

To: Illinois Power Agency

Re: Eligibility Criteria for Equity Eligible Contractors and the Equity Eligible Contractor Category

From: Windfree Wind and Solar Energy Design Company

Windfree Wind and Solar Energy Design Company is a Chicago based Equity Eligible Contractor and Certified Minority Business Enterprise focused on solar and energy storage installations in the State of Illinois. We have been an installer of small-scale solar projects in the greater Chicago area since 2009 and have participated as a model small scale developer and installer in the IL Solar for All (ILSFA) Program and have been an approved vendor in ILABP since 2018. Over the last 14+ years we have worked to grow our business organically and cautiously due to the complexity of installing solar and difficulty in accessing capital as a small business without going into serious debt. To date, Windfree Solar is currently employing 18% of its internal workforce from Illinois funded training programs. These EEPs work in every aspect and department of our small solar company.

When CEJA passed in Fall 2021 and program rules were set, we were initially concerned that we would not be able to participate in the community solar opportunities provided to EECs by the legislation because of the barriers to learning how to effectively develop and fund community solar projects and the required upfront capital. The accelerated payments offered under the EEC block don't help us enough in avoiding going into debt to develop projects because those accelerated payments are not provided until after development costs are incurred, which can often rise to millions of dollars including interconnection deposits, (they also haven't been actually available to date). Also, the accelerated payments do not help us learn best practices for developing community solar or cover the full cost of constructing a project. If we attempted to develop community solar projects without the flexibility of JV partnerships and support, we would have had to take on expensive debt or sold equity in our company to fund those efforts; due to the IPA requirement of minimum 51% ownership by EEPs, we also have limited ability to sell equity in the company to raise funds. Also, we likely would have made some mistakes as we learned more about community solar development which would prevent us from securing a REC contract with accelerated payments to cover our costs, leaving us at risk of losing our company or going bankrupt trying to repay our debt.

However, we were excited when we identified ways to partner with experienced developers to help us access the opportunities offered to EECs by CEJA and access sources of investment for our business which has never been attainable before CEJA, thanks the ability to form partnerships. We now own several projects which we have submitted into the EEC block. On many of the projects we own, we have retained the services of an experienced large-scale developer to assist us as we move the projects through development, construction, and financing. By working with these established developers and leveraging their experience and financial strength, we will be able to scale our business, hire and train a larger local workforce, and learn community solar industry best-practices without putting our company at risk of severe financial loss or bankruptcy.

Our below comments to the questions posed by the IPA are targeted toward program rules which would continue to ensure that Windfree and other small business EECs in Illinois like us continue to have the opportunities to access the benefits of CEJA without having to put our companies at risk.

Responses to questions:

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

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

Yes, an Equity Eligible Person should be able to serve as a qualifying EEP for more than one EEC. However, as proposed in the revised long-term plan, each EEP should be subject to the developer cap such that any EEC which is owned partially or wholly by the same EEP is considered an affiliate and so subject to a cap on awards. The developer cap considers whether EECs share common ownership by the same EEP, so the developer cap already limits concentration of project awards amongst a few beneficiaries. Limiting the flexibility for EEPs to form multiple small-scale partnerships or EEC qualified entities for financing purposes would eliminate opportunities for EEPs without improving the outcomes of the program. In particular, we are concerned that not allowing an EEP to serve as the qualifying person for more than one EEC will prevent us from forming a joint venture that is necessary for tax equity financing of EEC projects.

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

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

While we are not intending to be passive investors in our projects, we need to be able to partner with established solar companies and their financial backing under flexible arrangements to both learn from them and finance our projects. As discussed in the introduction to our responses, if we were unable to form partnerships with established companies, we would be unable to source the millions of dollars required to develop and construct projects. Without these partnerships which provide capital and training to EECs, the EEC block would not be successful. EECs would either be unable to participate or potentially face bankruptcy if they invested large sums of their own money into projects but were ultimately unsuccessful in developing projects which could secure a REC contract.

- b. For companies where the minority share is owned by another company, not a natural person, should the agency require that the applicant must demonstrate one (or more) of the following:
 - i. There is a contractual agreement guaranteeing the eventual increase in ownership share of the Equity Eligible Person.
 - ii. The company is located in an equity investment eligible community.
 - iii. The company is also a small and emerging business.

- iv. The company employs local residents.
 - v. The company employs dislocated energy workers.
 - vi. The company employs an elevated percentage of EEPs above the minimum equity standard.
- c. If the Agency does require one or more of the above additional showings for companies seeking EEC-certification, should it do so only where the minority owner is a large company or where EEP owns less than a certain percentage of the company?

All of these proposed changes for qualification would create unnecessary barriers to EEC participation in the program by preventing partnerships which are needed to finance projects which cost millions of dollars to develop and construct. We are not passive in our projects, but we may need to form a joint venture with a large developer or financier to fund development and construction of community solar projects. If any of the proposed standards (i)-(vi) are implemented, it would prevent bringing in minority partners on our projects that are required to finance community-scale solar projects and eliminate our ability to successfully implement projects. There are no tax equity or sponsor equity providers in the solar industry which could meet any of these proposed qualifications, so if such an entity is required to be brought in as a minority partner for financing purposes, all EECs may be unintentionally precluded from obtaining financing for their projects.

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

- a. Name of companies certified as EECs?
- b. Ownership structure and shares?
- c. Basis upon which the majority-owner(s) qualified as EEP?

There is no reason this information should be shared publicly. As long as an EEC is qualified and approved by the IPA, that should be sufficient, and we do not see the benefits of public disclosure of the basis of the qualification.

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

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

All of these are sensitive documents which typically are kept highly confidential. We would suggest either that the IPA maintain the current system of attestation or allow for submission of highly redacted articles of incorporation.

5. Are there variations on the above that strike a better balance? For example, the Agency could implement a prioritization system within the Equity Eligible Contractor category based on the above factors, providing bonus points for EECs that meet one or more of those criteria and selecting projects based on points received. Alternatively, the Agency could reserve a portion of that capacity for entities

that meet some of the above factors – what might be a reasonable reserve portion to ensure state incentives benefit the intended actors?

While we are open to changes to the EEC rules which enhance the benefits of the program for EECs, we want to reiterate that such rules must be viewed through the reality that partnerships with large developers or financing parties are essential for the success of the program and to allow EECs and EEPs to benefit from the program. As proposed above, applying the developer cap to EECs and EEPs in future years should address many of the concerns here. This would also still allow for the necessary partnerships for EECs to access the benefits of the program, grow their businesses, and hire and train a larger local solar workforce without risking bankruptcy.