



ENVIRONMENTAL LAW & POLICY CENTER

Protecting the Midwest's Environment and Natural Heritage

TO: Program Administrator - Adjustable Block Program and the Illinois Power Agency

FROM: Brad Klein, Senior Attorney, Environmental Law & Policy Center (ELPC);
MeLena Hessel, Policy Advocate, ELPC;
Will Kenworthy, Regulatory Director, Vote Solar

SUBJECT: Comments on Draft Procedure for Block 1 Lottery

The Environmental Law and Policy Center (ELPC) and Vote Solar appreciate the opportunity to provide comments to the Illinois Power Agency (IPA) and the Adjustable Block Program (APB) Administrator in response to the release of its draft procedure for the Block 1 lottery (procedure). ELPC has spent years advocating for the expansion of clean energy in Illinois, specifically to ensure the success of Illinois' Renewable Portfolio Standard. ELPC was a party in the proceeding to approve the Long-Term Renewable Resources Procurement Plan (Plan) and has engaged in extensive outreach, both with the renewables industry and environmental advocates. ELPC is also an active participant in the Illinois Solar for All Working Group. ELPC draws on this experience to inform our comments on the draft procedure. Vote Solar is a non-profit, non-partisan, grassroots organization working to fight climate change and foster economic opportunity by bringing solar energy and other distributed energy resources ("DER") into the mainstream.

ELPC and Vote Solar understand the difficulty of this task, and we appreciate the IPA's effort to initiate stakeholder discussion around a potential solution. However, for the reasons discussed in more detail below, we are unable to support the IPA's initial draft proposal released for public comment on September 10th. The current lottery proposal is well-intentioned, but necessarily incomplete because it does not adequately integrate the ABP with the electric utilities' interconnection procedures for ABP participants. The problems with community solar oversubscription and the utility interconnection process are inextricably connected and they cannot be solved in isolation. Without both sides of the equation – interconnection and the lottery – at the table, and the ability for back and forth, it is not possible to develop a well-vetted proposal for running the lottery. Illinois needs a process that brings together all ideas to reform the ABP and the utility interconnection process together. **Therefore, rather than move forward with this lottery proposal in isolation, ELPC and Vote Solar recommend an immediate stakeholder process that allows the IPA, the ICC, the electric utilities, the solar industry,**

35 East Wacker Drive, Suite 1600 • Chicago, Illinois 60601

(312) 673-6500 • www.ELPC.org

Harry Drucker, Chairperson • Howard A. Learner, Executive Director

Chicago, IL • Columbus, OH • Des Moines, IA • Duluth, MN • Grand Rapids, MI • Jamestown, ND
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and clean energy/community advocates to identify a more comprehensive near-term solution to the lottery for the allocation of the initial blocks and the interconnection process, together.¹

Statutory Background and Purpose:

The legislature created the Adjustable Block Program with very clear intentions:

The Adjustable Block program shall be designed to provide a transparent schedule of prices and quantities to enable the photovoltaic market to scale up and for renewable energy credit prices to adjust at a predictable rate over time. (20 ILCS 3855/1-75(c)(1)(K)).

The idea was for a solar renewable energy credit (SREC) purchase program that was always open and available, with transparent pricing, whenever a distributed solar project was ready to be built. SREC prices would change over time as the solar market gradually grew, but those changes would be predictable and transparent. This would create a stable environment for the development of a distributed solar market in Illinois, over time.

This draft procedure for a lottery is necessitated because, rather than gradual development of a market, Illinois is facing a tidal wave of immediate, strong interest in its community solar program. In many ways, this interest is positive. It indicates that there is strong potential for community solar to dramatically increase access to the benefits of solar energy across the state. However, this tidal wave also threatens the clear legislative intent of the Adjustable Block Program to promote gradual market development through an always-open program. Furthermore, if mishandled, there is risk that this tidal wave could pre-determine community solar projects that will be developed in Illinois over many years or even the life of the Adjustable Block Program. This would severely limit opportunities for improvements to the community solar program from lessons learned, including addressing barriers to entry, ensuring a diverse and robust portfolio of projects, and improvements around important, contested issues from the approval of the initial Plan, including small-subscriber participation.

Therefore the goal of any lottery procedure must be, not only to allocate a limited quantity of community solar megawatts in the early blocks of the program fairly, but to establish a pathway back to an ABP that will actually lead to the gradual development and stable market conditions envisioned by the legislature and a community solar program that has the ability to make changes, if necessary, to maximize the benefits of solar access across the state and for the people of Illinois. ELPC and Vote Solar's comments will therefore focus on what the lottery procedure should prioritize in order to move the community solar program away from the current logjam and back on track for successful outcomes, in line with clearly stated legislative intent.

¹ To be clear, ELPC and Vote Solar do not recommend that the IPA cede jurisdiction over the ABP program design to the ICC or any other party—the approved Plan clearly gives the IPA discretion to create the terms and conditions of the lottery independently without further ICC approval. ELPC and Vote Solar are simply suggesting that the IPA cannot reasonably exercise its jurisdiction over the ABP program *without* having a clear understanding of the utilities' and the ICC's parallel exercise of jurisdiction over the Part 466 interconnection process. Both processes must move together, in concert, to arrive at an optimal solution.

The law also directs the Agency to design the ABP to ensure that community solar projects are developed “in diverse locations and are not concentrated in a few geographic areas.” 20 ILCS 3855/1-75(c)(1)(K)). The IPA should keep this requirement in mind when designing the lottery and should be mindful of policy decisions that could foreclose future development opportunities for projects in diverse locations around the state. For example, it is ELPC and Vote Solar’s understanding from publicly-available ComEd interconnection data that many developers intend to develop community solar projects in the “far collar counties” in ComEd’s service territory but few community solar projects, so far, have been proposed in Cook County. The Agency should avoid designing a lottery that “locks-in” this development pattern and forecloses opportunity for future community solar development in Cook County or in other less-developed areas of the state. In other words, the lottery design should preserve, and not reduce, the Agency’s ability to remain flexible and make future changes to the ABP to achieve all of the Agency’s statutory requirements.

Furthermore it is imperative that the IPA and its Administrator plan for the future of the adjustable block program after this first tranche of capacity has been allocated by the lottery. That future must balance the IPA’s planning needs with the legislature’s directive for the ABP to feature the “automatic opening of the next step [in the ABP] as soon as the nameplate capacity and available purchase prices for an open step are fully committed or reserved.” (20 ILCS 3855/1-75(c)(1)(K)). But it is clear that whatever that future looks like, it should not be the same as the present: the IPA and its Administrator *must* find a path forward that eliminates the conditions that have driven the current mismatch between supply of and demand for community solar RECs. Additionally this work to define the future of the community solar program in particular should consider whether it is delivering on the solar access benefits expected (including but not limited to small-subscriber and community-based participation) and, if not, propose changes to achieve those benefits. **To that end, ELPC and Vote Solar urge the IPA and its Administrator to begin working through these long-term issues before the program opens in order to solidify the future of the Adjustable Block Program. Similarly, as mentioned above, the IPA and its Administrator should not approve a lottery procedure that “locks-in” development rights indefinitely and reduces the Agency’s flexibility to make future program changes to ensure the long-term success of the program.**

Lottery Priorities and Recommendations

Below is a list of the priorities the IPA and its Administrator should weigh against individual elements of the final lottery procedure in order to move the community solar program away from the current logjam and back on track for successful outcomes, in line with clearly stated legislative intent.

- 1) **Harmonization with interconnection process.** The lottery and the interconnection process cannot work well in isolation of one another, therefore the IPA and its Administrator *must* play an active role, alongside the Commission and both utilities, in designing how the interconnection process for community solar projects interplays with the ABP and advocate for an outcome that will facilitate successful program outcomes.

- 2) **Avoid incenting speculative project entry.** Current conditions have created undesirable incentives for project developers. Either they must race to include as many potential projects in the ABP lottery as possible, or they reasonably fear they may be locked out of the community solar market altogether in Illinois. This was clearly not the intent of the IPA or any stakeholders when designing the long-term Plan. In fact, stakeholders repeatedly expressed the importance of sufficient milestones and barriers to entry in the IPA workshops leading to the development of the Plan. Unfortunately, despite this intent, the current interconnection and lottery uncertainty have led participants to prepare to enter more projects in the lottery than they plan to build, knowing that only a subset will “win” spots through the lottery. While this incentive cannot be undone, the lottery procedure can enhance or dampen this incentive. The IPA and its Administrator should take every precaution to dampen the incentives for entering more projects than a developer plans to build and, in particular, avoid speculative project entry.

- 3) **Work through the surfeit of community solar projects as quickly and painlessly as possible.** Getting back to an always-open ABP program means eliminating the backlog as quickly as possible. This will involve both awarding projects SREC contracts as well as providing clarity where projects are not eligible or will not pencil, ultimately enabling community solar developers to cut their losses rather than hold onto future positions in the program or in the interconnection queue. As part of working through the backlog as quickly as possible, the IPA and its Administrator should avoid any delays to opening the program or keeping it open. The IPA should also work closely to help shape any future utility proposals at the ICC to help cull the interconnection queue of projects that are delayed or unlikely to move forward.

ELPC and Vote Solar are focusing on principles and priorities rather than specific recommendations because the lack of certainty regarding the utility interconnection process makes it difficult if not impossible to have confidence in any specific procedural recommendation to modify the IPA’s lottery proposal in isolation. As the IPA is certainly aware from its discussion with solar developers, there is a great deal of uncertainty related to the interconnection process that has created a “chicken-and-egg” problem for project developers. Project developers do not know which of their projects will ultimately be viable because they currently lack two necessary pieces of information: (1) whether they will secure a slot in the ABP program (and at what level of SREC compensation), and (2) what their likely interconnection costs will be. Both of these sources of uncertainty are linked to each other in a negative feedback loop. The lottery encourages developers to maximize their chances of “winning” by submitting more projects than they ultimately intend to develop, which increases the utility interconnection backlog, which leads to increased uncertainty about interconnection costs, which further reduces the ability of developers to identify and “weed out” projects that are unlikely to proceed, which leads to more speculative projects in the lottery, and so on.

ComEd has recently filed a petition with the ICC seeking a temporary waiver of certain portions of the Part 466 interconnection process in order to address its interaction with “the upcoming lottery selection process” for the ABP. ICC Docket 18-1503, ComEd Verified Petition for Waiver of Rules (Sept. 12, 2018). As explained by ComEd in its petition, “whether a project is selected for program participation through the lottery will have a significant impact on many

projects' economics and on the ultimate decision by many projects' developers as to whether to proceed with actual interconnection and operation." ComEd Petition at 5. This, in turn, will "have a significant impact on the required upgrades and interconnection costs of projects farther down in the queues and thus can affect their economics and viability." *Id.* As ComEd points out "the interaction of queue and lottery processes may upset the goals of both." ELPC and Vote Solar agree. ComEd's recent filing highlights the interconnected nature of both the ABP lottery and the utility interconnection process. Proposals to implement or modify either one of these important aspects of the community solar program *must be considered together* in a process that includes all stakeholders, including representatives of the ICC, the utilities, the solar industry, and clean energy advocates. Otherwise, well-intentioned proposals to modify either the lottery process or the interconnection process in isolation could result in a continuous negative feedback loop that requires continuous intervention and less than optimal outcomes.

Program Elements:

As described above, ELPC and Vote Solar's preference would be for the IPA and its Program Administrator to go back to the drawing board and propose a new lottery procedure following stakeholder discussions that considers the above-stated priorities and better accounts for the utility interconnection process. However, should the IPA desire to move ahead with the current proposal, ELPC and Vote Solar offer the following comments on three procedural elements in the IPA's current proposal:

- 1) **Project substitution.** As drafted, the proposed lottery procedure allows Approved Vendors to reallocate projects from losing lottery positions to winning lottery positions, in other words to substitute projects. [Page 4, paragraph 1-2] ELPC and Vote Solar understand and agree with the *intent* of this proposal. It is not efficient to require project developers to proceed with projects that have high interconnection costs when they have other projects in a higher queue position (and therefore lower interconnection costs) that were not selected in the lottery. However, ELPC and Vote Solar are concerned that the project substitution proposal will actually increase the developers' incentives to maximize the number of projects (or "lottery tickets") that they enter into the lottery, and therefore the proposal will exacerbate the ABP oversubscription problem that the lottery is intended to address. In other words, the project substitution proposal treats a *symptom* of the problem, but it does not cure the disease. In fact, it may just kick the can down the road and make the disease even more difficult to cure in the long run. Therefore, ELPC and Vote Solar cannot support this project substitution proposal in the absence of a more robust conversation about how the lottery will interact with the utility interconnection process.

ELPC and Vote Solar support a process that facilitates developers bringing only their best projects forward. The IPA should avoid a process that encourages market actors to race to enter the maximum number of projects in the lottery that are unlikely to be economically viable. Furthermore, the IPA should be mindful to avoid creating a process that provides a competitive advantage to large, well-capitalized developers with many, interchangeable projects over, not only smaller developers, but community-driven

projects that are tied to particular sites in particular neighborhoods – an issue exacerbated if there is speculation.

ELPC and Vote Solar understand the original intent of the IPA’s ABP application procedure to require relatively high barriers to entry to avoid speculative projects. This is one of the reasons that the IPA decided to require a completed Interconnection Agreement (IA) as a prerequisite for the ABP program. It is important to note that, in this respect, the Part 466 interconnection procedures do not require project developers to put money at risk (in the form of a deposit on distribution facilities upgrade costs identified in their IA) until “20 business days prior to the commencement of the design, procurements, installation, or construction of the EDC’s interconnection facilities and distribution upgrades” identified in a Level 4 Interconnection Facilities Study. 83 Ill. Adm. Code Section 466 Appendix D (Levels 1 to 4 Contract), Article 5.2 (“Interconnection Customer Deposit”). For many (or most) lottery participants, these deposits will not be required until well *after* the lottery occurs. While the application fee and required interconnection studies do require outlays of several thousand dollars per site, this has proven to be insufficient to discourage speculative or non-viable projects.

Both in light of IAs failing to provide sufficient barriers to entry *and* based on conversations with market participants, ELPC and Vote Solar believe that the substitution provision will worsen problems related to speculative project entry. The IPA and its Administrator should not allow project substitution if they cannot include a mechanism to eliminate the incentive for non-viable project entry. This will likely require further conversations with stakeholders that account for the interaction of the lottery and the utility interconnection process.

- 2) **Remaining 25%.** The IPA’s Plan does not allocate all of the capacity eligible for Block 3 to any of the existent Block Categories (small distributed, large distributed or community solar), rather holding that capacity back to allocate at the Agency’s discretion. In the lottery proposal, the Agency explains that it will not allocate this capacity “until it has evaluated the results of initial program launch to assess the available remaining Renewable Resources Budget ... demand in the various Groups/categories, any unexpected barriers to participation, or other factors related to creating a robust and diverse portfolio of projects.” ELPC and Vote Solar support the IPA’s intent to take stock of the direction the program is headed before it allocates more capacity to community solar (or any) ABP block. Even more importantly, ELPC and Vote Solar believe the IPA must take steps to fix current problems driving oversubscription and, given this oversubscription, any barriers to entry before releasing more capacity.

However it is equally important to give the community solar program a clear runway for the future. The legislature intended the program to be always-open and available to projects that are ready to go forward. The IPA should avoid creating unnecessary uncertainty about the future of the ABP that could lead to a market bust rather than gradual market development.

Therefore, the IPA needs to engage with its Administrator and program stakeholders in the near-term, before the ABP opens, to forge the path forward for the community solar program. This path will need to address the problems that led to oversubscription in the first place, such as whether REC prices are too high, the requirements for entry into the community solar program too low, and likely a number of other issues. It also must ensure no classes of projects or customers are unable to participate in the program or are locked-out of future opportunities.

If this work is done ahead of time and the path forward for community solar is known (even if exact capacity is not), (1) that path can be publicized to provide market certainty and (2) the IPA will be able to move quickly to release more capacity into the community solar program. Ideally, taking stock of budgets and programs could be a straightforward analytical exercise that can be completed in a short time to allow the program to remain open, in line with the legislature's very clear intent.

- 3) **Rank-ordered waiting list.** The perverse incentive for developers to maximize lottery entrants is exacerbated by the IPA's proposal to allow unsuccessful projects to hold a place in line indefinitely following the lottery. [Page 3, paragraph 6]² ELPC and Vote Solar appreciate that a rank-ordered waiting list provides greater market certainty around the community solar program. However, ELPC and Vote Solar see two problems with this proposal element.

First, developers are placed in a lose-lose situation. Either they must file more interconnection applications than they intend to actually develop *or* they risk being locked out of the ABP because other developers have already reserved all of the spots in line for the indefinite future. This will further incent the inclusion of speculative projects, exacerbating the backlog of community solar projects in the queue. It will also reinforce the perception (which ELPC and Vote Solar have also heard expressed from stakeholders) that it is "not worth it" to pursue community solar in Illinois unless you're already in the queue because the program is already hopelessly oversubscribed and full. That is not the message that the legislature intended this program to send to the market.

Secondly, in the event there are unexpected barriers to participation in the community solar program or other unanticipated challenges to creating a robust and diverse portfolio of projects, this approach would severely limit the IPA's ability to change the program to better serve the legislative goals. This is a particular concern when it comes to ensuring space for both small-subscriber participation and slower-moving, community-driven projects.

ELPC and Vote Solar believe the IPA should not move forward with using the lottery to assign capacity outside of the initial block if it cannot address these two problems – eliminating perverse incentives and allowing future program flexibility to ensure the program leaves no classes of projects or customers behind.

² "Projects that remain not selected following the Block 3 allocation will be placed in a rank-ordered waiting list (based upon their numbers from the Block 1 lottery). If and when additional capacity for that Group/category is made available by the Agency, those projects will be given 10 business days to accept or decline their selection."

Conclusion

There is a strong logic to all of the proposal elements that ELPC and Vote Solar are criticizing. They are all trying to solve real problems with the current set-up of the community solar program, and in some cases, created by the lottery itself. However the challenge with these elements is that, in the interest of solving current problems, these elements are likely creating new problems that may be even more difficult to resolve in the future.

In fact this is really the meta-challenge facing the community solar program in the first place. The set-up of the community solar program un-intentionally resulted in oversubscription. Rather than rework the program to avoid oversubscription, the IPA (and other program stakeholders!) chose to deal with the oversubscription with a lottery. The lottery began incenting further oversubscription, which put further pressure on the interconnection processes. Workarounds to breakdowns in the interconnection process drive even more oversubscription and less certainty about which projects will ultimately move forward, creating more problems for the lottery.

This pattern must end. The lottery procedure and indeed the broader community solar program must find a path forward that works for the whole system of community solar development, both the lottery side of it and the interconnection side of it, both the first few blocks of the program and into the future. **Therefore, rather than move forward with this lottery proposal as is, ELPC and Vote Solar recommend:**

- (1) An immediate stakeholder process that allows the IPA, the ICC, the electric utilities, the solar industry, and clean energy/community advocates to identify a more comprehensive near-term solution to the lottery for the allocation of the initial blocks and the interconnection process, together.**
- (2) The IPA and its Administrator to begin work before the program opens to solidify the future of the Adjustable Block Program. This will involve correcting the problems that led to oversubscription in the first place, proactively addressing barriers to entry and the creation of a robust and diverse set of projects, and enabling the swift release of more capacity where the initial blocks are exhausted.**