

RESPONSE TO UPDATED IPA LOTTERY PROPOSAL ON BEHALF OF THE JOINT SOLAR PARTIES

The Solar Energy Industries Association and the Illinois Solar Energy Association (collectively the Joint Solar Parties or JSP), respectfully submit these comments on the IPA's updated lottery proposal released on October 5, 2018. The JSP appreciate that the IPA and the Program Administrator have clearly spent a significant amount of effort on addressing complaints regarding the lottery. While the JSP believe the IPA has correctly identified several problems with the lottery process, the JSP strongly urge the IPA to adopt some but substantially modify or outright reject many of the solutions proposed in the October 5, 2018 Request for Follow-Up Comments ("Updated IPA Proposal").

Introduction

The JSP believe the fundamental problem with the IPA's lottery structure—given that the structure can only be amended within the parameters of the Commission's Final Order—are twofold. First, there are substantial incentives for developers to submit projects that are not viable to the Adjustable Block program, because those projects can be switched out for viable projects. Project switching serves the critical function of allowing a developer to submit its best projects (the developer's best X-number of projects are necessarily a subset of all viable projects); this function is undermined if there are not controls on unviable projects flooding the Adjustable Block program. Second, Approved Vendors need to make switching decisions based on incomplete information. Without minimizing their importance, the JSP believe that all of the other issues are simply symptoms of these underlying structural flaws.

At the outset, the JSP recognize that the IPA has limited tools to address these problems directly. Given the timeline, the best hope for resolution is the IPA working with utilities and developers to bend the interconnection and lottery processes so that those two structural issues are mitigated to the greatest extent possible.¹ The JSP believe that full resolution is unlikely for Phase I (i.e. the initial 666 MW of Adjustable Block capacity), but engagement in such discussions could lead to a much better outcome. Beyond Phase I, the JSP look forward to discussing improvements in the 2019 LTRRPP update.

The JSP respectfully recommend that the IPA review its own proposals and stakeholder comments with the following questions in mind: Does it reduce the number of unviable projects submitted to the Adjustable Block program? Does it provide Approved Vendors with better information? Would a strategy to reduce unviable projects also eliminate viable projects?

Project Substitution

The Updated IPA Proposal floated a new approach to switching, specifically allowing projects to switch after they receive a restudy of their interconnection costs. The IPA does correctly identify the disconnect between the IPA's initial proposed switching window and subsequent utility

¹ The JSP have participated in informal conversations with several stakeholders on resolving these issues globally and are aware of others having similar conversations. The JSP anticipate that they will continue such conversations.

restudies. However, adding multiple, non-concurrent switching windows is more likely to cause chaos than order.

In a vacuum, the JSP could understand the benefits of additional switching periods. However, the JSP understand from informal conversations with utilities that if there are additional changes to the interconnection queue, the ongoing restudy process could be negatively impacted. Success of the Adjustable Block program relies on the utilities completing restudies in a timely manner to allow projects to begin construction in 2019 and take advantage of the full Investment Tax Credit.

Also related to project switching, the JSP recommend that the IPA clarify that: (1) two projects that are assigned capacity in the initial Blocks 1-3 should be switchable (i.e. swap Block 1 incentive for Block 3), (2) if a project is switched, the impact of the switch is the two projects swap “lottery numbers” and continue to persist in the queue, and (3) a project that is not selected for Blocks 1-3 should be able to switch—for instance, the first project after Block 3 should be able to switch with a project with a worse lottery number.

Synchronization of the IPA Lottery with the Utility Interconnection Queue Process

The JSP fully appreciate the real-world impacts of the conflict between the IPA’s lottery and the utility interconnection queues. To the extent that the disconnects can be fixed, the JSP believe they should be fixed directly—with better information available to developers—rather than indirectly or by proxy. While the JSP greatly appreciate the IPA’s attempts to address issues within the context of the Commission’s Final Order, the IPA’s proposals end up creating more problems than they solve because they only indirectly address the problems.

The proposal to deem as having a signed ISA projects that once had a signed ISA but that dropped out of the interconnection queue before selection in the Adjustable Block program does not help queue management. Instead, it is likely to create headaches down the road for the IPA because there are no guarantees that the project will (once it does apply for interconnection) receive an estimate that allows the project to go forward. This is because once the project drops out of the interconnection queue—without regard to it at one point having a signed ISA—it will have to reenter, likely behind more projects on the same feeder. While of course the interconnection estimate may be similar (or potentially lower), it is also quite possible it is not only higher but substantially high that the project is infeasible for a lower Block. A better approach would be for the project to receive this assessment *before* requalifying for the Adjustable Block program.

In addition, restricting the ability of a project to apply to the Solar for All program if it also applies to the Adjustable Block program does not make sense from a queue management or political perspective. The Joint Solar Parties fully support the Solar for All program and urge the IPA not to create artificial barriers to its success.

Reducing Applications from Speculative Projects

The JSP wish to respond to several items in this section of the Updated IPA Proposal:

- Within the JSP (and even the membership of each participating trade association), there are substantial splits over the prudence of a developer cap. However, all of those

conversations have focused on a cap on *winning* projects. The JSP all oppose the concept of an *application* cap, no matter where that cap is set.

- While it's important to reduce the number of non-viable projects applying to the program, an application cap would not achieve this goal, and would unfairly limit viable projects from entering into the program. The rationale of a lottery is having a selection mechanism to rank "equal" projects based on the structure the IPA proposed for Phase I in which all projects meeting the minimum Adjustable Block program submission criteria would be considered equal (with the limited exception of the 50% small subscriber commitment for the top community solar lottery). This, of course, assumes that the minimum Adjustable Block program submission criteria are synonymous with project viability. The JSP appreciate that was likely the IPA's intention, but given the issues with utility interconnection estimates and the impact of potential restudies, a project can meet Adjustable Block program submission criteria and not be viable.
- The goal of the Adjustable Block program should be to maximize the number of viable projects as a percentage of submitted projects, then select from among that pool. Capping applications does not address the issue of unviable projects—it does not prevent developers with less capacity from submitting non-viable projects. but it may prevent viable projects from developers with more capacity from going forward.
- Adding an application cap is a substantial change in market rules, potentially stranding tens of millions of dollars in investments made by developers that entered the Illinois market with the understanding that all qualified projects could be submitted to the lottery. At no point during the LTRRPP litigation, the ICC Order approving the plan, nor subsequent correspondence from the IPA was an application cap discussed.
- The addition of an application cap would represent such a major shift in program structure. The JSP believe that adding an application cap when none was proposed in ICC Docket No. 17-0838 or adopted in the Commission's approval with modifications of the LTRRPP, given its potentially substantial impact on the market, adopting an application cap would require approval by the Commission. Furthermore, the JSP note that the IPA has not even proposed a cap value—the IPA only offers an example for the cap value. The JSP are unable to respond to the impacts of all potential cap values. While the JSP agree that an application cap is not a solution, the JSP were not able to achieve consensus around a solution. Individual members of the trade associations that comprise the JSP are anticipated to propose alternative solutions.
- The JSP initially proposed a cutoff date of September 10, 2018 for community solar projects. However, upon reflection, the JSP recommends simply not allowing community solar projects that meet Adjustable Block program criteria that were submitted for interconnection after September 10, 2018 to be eligible for switching out of winning slots (but still be eligible for the lottery)—again, assuming those community solar projects meet the IPA's minimum standards for submission to the Adjustable Block program. To clarify projects that have interconnection agreements submitted after September 10, 2018, may

swap into winning spots, but may not swap out of winning spots. This will help to ensure that quality newer projects can participate in the lottery process, but they cannot be used simply to boost the number of “winning lottery tickets” for an Approved Vendor.

- The JSP understand the IPA is concerned that some developers may not be able to meet their commitments to secure 50% small subscribers by the time of energization. . The JSP firmly believe that the financial penalties already in the Plan provide enough guarantee that developers will achieve their commitments. Requiring submission of a plan for small subscriber acquisition—and presumably requiring IPA to evaluate that plan with the potential to reject it—is not a viable answer.
 - If the IPA believes that the financial penalties in the final approved LTRRPP are insufficient, the IPA should propose additional penalties in the 2019 LTRRPP update. To the extent that the IPA believes it can increase or supplement those penalties without modifications to the LTRRPP approved with modifications on April 3, 2018, then the IPA should consider doing so.
 - The JSP believe that the small subscriber adders offer sufficient financial incentive to cover the cost of small subscriber customer acquisition.
 - The JSP note that the IPA has rejected approaches to the lottery that would require subjective review of project readiness. The JSP recommend that the IPA similarly avoid an inherently subjective evaluation (and currently without any proposed standards or process for creating standards) with regard to small subscriber acquisition readiness.
- The JSP were somewhat confused by the “new” requirement that non-ministerial permits be uploaded. The JSP assumed that was always a requirement. To the extent that the IPA was not contemplating doing so all along, the JSP recommends that the IPA adopt this requirement.
- With regard to requiring a signed lease or option agreement to demonstrate site control, the JSP believe this is appropriate in the community solar context. However, for behind-the-meter projects, it does not make sense to require a separate lease when a lease is often either appended to or included within the PPA. In those contexts, while a separately signed lease or option agreement should be sufficient, the IPA should establish that a letter of intent will be sufficient for projects that are cash deals or not financed via a PPA structure, which is commonplace for behind the meter transactions.

Grouping

If the IPA allows for grouping as described in the Updated IPA Proposal, the IPA should explain how (if at all) the requirements of and processes in Sections 16.4.1, 16.4.4, and potentially 6.5.2 are impacted. For instance, if projects are submitted as all-or-nothing and there is an uncured deficiency in one of them as set out in Section 16.4.4, would the IPA reject the batch even if the remaining kW exceeded 75% of the initial kW? Would there be a requirement surrounding what projects can be combined into an “all-or-nothing” package beyond the requirement that the total cannot exceed 2 MW (AC)?

Transparency of Information

As an initial matter, the JSP are troubled by the IPA's contention that there should not be confidentiality of community solar projects chosen in the initial lottery that do not get an initial contract due to switching. The IPA contended that the fact a developer made a switching decision is: "something that, as a matter of public policy, a landowner or zoning board that had permitted the project may have a right to know."

First, the IPA's assertion that "as a matter of public policy" there may be "a right to know" must be better fleshed out before the JSP can engage on this issue. The Updated IPA Proposal cites no statute, case law, or any binding or persuasive authority to define the purported "right to know." Instead, the JSP understand that the IPA is suggesting it believes there are policy arguments for such a requirement.

Second, the JSP oppose the IPA's proposed requirement that Approved Vendors attest that they provided a disclosure related to project switching to land owners. The rights and responsibilities between the developer—which may or may not be the Approved Vendor—and the landowner are governed by a contract negotiated between the landowner and developer. The JSP understand anecdotally that there was substantial competition between developers for land in many areas, and agreements between landowners and developers are subject to arms-length negotiation. The IPA should not interfere with that relationship, or require an Approved Vendor that may be a stranger to that relationship to intervene.

Third, the JSP note that the IPA did not require such an attestation for the Supplemental procurements pursuant to Section 1-56 of the IPA Act, even though project switching was allowed in that procurement.

Lottery within 45 Days

The JSP strongly oppose the IPA's proposal for a secondary lottery trigger at 45 days. First, such an approach would be contrary to the Commission's April 3, 2018 order:

Furthermore, the Commission finds the risk and uncertainty of the lottery to be reduced through the application of a shorter window. The IPA has now agreed to shorten the window for the initial opening of Block 1 from 45 days to 21 days, but the Commission observes that an even shorter window will reward early applicants, limit enrollment, and allow for applicants to know whether they have been accepted in a quicker timeframe. The Commission directs the IPA to shorten the window to 14 days for the initial opening of Block 1.

(ICC Docket No. 17-0838, Final Order dated April 3, 2018 at 68.) The Commission rejected a lottery window longer than 14 days, and provided sound reasoning for why an extended lottery period—even of 21 days—was inadvisable.

For the reasons the Commission cited, adding a secondary lottery trigger at 45 days will only add risk to projects that submit on time. Instead of rewarding projects that are submitted at or near Block 1 open, the IPA will require those projects (and, more important, their customers) to face

uncertainty for up to 44 days as other projects are submitted—in addition to the still undefined Commission approval process.

Discretionary Capacity

The JSP appreciates the IPA's request for feedback on how to adhere to the requirements of the Commission's Final Order in ICC Docket No. 17-0838 while providing the IPA with discretion in the allocation. The JSP does not believe these are mutually exclusive. While members of the trade associations that comprise the JSP each target different categories of projects and may have different individual interests, the JSP agree that providing a clear signal in the marketplace is critically important.

One area in which this signal is particularly important: for the purposes of project switching, it is important for Approved Vendors to know how much extra capacity will be available before the lottery occurs. Vendors cannot make rational switching decisions before they understand how much capacity is available to that market segment

As a result, the JSP strongly urge the IPA to make a discretionary determination public before the lottery occurs or switching window opens. In using its discretion, the IPA should at minimum consider: (1) the extent to which Blocks 1-3 are oversubscribed, and (2) information from other sources (such as utility interconnection queues) about projects in the pipeline but not yet submitted, and allocate the remaining capacity to the most successful market segments.

The JSP note that assuming the IPA correctly rejects the secondary lottery trigger at 45 days, there could theoretically be a number of projects that are submitted after Block 3 fills but before the IPA announces discretionary capacity releases—those projects should receive capacity on a first come first served basis. For example, if Group A over 10 kW DG receives 30 MW of applications through January 29, a lottery will not be triggered. However, if another 19.5 MW apply by February 10, the entirety of Blocks 1-3 will be subscribed. The JSP propose above that the IPA make its reallocation before the anticipated community solar lottery, which would be 45 days after Block 1 open. The JSP simply recommend that, in this example, the Group A over 10 kW DG that applies after February 10 (the date Blocks 1-3 were fully subscribed) access the discretionary capacity available to Group A over 10 kW DG in a first come, first served basis.