

POST-WORKSHOP COMMENTS ON BEHALF OF THE JOINT SOLAR PARTIES

The Joint Solar Parties, comprised of the Solar Energy Industries Association, the Coalition for Community Solar Access, and the Illinois Solar Energy Association, appreciate the opportunity to provide comment on topics raised during the June 20, 2019 and June 26, 2019 IPA-led workshops. The Joint Solar Parties expect that a number of individual member companies will also elect to provide comments as well.

The Joint Solar Parties have six general categories of comments:

- **Procedural Proposals.** The Joint Solar Parties provide recommendations about the timing of LTRRPP litigation and a proposal related to limiting content to critical issues while preparing for likely legislation.
- **Waitlist.** The Joint Solar Parties recommend options and frameworks for taking projects off of the waitlist.
- **REC Model Update.** The Joint Solar Parties provide recommendations for updating the REC Model to complement the efforts of the IPA to update inputs.
- **REC Contract Improvements.** The Joint Solar Parties provide recommendations for moving forward with improvements to the REC Contract that would preserve many of the basic structures but reduce perception of risk and make relatively minor but important changes.
- **Consumer Protections.** The Joint Solar Parties provide a framework for thinking about consumer protections going forward.

RESPONSES TO IPA SPECIFIC POST-WORKSHOP QUESTIONS

A. June 20, Morning Session: Overview of the Renewable Portfolio Standard (“RPS”) and the Long-Term Renewable Resources Procurement Plan; RPS Budgets; Utility-Scale Procurements

1) Budget. The Joint Solar Parties believe the data on budget current obligations and future year spending estimates are reasonably accurate and should be used for planning.

2) Utility-held Alternative Compliance Payments. The Joint Solar Parties strongly believe that the IPA should utilize the utility-held ACP funds immediately. Specifically, the Joint Solar Parties recommend that the IPA seek a determination from the Commission that the utility-held ACP should be, for accounting purposes, considered the first dollars spent after the Commission order is final. This will prevent the funding from expiring when there is far more demand than funding to build new projects.

The Joint Solar Parties do wish to emphasize that this use of the utility-held ACP funds is a positive stopgap solution to the long waitlist for community solar, the rapidly approaching end of Block 4 in the large behind-the-meter category, and the accelerating update in the small behind-the-meter category—in all cases, across both utility service territories.

4) Meeting annual RPS percentage goals. The Joint Solar Parties appreciate that there are likely to be challenges meeting the RPS percentage goals in Section 1-75(c). However, the Joint Solar Parties strongly believe that the disconnect between RPS percentage goals and what is likely to be developed in the short- to medium-term is more of an indictment of the resources available for new renewable energy build than an invitation for the IPA to procure resources for the sole purpose of meeting percentage goals. The Joint Solar Parties believe that the General Assembly made clear their priority by prioritizing the new build REC procurement requirements over meeting the top-line renewable energy percentages. The Joint Solar Parties recommended in ICC Docket No. 17-0838 that the IPA not undertake any spot REC procurements, and—with a budget crunch, an extended waitlist for community solar, and rapidly filling blocks for behind-the-meter projects—the Joint Solar Parties believe the case is even more compelling today to focus exclusively on new build rather than the top-line percentages.

6) Contracts and credit/collateral requirements. The Joint Solar Parties believe the collateral requirements are too onerous. As an initial matter, the Joint Solar Parties believe that adjusting project-readiness criteria tailored to the specific system category will better ensure systems are built—a better outcome than drawing pre-Energization collateral. In addition, the Joint Solar Parties suggest that the IPA, utilities, and Approved Vendors meet to determine whether common ground is possible on expanding the options for letters of credit. The Joint Solar Parties expect individual developers to provide additional feedback.

B. June 20, Afternoon Session: Illinois Solar for All

5) Project application windows versus open enrollment. The Joint Solar Parties believe that Solar for All should be administered on an open enrollment basis, where projects may apply at any time. Moving toward open enrollment administration is an essential change to more fully engage in public education, encourage robust industry participation, and reduce frustration with potential customers. The application window is a challenge for Approved Vendors to manage ongoing project development—a cycle in which timing is critically important but sometimes challenging to manage because the developer (and customers) do not want the project to sit waiting but also do not want to miss the application windows. An open enrollment process is much more customer-friendly. Programs that have stop-start incentives have proved difficult to explain and offer to the public, often times resulting in market confusion and frustration. The Joint Solar Parties recommend an open enrollment style program, with a monitoring tool similar to the Adjustable Block program dashboard. With that approach, the industry can monitor available and remaining funds in Solar for All. While some sections may fill quicker than others (again similar to the Adjustable Block program), the similar process will encourage additional participation.

6) Job training requirements. The Joint Solar Parties agree that there is a concern in the expected increase in volume of trainees as years progress. As an initial matter, the Joint Solar Parties note that if there is a boom-bust cycle due to ongoing budget issues, it will be harder for the industry to provide stable employment on the construction and development side. Even setting that matter aside, looking at the supply of new job trainees, the Joint Solar Parties expect that most likely there will be leveling out, or sustainable workforce numbers after the initial ramp up of the industry over these first few years. The Joint Solar Parties recommend that the Solar for All program should develop long-term connections and relationships with job training organizations, and simply

increasing the percentage of trainees hired may not be the best mechanism for judging success. The Joint Solar Parties look forward to discussing ideas of how to ensure success to build a trained and strong workforce.

D. June 26, Afternoon Session: Community Solar, Consumer Protections

5) Disclosure Forms. The Joint Solar Parties strongly believe that the disclosure form should be simplified. Anecdotally, the Joint Solar Parties understand that the disclosure form has been challenging at times to customers and may in some cases create more confusion. The Joint Solar Parties recommend that the IPA work with stakeholders to simplify the disclosure form so that customers receive the necessary information to make an informed decision but are not confused by length or information overload.

JSP ADDITIONAL FEEDBACK

I. Procedural Proposal

The Joint Solar Parties appreciated the IPA acknowledging ongoing legislative discussions and the potential for those discussions to result in a bill passed not long after September 30, 2019 (the approximate date by the Joint Solar Parties' calculation that the IPA must file its energy procurement plan). The Joint Solar Parties also understand that the IPA wishes to have an updated LTRRPP filed with the Commission around the same time.

The Joint Solar Parties believe both of these interests can be simultaneously accommodated. If the IPA wishes to file the LTRRPP with the Commission for approval on or around September 30, the Joint Solar Parties recommend that the IPA immediately file a Motion to Stay (which the Joint Solar Parties intend to support) for at least 50 days with plans for a status hearing on or just before November 19. That will allow the General Assembly to complete its two scheduled weeks of Veto Session.¹ If the General Assembly takes no action, the parties can pick up the case schedule. If the General Assembly does take action, the stay can be extended or lifted based on the specific content of the bill.

The Joint Solar Parties believe that this approach would conserve administrative resources and allow stakeholders transparency into the IPA's recommendations in the updated LTRRPP. Also, to the extent that legislation does not pass, the stay can be lifted and litigation can continue immediately.

II. Waitlist

A. Issues with Current Waitlist

A random lottery is not a solution to selecting projects because it creates substantial problems. As background to the Joint Solar Parties' recommendations regarding the waitlist, the Joint Solar Parties wish to reiterate—as discussed in more detail in Section III below—that a random lottery is among the worst ways to select projects. Though the precise reasons differ by project type

¹ See, e.g., http://www.ilga.gov/senate/schedules/2019_Veto_Calendar.pdf.

(community solar, and behind the meter of all sizes), the lottery approach is challenging for all. REC Contracts remain a scarce resource (in the economics sense of the word “scarce,” i.e. limited) that is critical to most development. With a random lottery, community solar developers cannot compete in any meaningful way for the scarce REC Contract resource other than submitting as many projects as possible—a strategy that, ironically, exacerbates the negative impacts of the lottery by introducing more projects competing for the same number of REC Contracts—that meet the minimum qualifying criteria. With a lottery applying to behind-the-meter systems, the customer bears the primary risk because of the effort and expense of the customer to agree to move forward (signing a contract) is required without insight into whether the project will be selected or not.

The Joint Solar Parties raise this issue not to relitigate the lottery that has already taken place and led to awards of REC Contracts, but rather to contextualize the Joint Solar Parties’ concerns with using the waitlist as it is currently constituted. Position on the waitlist is the result of a random number generator, not the quality of the project or likelihood of successful long-term operation.

As an aside, it is not clear to the Joint Solar Parties that an Approved Vendor can assign a batch to another Approved Vendor during the time between Part I application and the latter of 30 business days after ICC approval of the batch and posting of REC Contract collateral. For reasons described throughout this document, many community solar developers are looking to cut losses and recoup some of the \$50,000-100,000 or more in developing most projects by selling waitlisted projects to other Approved Vendors. The Joint Solar Parties anticipate that at minimum over 10 kW behind-the-meter systems are likely to go to a waitlist; both the developer and the customer also have substantial up-front costs in that scenario as well. The Joint Solar Parties strongly believe that the way to ensure the best projects are developed—in addition to the recommendations below—is to allow the entities that value those projects the most to purchase and pursue further development of them. If there is a practical open-ended moratorium on transferring the project (at least at the Approved Vendor level), the IPA will only encourage more single-project Approved Vendors so sellers can simply sell the Approved Vendor along with the project in the longer term and inefficiently allocate projects in the shorter term.

B. Community Solar Alternative: Project Readiness Criteria

The Joint Solar Parties believe that, generally speaking, project readiness criteria are the fairest and most efficient way to meet the IPA’s goal of selecting projects for REC Contracts that will be developed and operated for the entire 15-year REC Contract term.

In many other markets, programs use a project’s Interconnection Agreement (ISA) date as an indicator of project readiness, specifically the date that the developer has reached all of the milestones for when the utility is obligated to offer an ISA for interconnection customer signature.² ISA date is not an arbitrary indicator. To receive an ISA for signature and execute the ISA, a developer has done a significant amount of due diligence to move that project along its

² The Joint Solar Parties recognize that ComEd in ICC Docket No. 18-1503 sought and secured permission to give all community solar facilities that were eligible for an ISA before a certain date a uniform ISA date. To be clear, the Joint Solar Parties are not asking for the IPA to use that uniform date but the date on which ComEd would have offered the ISA under Part 466 but for the waiver.

development path and feels confident enough to put a deposit down toward that project's interconnection cost. For ground-mount projects, that work typically includes all or a significant number of the following aspects:

- Desktop wetlands review,
- Floodplains and topography review
- Endangered species research
- A pre-application meeting with the local authority having jurisdiction regarding relevant permitting needs
- Historical and archeological sensitivity review
- Title review
- Initial site control steps
- Initial outreach to the site's neighbors and community
- Geographic Information System analysis
- Utility hosting capacity review and initial interconnection cost analysis (for instance, the studies that a utility must undertake for the different levels of interconnection)

For customer-sited community solar projects, the upfront work also includes negotiation with the customer on project economics.

While there are arguably numerous ways level-set and reestablish a REC Contract waitlist queue based on project readiness criteria, the Joint Solar Parties recommend:

1. Eliminating the rank order of the waitlist
2. Prioritizing future projects based on their original ISA date (or the date in which a project became eligible to receive and execute its ISA from the interconnecting utility)—the best proxy for original ISA date for ISAs with the uniform date pursuant to 18-1503 is the date of the Facilities Study; and
3. Requiring a material “waitlist collateral” deposit for projects that drop out of the interconnection queue and re-apply.

This combination of measures, taken together, would raise the bar for entry, incentivize developers to focus their energy and efforts on fewer, higher quality projects.

The Joint Solar Parties recognize that this is complicated by the current state of the interconnection queue, but the Joint Solar Parties support minimizing the chaos that would ensue if all projects without an award (and therefore, which are likely out of the interconnection queue), reentered the interconnection queue in a random order.

C. Behind the Meter Waitlist

- While there is currently not a waitlist for either size category of behind-the-meter projects, the Joint Solar Parties anticipate that at minimum over 10 kW behind the meter systems and likely both size categories will go to waitlist in the two-year period until the next plan revision. To the Joint Solar Parties' knowledge, the IPA has not definitively explained how projects will be selected for REC Contracts if additional capacity is

allocated to Block 4 or if a new Block 5 opens. At minimum, the Joint Solar Parties recommend that the IPA clearly explain how the waitlist will work for behind-the-meter systems. The sooner the IPA can provide this information, the more clarity developers will have in explaining to their customers the prospects of securing a REC Contract once Block 4 gets close to filling up.

D. Allocation of Capacity

The Joint Solar Parties represent a variety of developers, each with different target markets and preferred type of development. As a result, the Joint Solar Parties were unable to reach consensus on how additional capacity should be allocated but expect many individual members to provide recommendations.

Generally speaking, the Joint Solar Parties recommend that the IPA base its decision on factors beyond which RECs can be obtained for the lowest price. To focus solely on price would negatively impact the under 10 kW (AC) behind the meter and community solar categories. The IPA should take multiple factors into account, including developer interest, statutory minimum percentages, other policy goals, and price.

III. REC Model

The Joint Solar Parties look forward to seeing the IPA's updated REC Model and anticipates providing comments upon its release. The Joint Solar Parties understand that the IPA is already planning to take into account the economic impact of the ITC stepdown as well as import tariffs on certain types of modules. However, in advance of that release, the Joint Solar Parties wish to provide some more general commentary about refining the REC Model going forward.

As an initial matter, the Joint Solar Parties are three trade associations and thus are limited in their ability to communicate with member companies about business strategies. However, the Joint Solar Parties understand anecdotally that the REC Model for community solar likely does not fully and accurately reflect certain inputs—particularly in the ComEd service territory. The Joint Solar Parties also anecdotally understand there is a perception for the base REC value for later blocks for behind-the-meter systems (especially systems at the bottom of size ranges) may be decreasing faster than associated costs. At minimum, the Joint Solar Parties understand that developers do not expect to earn the return utilized in the REC Model on the base REC (i.e. adjusted for size but not small subscriber adder).

The Joint Solar Parties believe to the extent that RECs for community solar are underpriced, the primary driver is unrealistic interconnection costs. The IPA estimated that interconnection costs would be \$279,045 for a 2 MW (AC) facility (Input Assumptions, Cell H7) in the Final REC Model for Community Solar.³

A community solar facility that exactly meets the IPA's other estimated values but has a \$600,000 interconnection cost—the threshold to exercise termination under Section 4.3(b) of the REC

³ <https://www2.illinois.gov/sites/ipa/Documents/2018ProcurementPlan/AppendixE-2-aAdjustableBlockProgramCommunitySolarPricingModel.xls>

Contract, as modified by the Cover Sheet—would face an over \$320,000 shortfall compared to the REC Model’s anticipated net income. By only replacing \$279,045 with \$600,000 in the “Input Assumptions” tab in the Community Solar pricing model:

- The Ameren Base REC Price (Dashboard, Cell C7) rises from \$52.28 to \$63.35
- The ComEd Base REC Price (Dashboard, Cell D7) rises from \$47.88 to \$58.90

The Joint Solar Parties note that is approximately the same increase as each incremental increase for the small subscriber adder.

More generally speaking, the Joint Solar Parties wish to highlight the diversity of projects that are covered by the same REC Model. Although the model does distinguish between Group A and Group B, there is currently no distinction between:

- Projects where there are no zoning requirements and projects located in areas with extensive zoning requirements;
- Projects in largely rural areas and projects in urban or suburban areas (which impacts land availability, land costs, and likely interconnection costs)

The Joint Solar Parties understand that some stakeholders would like to see more projects in urban areas, particularly (but not exclusively) in Cook County. The Joint Solar Parties believe that one of the likely barriers to Cook County projects is that the REC pricing model does not account for:

- Higher land costs
- Anticipated higher interconnection costs
- Lessened economies of scale if land (or roof space) limits project sizing
- Other regulatory costs and hurdles

While the Joint Solar Parties did not oppose a REC Model that only took into account Group A/B and system size during the first LTRRPP process, subsequent experience has led the Joint Solar Parties to recommend changes. The Joint Solar Parties thus recommend that the IPA, in updating the REC Model, make modifications as follows:

- Set the initial base REC price at reasonable low-end costs—by reasonable low-end costs, the Joint Solar Parties means looking at actual project costs submitted after removing outliers.
- Set adders reflecting additional costs related to interconnection, land, and loss of economies of scale for appropriate geographies (for example, Cook County, or projects within the limits of a home-rule municipality).

The Joint Solar Parties also recommend keeping the small subscriber adder, although the Joint Solar Parties welcome discussions about whether the small subscriber adder should be modified prospectively for projects in batches that have not yet been approved by the ICC. To be clear, that discussion should be over a long enough horizon to gain actual experience acquiring, enrolling, serving, and dealing with churn from small subscribers. Each of those components provides

critical information about costs and risks of serving small subscribers that should be reflected in the adder.

The Joint Solar Parties also note that all systems—including behind-the-meter systems—face the same pressure from the ITC stepdown and price impacts of scarcity of panels due to tariffs and import restrictions (the effect goes beyond the tariff itself). A recent article cited⁴ Wood Mackenzie estimates that prices on panels are up 10% due to market scarcity and demand to construct projects before the ITC stepdown.

IV. REC Contract Improvements

The Joint Solar Parties greatly appreciate that the IPA is willing to revisit the REC Contract. By way of background, the REC Contract is itself one of the three primary revenue streams for a developer and substantially influences a second: tax equity investment. Because tax equity investors expect their tax equity investments to be very low risk, the perception of increased risk in the REC Contract will lead to worse commercial terms or tax equity investors refusing to participate.

The Joint Solar Parties recognize that any contract will allocate risk amongst parties and no REC Contract will ever fully insulate the Approved Vendor (or its tax equity investor) from risk. These intentionally allocated risks are part of every program; the risks are allocated to serve a specific program purpose such as reducing risk on other parties or stakeholders. However, the Joint Solar Parties believe it is in all stakeholders' interests to remove risk or the perception of risk based on overly complicated or ambiguous REC Contract structure. These risks are not intentional, and no stakeholder benefits from increased risk due to complication or ambiguity.

The Joint Solar Parties appreciate the effort that the IPA put in around the holidays in late 2018 and early 2019 and responsiveness to several industry concerns. However, the Joint Solar Parties' comments (and, upon review by the Joint Solar Parties, most other comments) left the form of the contract and many substantive issues either undisturbed or buried in comments addressing a range of issues. Without the pressure of program opening, the Joint Solar Parties recommend an informal process for Approved Vendors, developers, customers, and financing parties to participate.

The Joint Solar Parties recommend that the IPA consider at minimum the following topics during any informal processes:

- **Shortening and simplifying the REC Contract.** While the Joint Solar Parties understand the origin of the REC Contract and how it evolved from previous iterations to the Adjustable Block program, the Adjustable Block program is substantial and long-term enough to merit its own customized REC Contract. The Joint Solar Parties believe the Master REC Purchase and Sale Agreement is a good place to start for many potential terms, but a single contract (as opposed to a standard agreement modified by a cover sheet) tailored to the features of the Adjustable Block program will make it more understandable. The better financing parties understand the REC Contract, the easier it will be for them to perceive actual risk allocations rather than risk due to ambiguity or complexity.

⁴ <https://www.reuters.com/article/us-usa-solar-subsidy-focus-idUSKCN1UE0CO>.

- **Clarifying contract default vs. system default vs. penalties.** The Joint Solar Parties observed that during and after the REC Contract drafting process, there were frequent questions regarding what constituted a default of the entire REC Contract, what constituted default on the individual system level, and what could lead to a penalty but not a breach. These distinctions should be made clearer and more obvious in future iterations of the contract.
- **Clarifying Product Order-, Master Contract-, and Portfolio-level responsibilities.** Similar to contract default vs. system default vs. penalties, the obligations at the Product Order, master contract, and portfolio levels were topics of frequent questions. The IPA should consider better defining those responsibilities.
- **Termination for convenience by seller.** As has been pointed out, there is no explicit provision for termination for convenience by Seller (the Approved Vendor). While the Joint Solar Parties understand that any termination for convenience provision would likely be paired with a clawback, Seller should be able to terminate at the Product Order or REC Contract level for convenience.
- **Measurement of subscription levels.** The IPA was responsive to some of the issues raised by the Joint Solar Parties during the drafting of the REC Contract. Now, the Joint Solar Parties recommend that the IPA evaluate how subscription levels and small subscriber levels are calculated.
- **Collateral Holdback.** During the last LTRRPP process, the Joint Solar Parties recommended and the IPA did not object to using a holdback of REC Contract payments to satisfy collateral obligations. However, the IPA during the course of contract development shifted the holdback from the first payment to the final payment (for systems with more than one REC Contract payment). The Joint Solar Parties objected to this change during the comment process on the REC Contract. The Joint Solar Parties recommend that the IPA move the collateral holdback back to the final payment rather than the initial payment.

In addition, the Joint Solar Parties recommend the IPA consider making changes including the following to the Adjustable Block program application process:

- Projects should be allowed to make change in the system from Part I to Part II applications that increase capacity factor or total RECs to be generated (although perhaps bounding the potential increase);
- Projects should be able to request custom degradation factors;
- The application portal should allow for CSV upload or other automated processes, particularly for under 10 kW behind-the-meter projects;
- The IPA, the Program Administrator, the utilities, and other stakeholders (including the Commission) should meet to figure out ways to streamline the process from REC Contract award to the Approved Vendor actually receiving the contract or product order.

V. Consumer Protections

The Joint Solar Parties recommend that instead of seeking Commission approval of existing marketing rules, the IPA should work with stakeholders on a review of how the marketing rules have been working so far. To the extent that marketing rules are negatively impacting the customer

experience—disclosure forms are a particular issue, from the contents to the mechanics—the IPA should work with stakeholders to readjust marketing guidelines to enhance the customer experience.