

TO: Adjustable Block Program Administrator and the Illinois Power Agency

**FROM: MeLena Hessel, Policy Advocate, ELPC
Will Kenworthy, Regulatory Director, Vote Solar
Brad Klein, Senior Attorney, ELPC**

SUBJECT: Reply Comments on Draft Procedure for Block 1 Lottery

The Environmental Law and Policy Center (ELPC) and Vote Solar appreciate the opportunity to provide Reply Comments to the Illinois Power Agency (IPA or Agency) and its Adjustable Block Program (ABP) Administrator regarding its lottery proposal.

As stated in ELPC and Vote Solar's initial comments, to ensure the success of the various RPS programs, **any lottery procedure must establish a pathway back to a functioning ABP**, not only allocate a limited quantity of community solar megawatts in the early blocks of the program fairly. This means an ABP that will actually result in the gradual development and stable market conditions envisioned by the legislature and a community solar program that has the ability to be improved, if necessary, to maximize the benefits of solar access across the state¹ and for the people of Illinois. To that end, ELPC and Vote Solar continue to urge the IPA and the ABP Administrator:

- (1) Plan for the future of the adjustable block program after this first tranche of capacity has been allocated by the lottery, and
- (2) Avoid a lottery procedure that locks-in development rights indefinitely and reduces the Agency's flexibility to make future changes to ensure long-term program success.

As a general matter, ELPC and Vote Solar also think it is bad policy to adopt lottery procedure elements that materially alter the terms of participation in the program as defined in the *Long-Term Renewable Resources Plan* (the Plan) approved by the Illinois Commerce Commission (ICC) on February 26, 2018. ELPC and Vote Solar worry that some proposed lottery elements do just that. For example, a deadline in the past for developer caps are not contemplated in the Plan. The IPA should attempt to minimize the negative consequences of the lottery where possible, but in doing so should endeavor to stay within the rules and conditions of participation established in the approved Plan.

ELPC's and Vote Solar's initial comments focused on the priorities the IPA and the ABP Administrator should weigh against any final lottery procedure. These were (1) harmonization with the interconnection process, (2) avoiding incenting speculative project entry, and (3) working through the surfeit of community solar projects as quickly and painlessly as possible. ELPC and Vote Solar recommended a stakeholder process that pulled in the utilities and the ICC to develop a lottery proposal that kept these priorities in mind *in coordination with* utilities'

¹ Consistent with 20 ILCS 3855/1-75(c)(1)(K) calling for photovoltaic projects "in diverse locations and are not concentrated in a few geographic areas."

interconnection processes. The IPA's intervention in the pending ComEd requests for waivers to their interconnection process in front of the ICC ensures there will be a venue for this conversation in ComEd territory. ELPC and Vote Solar recommend that the IPA and its ABP Administrator be cautious in making final decisions on the lottery procedure before this ICC process is completed. As the IPA is party to the ICC interconnection dockets, the IPA and other parties should seek to negotiate a comprehensive solution that involves lottery reform and interconnection reform together. Locking in a lottery procedure element that hamstring the interconnection options available to the ICC, or vice versa, could simply repeat the negative lottery/interconnection interplay that has contributed to the current situation.

Keeping this need for ongoing coordination with the utilities when it comes to interconnection in mind, ELPC and Vote Solar make the following recommendations regarding the specific proposals on which the IPA and its Administrator seek feedback:

The IPA should eliminate project substitution/reallocation.

In our initial comments, ELPC and Vote Solar indicated our belief that project substitution exacerbates the incentive for project developers to propose speculative projects because every "lottery ticket" increases the odds of winning a slot that can be subsequently reallocated to the developers' preferred projects. Specifically, we argued, "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."²

While there are economic efficiency arguments in favor of allowing developers to substitute or re-allocate projects, on balance it is more important to establish a fair process and minimize the perverse incentives that drive speculative project entry and exacerbate the already sizable challenge created by oversubscription.

Our conclusion is that the project substitution provisions are the strongest incentive extant for developers to submit applications for speculative projects for allocations in the initial blocks (i.e. in the lottery). This is clear from other commenters' response to the initial lottery proposal. As such, while there would be some sacrifice of economic efficiency, eliminating project substitution would also address one of the most significant problems created by the lottery.

Additionally, the project substitution concept was not in the original, ICC-approved *Long Term Renewable Resources Plan*. In fact, the substitution proposal actually seems to conflict with the intent of the Plan to hold a lottery to select *projects* (see Plan at 6.3.1, page 101) and instead results in a lottery to select *developers*. This advantages large, well-capitalized developers with many interchangeable projects over smaller developers and community-driven projects.

² Initial Comments of ELPC and Vote Solar, p.6.

ELPC and Vote Solar appreciate that the IPA and its ABP Administrator are trying to soften the negative impacts of the randomness of the lottery, particularly vis-a-vis interconnection. However, these concerns may be better addressed through the ongoing interconnection waiver dockets at the ICC. In contrast, the substitution proposal raises fairness issues and encourages the entry of “dummy” projects that exacerbate the oversubscription problem. For these reasons, the IPA and its ABP Administrator should eliminate project substitution.

If moving forward with project substitution/reallocation, the IPA should not allow re-substitution.

ELPC and Vote Solar recognize the logic behind the proposal to allow substitution of projects where interconnection costs have gone up substantially. In the current environment, it is widely accepted that interconnection cost estimates in ComEd territory could shift significantly after the lottery runs its course, and the original intent of the Plan was to only allow entry into the ABP once interconnection costs were known to ensure project viability. Nonetheless, ELPC and Vote Solar have two major concerns with this proposal:

First re-substitution would encourage developers to “kick-the-can” on projects that they may otherwise be uninterested in moving forward, keeping them around in the event that another projects’ interconnection costs rise significantly. This is counter to the intention of moving through the surfeit of community solar projects as quickly as possible. Furthermore, re-substitution could complicate utilities’ plans to work through the interconnection queue by requiring non-refundable deposits and, in the case of ComEd, engaging in a re-study process.

If the IPA and its Administrator do decide to move forward with re-substitution, it is essential to consider all the implications with the utility interconnection process and, in the case of ComEd, move forward only in concert with the currently open waiver process in front of the ICC.

The IPA should continue to require an interconnection agreement in order to participate in the ABP.

The IPA requested comment on allowing for a project to still be considered qualified for the Adjustable Block Program by virtue of its prior-executed interconnection agreement submitted at the time of the initial application to the Program, even if the project officially exits the utility interconnection queue.³

ELPC and Vote Solar oppose this change because it will reduce barriers to preventing spurious projects in subsequent blocks. As has been previously observed, the interplay between the utilities’ interconnection queues and the IPA’s lottery process is central to the challenges facing the lottery. The initial requirement for an interconnection agreement in order to gain entry to the ABP has been part of the program since the initial draft of the the Plan and is incorporated in the

³ Draft Lottery Procedures Request for Follow-up Comments, p 2.

Plan approved by the ICC. Interconnection agreements were believed to prove project seriousness and viability as developers would have to put deposits down to go through with them. There is consensus that current utility practice of not requiring interconnection deposits is a serious contributor to community solar program oversubscription, however that problem should begin to correct as the program moves forward and utilities begin requiring these deposits. Allowing projects to stick around in the ABP without an interconnection agreement is counter to the Final Plan approved by the Commission, undermines the Plan's intent to eliminate spurious projects, and encourages developers to kick the can on making decisions about projects going forward or not. As such, the IPA and its Administrator should continue to require an interconnection agreement in order to remain under consideration for the ABP.

The IPA should not create a rank-ordered waiting list following the lottery.

ELPC and Vote Solar continue to believe that it is inadvisable to create a rank-ordered list that would effectively lock in years worth of development "rights" at the very beginning of the program. This would severely limit the IPA and the ABP Administrator's ability to make desirable and necessary changes to the program going forward and would discourage participation of all others not already "on the list," including smaller, community driven projects.

For example, ComEd recently presented information at a Cook County Community Solar Stakeholders meeting that 1,224 MW of community solar projects are in their interconnection queue. This would represent over 23 blocks worth of community solar projects clustered mostly in the exurban areas of ComEd's service territory. If all those projects were rank ordered, it would mean that the development horizon for any new projects, including true community based projects that will help meet statutory goals, would be crowded out. This undermines the statutory goal of broad access to solar.

It is premature to require developers to choose between ABP and ILSFA.

The Illinois Solar for All (ILSFA) program should be insulated to extent possible from the challenges created by an oversubscribed ABP community solar program. A number of commenters expressed concern over the ILSFA program being treated as a "backstop" for projects that fail to get REC allocation in the initial blocks of the ABP. ELPC and Vote Solar share this concern. However, ELPC and Vote Solar are also concerned that a rigid barrier between the ABP community solar market and the ILSFA market could undermine the intent of Act 99-0906 "to create a long-term, low-income solar marketplace." 20 ILCS 3855/1-56(b)(2). One legitimate avenue for this market growth could be from strong interest in the ABP community solar program leading creative developers to figure out how to effectively serve low-income customers. Creating a barrier between the ABP and ILSFA for community solar projects actually disincentivizes ABP community solar developers figuring out how to serve low-income communities.

A far preferable approach to ensuring the integrity of the ILSFA program would be ensure strong and meaningful programmatic requirements to enter the ILSFA program, regardless of whether or not a developer is also participating in the ABP community solar program.

Therefore, ELPC and Vote Solar recommend IPA delay decisions about the interaction of the community solar program and the ILSFA program under the ILSFA Program Administrator has engaged with stakeholders to discuss potential program requirements to ensure a strong and meaningful program in a way that does not disincen general market developers from serving low-income markets.

The IPA should consider increasing bid assurance collateral on a graduated basis.

ELPC and Vote Solar support suggestions by a number of parties to increase bid assurance collateral (BAC) requirements for participation in the lottery for the initial blocks. However, we believe that it should be applied on a sliding scale that increases with the number of projects a developer submits. For example:

Example: Bid Assurance Collateral

Number of kW Submitted	Bid Assurance Collateral Requirement (per kW)
< 2,000	x
More than 2,000, less than 10,000	x + 10%
More than 10,000	x + 20%
....	...

In this vein, we believe that increasing BAC is a more direct and appropriate method of creating barriers to entry that will deter spurious projects.

One benefit of using BAC as a tool to deter speculative projects is its flexibility. Once a sustainable supply/demand equilibrium has been achieved, then the BAC could be adjusted to reflect market conditions.

ELPC and Vote Solar generally support other proposals to limit speculative projects.

In addition to increasing bid assurance collateral, ELPC and Vote Solar support the IPA and its ABP administrator implementing additional measures to ensure only viable projects are entered in the lottery.

The IPA has requested comments on the suggestion to increase the requirements for demonstrating small subscriber commitments in order to be eligible for the small subscriber portion of the lottery. There has been concern expressed about projects fully adhering to this

commitment instead of hedging to “win” a lottery spot with the intent to figure out later whether it makes sense to fulfill the commitment or take the financial penalty. We suggest that developers that commit to the 50% small subscriber level be required to submit specific plans for acquiring and managing subscribers with their applications.

As previously mentioned, we are also concerned with the proposal to limit lottery entry projects entered into the interconnection queue prior to September 10th. No cutoff date other than the final application deadline is contemplated in the Plan. Such a deadline could exclude viable projects that either due fair expectation of a simple interconnection route (e.g. eligible to apply for a Level 2 interconnection) or for other valid reasons did not apply for interconnection before September 10th.

Plan for the Future of Community Solar and the ABP

It is critical to take steps to ensure that current problems facing the community solar portion of the ABP are resolved before opening future blocks. In order to do this ELPC and Vote Solar continue to believe that the IPA must convene a stakeholder process soon, ideally before the program opens, to identify and correct the problems that led to oversubscription in the first place and proactively address any barriers to entry that may limit the development of a robust and diverse set of community solar projects in the future.