proposals.”³⁵ Acceptable proposals to implement projects must demonstrate the installer’s ability to:

- conduct initial community outreach, education, and recruitment of low-income participants in the community;
- include job training opportunities if available, and
- endeavor to coordinate with the solar job training programs described in paragraph (1) of subsection (a) of Section 16-108.12 of the PUA.³⁶

³¹ This list is based on the Minnesota PUC order reviewing Xcel Energy’s community solar tariff, available here: <https://www.edockets.state.mn.us/EFiling/edockets/searchDocuments.do?method=showPoup&documentId=%7B30B6A5B5-73CF-46E6-9E5D-B087352EA1AD%7D&documentTitle=20144-98041-01>

³² 20 ILCS 5/3855/1-56(b)(2).

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

The Illinois Solar for All program contains four service types:³⁷

1. Low-income distributed generation incentive. 22.5% of the program fund will provide incentives to low-income customers, either directly or through solar providers, for on-site distributed generation.
2. Low-Income Community Solar Project Initiative. 37.5% of the program fund will provide incentives to low-income customers, either directly or through developers, to increase the participation of low-income subscribers in community solar projects.
3. Incentives For Non-Profits And Public Facilities. 15% of the program fund is to be used to support on-site solar energy systems to serve the load associated with not-for-profit customers and public sector customers taking service at public buildings.
4. Low-Income Community Solar Pilot Projects. 25% of the program fund can be used by participants, including, but not limited to, electric utilities, for pilot community solar projects. Pilot projects must result in economic benefits for the members of the community in which the project will be located.

While the statutory program design is intended to make the benefits of distributed solar energy systems available to low-income consumers, it is critical that the consumer protections discussed above apply to all Solar for All contracts and transaction. In addition to requiring all of the aforementioned consumer protections described in the comments above, the following features should be included in the Solar for All program design.

1. Use of a Single, Non-Profit Administrator.

In order to ensure efficient management of each of the four Solar for All programs, the IPA should contract with a single, nonprofit entity to oversee each of the programs. This entity or administrator should be charged with vetting and enrolling all installers and contractors to assure quality installations and standard contracting practices. The approved installers and contractors would be subject to the same requirements listed for ABP and Community Solar registrants above, and be subject to oversight by the Solar for All administrator.

In addition to vetting installers and contractors, the administrator should be charged with coordinating, marketing, and outreach by working with trusted community partners, including not-for-profit organizations, houses of worship, and other local entities that have established and valued ties to the communities being served. Door-to-door marketing or mass mailings with claims that are not specific to the individual customer should not be allowed.

2. Use of U.S. Census Tract Data to Assist in Qualifying Participants.

The relevant statute defines eligible low-income participants as those whose annual incomes are at or below 80% of area median income (AMI).³⁸ This is the same income eligibility definition

³⁷ 20 ILCS 3855/1-56(b)(2).

³⁸ *Id.*

included in Section 8-103B of the PUA governing energy efficiency programs for low-income participants. The utilities and their implementers should identify, target, and qualify eligible single and multifamily low-income customers using U.S. Census tract data and/or other methodologies consistent with best practices. Individual participation in the on-site distributed generation program should be qualified through individual income verification.

Some portions of the Solar for All program refer to the ‘low-income community.’ That term should be broadly defined to include census tracts where the median household income is at or below 80% average median income (AMI), again utilizing U.S. Census tract data. The 80% AMI threshold is a well-established federal standard for U.S Housing and Urban Development subsidies in the affordable housing sector.

The administrator should offer specific compliance methods for multi-family buildings with affordable rents that are not in designated census tracts. Qualification details for multi-family buildings should be developed in consultation with the Community Investment Corporation and/or other knowledgeable members of the low-income energy efficiency advisory committee referenced in Section 8-103B of the PUA.³⁹

3. Incentives Should Cover 100% of Individual Consumer Participants’ Costs and Protect Low-Income Consumer Eligibility for Other Benefits Programs.

Low-income consumers’ participation in the Solar for All program should not threaten their ability to afford essential utility service or to qualify for other benefits programs. Recognizing the lack of significant discretionary income among qualifying low-income customers demands that incentives for individual low-income distributed generation and community solar participants be set at levels that require no contribution from qualified participants. However, incentive levels for qualifying multifamily building owners should require a contribution from the building owner, assuming flexible financing options are provided to meet the financing needs of the owner. The program should also require that the savings associated with participation in the Solar for All program be credited to the low-income residents of the qualified building in individually metered apartments. In master-metered buildings, the program should include a commitment that rents will reflect the savings achieved through the distributed generation investments.

Contract terms should ensure that participants are not assigned revenue for Solar for All RECs that hinders participants’ eligibility for other benefits programs. In other words, such SREC revenue should not count as income.

4. Utility Funded and Administered Job Training Programs

Ensuring meaningful and certain commitments from vendors that trainees participating in the Solar for All job training program will have employment opportunities is critical to the success of the program. It is the People’s understanding that the Department of Commerce and Economic Opportunity’s (“DCEO”) Office of Employment and Training (“OET”) offers comprehensive training services, including the provision of “wraparound” services, such as transportation subsidies for trainees, and job commitments from local businesses. The DCEO OET website⁴⁰ provides:

³⁹ 220 ILCS 5/8-103B.

⁴⁰ See <https://www.illinois.gov/dceo/AboutDCEO/Pages/EmploymentTraining.aspx> and <http://www.illinoisworknet.com/>

We provide oversight and administration for our statewide workforce system, which consists of 22 Local Workforce Innovation Areas throughout the state, in coordinating and promoting initiatives to bridge the skills gap. Illinois' workforce system provides comprehensive resources for employers and helps connect targeted populations - such as dislocated workers, veterans, low-skilled adults, immigrants, and out-of-school youth - to employment and training programs that lead to self-sustaining wages. We program, develop, and expand partnerships that engage businesses, other state agencies, educators, local governments, and economic development partners to ensure a coordinated cradle to career approach to education and workforce development, preparing Illinois residents for successful careers. Additional programs and services include Accelerated Training for Illinois Manufacturing (ATIM), the Trade Act Program, disabilityworks®, and Illinois workNet® Centers.

The Illinois Department of Commerce administers federally funded programs, including the Workforce Innovation and Opportunity Act (WIOA) that provides on-the-job training to hire and train employees, customized classroom training to help train and retain employees, and incumbent worker training to upgrade the skills of existing employees.

As the Solar for All job training program begins, ensuring that resources are used efficiently demands coordination with programs such as DCEO's OET network, trade allies and union shops, not only to ensure efficient utilization of resources but to ensure that low-income and other identified communities receive the benefit of the employment guarantees contained in the law. In addition, RFPs for vendors participating in all of the FEJA solar programs should include scoring that rewards vendors who commit to hire trainees from low-income communities.

Conclusion

Thank you for your consideration of these comments. We can be reached at the telephone numbers and email addresses listed below should you have any questions or wish to discuss our comments.

Sincerely,

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