RESPONSE TO PROGRAM ADMINISTRATOR'S REQUEST FOR COMMENTS ADJUSTABLE BLOCK PROGRAM PUBLISHING OF CONSUMER COMPLAINTS ON BEHALF OF THE JOINT SOLAR PARTIES

The Solar Energy Industries Association, the Coalition for Community Solar Access, and the Illinois Solar Energy Association (collectively "Joint Solar Parties" or "JSP") appreciate the opportunity to provide feedback as it concerns the Program Administrators' request to provide comments regarding the publishing of consumer complaints made in relation to Approved Vendors of the Adjustable Block Program ("ABP" or the "Program").

At the request of the Program Administrator, the Joint Solar Parties intend to provide a response to all the questions posed for stakeholder feedback. However, we must express that our response to the following questions do not in any way imply that the Joint Solar Parties agree that consumer complaints should be published.

A. The Adjustable Block Program should not create a consumer complaints database.

Section 6.13.3 of the Plan states that, "To the extent feasible, the Agency will work with its Program Administrator to maintain a public database of complaints (with any confidential or particularly sensitive information redacted from public entries)." For the following reasons, it is JSP's position that rather than a complaints database, the public administrator of the Adjustable Block Program should act as a liaison between complainants and Approved Vendors of the Program to aid in curing potential issues and conflicts.

As an initial matter, the JSP note that such a model is consistent with the Illinois Commerce Commission's practice with informal complaints. Complaints are still tallied in aggregate, but the focus of Consumer Services Division is on being an intermediary between the regulated entity and the customer. Consumer Services Division has historically defended its role as a mediator and facilitator for informal complaints over adjudicating or issuing a "finding." While the goal is to

facilitate resolution, there is additional process in the event that the customer and regulated entity do not reach resolution.

The JSP provides two primary reasons for its position. First, the primary goal of the IPA and the Program Administrator should be satisfaction of customer complaints. The IPA—once again, similar to Illinois Commerce Commission Staff—cannot and should not be precluded from acting based on patterns or practices of a particular entity or the market. However, providing detailed information about each complaint to the Program Administrator will chill resolution—especially if the customer has no obligation to try to work out disputes before complaining to the Program Administrator. (*Cf.* 83 Ill. Admin. Code § 412.320(b) (requiring customer to complain to an ARES first before the Commission or the AG).) Transparency is important—the transparency should be related to actionable information and not at the expense of consumer benefits.

Secondly, as evidenced by some of the questions provided by the Program Administrator, maintaining a database is complex, costly and requires regular upkeep. The process to develop the parameters for the database will require a lot of time and resources that should be dedicated to issues with higher priority, such as the successful development and execution of the Adjustable Block Program, which is still very much in its infancy stage. Perhaps, a consumer database would be useful within the Program at a later date, but at this time it is the JSP's position that there are more pressing matters within the Program that need to be addressed.

B. What constitutes a complaint?

The Joint Solar Parties recognize the intent of the IPA to promote transparency as it concerns the Adjustable Block Program. All parties involved should understand and realize that

with every new program there are kinks to work through and processes that will require refining with trial and error. In this case, the JSP believe that transparency of the complaints received by the Program Administrator as it concerns this Program should first be with the accused Approved Vendor and not the public, primarily because it is not at this time very clear to the JSP what constitutes a complaint. As noted above, the Approved Vendor at minimum should have a chance to respond to a complaint and satisfy the customer—especially if the customer is not under an obligation to try to work it out first with the Approved Vendor. This method could cause confusion about the level of service an Approved Vendor is providing if customers are going straight to the Program Administrator with inquiries that will immediately and automatically be published.

In other markets, it has not always been easy to define what a "complaint" is relative to an inquiry, clarification, or question about a third party over which the solar developer has no control. For example, is the failure of the utility to properly enroll a customer appropriately considered a "complaint" against an Approved Vendor? If a customer misunderstood a clear contractual right or responsibility that was fully and adequately disclosed (or simply does not like it), is it a question of interpretation of the contract or a complaint? In practice, many of the complaints received by JSP in other states have been due to factors outside the providers' control, such as utility-caused delays in interconnecting projects and allocating credits to customers' utility bills (the latter of which would appear in the Illinois context as the volume of the credit on the electricity provider's bill). Approved Vendors that respond quickly to customers who are confused about some aspect of their bill or spend time working with the utility on behalf of the customer to resolve utility-caused errors or delays are providing valuable customer service and should not have these "complaints" published publicly.

Furthermore, there is questionable value to prospective customers in elevating/publicizing minor complaints that are resolved quickly. What is relevant are serious complaints that were not quickly resolved after being escalated to a regulatory body – those are important data points that would get lost in the noise if they are included alongside minor complaints.

A public database may be a useful consumer protection tool if the right process is established to make sure that only companies causing egregious, repeated problems are included, but that may be difficult to establish. As previously stated, efforts to publicize complaints should always include a private "cure" period and process for Approved Vendors to rectify any perceived or real problems. Again, the Joint Solar Parties are not opposed to public information about escalated complaints that are subject to a legitimate dispute between the customer and Approved Vendor, although such posting should be delayed to reflect resolution (for instance, if the customer's complaint was determined to lack merit).

If the Program Administrator elects to proceed with a public consumer database, the JSP strongly advise that a clear definition of what is considered a "complaint" is considered first.

C. Questions for stakeholder feedback

1. What information should be published regarding complaints received (i.e. Approved Vendor/Designee name, nature of the complaint, time and date of receipt of complaint, resolution of the complaint, identity or role of the complainant, etc.)?

Notwithstanding the comments above, information regarding complaints received should be limited such that no confidential or proprietary data is revealed about the complainant or Approved Vendor. Consistent with the recommendations above, the Joint Solar Parties have no objection to defining category of informal complaints (even if resolved) and perhaps more information on escalated complaints. However, the database should provide a disclaimer to the complainant that confidential information, such as trade secrets or an individual marketer's name

and contact information (perhaps, an identification number is sufficient) will not be accepted or otherwise redacted from a complaint before posted.

The JSP would be open to working with the Program Administrator to decide what information should be included as you continue to work through this process.

2. **Should complaints be published when received (and thus not reviewed), or only after the complaint has been investigated (and responsive actions taken by the Program Administrator, if warranted)?**

All complaints should be verified, investigated, and adjudicated before published. If no wrongdoing by the Approved Vendor is found, the complaint should not be published. If a complaint is settled, it should be counted in bulk but not published.[1] A pattern of complaints could help consumers identify problem companies, but companies could be prejudiced if the bulk of the complaints arose from issues outside of the Approved Vendor's control or if complaints, after investigation, turn out to be baseless. A more balanced approach is to publish discipline of an Approved Vendor for a pattern or practice rather than the complaints themselves—balancing potential customers' interest in actions of an Approved Vendor with encouraging resolution and avoiding publication of unfounded complaints. This is especially true for Approved Vendors that work more with certain sectors (for instance residential) that tend to naturally generate more complaints due to customer volume and sophistication.

Another aspect to consider is what happens if the complaint is determined to be unfounded due to lack of evidence or an incorrect contract interpretation. No matter what standard the Program Administrator or IPA uses to construe a contract, the customer will not have the correct or better interpretation in 100% of cases. Those complaints should not be published and allegations

[1] Nothing prohibits the IPA or Program Administrator from disciplining an Approved Vendor, subject to appropriate due process, without regard to whether a complaint is resolved or not.

within complaints that are not founded should not be published (similar to the Executive Ethics Commission not publishing unfounded sections). Publishing only adjudicated complaints (assuming wrongdoing was found) will help consumers while protecting companies.

3. **Should complaints only be published from customers? Or should competitors be allowed to report on the misconduct of other Approved Vendors/designees?**

While complaints from competitors may help alert enforcement authorities about suspicious activity and investigate wrongdoing, such complaints should not be published. There is too much risk of businesses sabotaging competitors with complaints, especially if the IPA plans to publish all complaints received.

If competitor complaints are published, they should be held to the same standard as customers. Most notably, competitor complaints should be an account of firsthand knowledge rather than hearsay. The Program Administrator must verify competitor complaints for accuracy and provide time for the accused to cure. Please refer to previous comments above for context.

Once again, nothing can or should prevent the Program Administrator or IPA investigating or, after due process, disciplining an Approved Vendor for behavior without regard to the source. However, whether an Approved Vendor can or should be disciplined is separate from whether a complaint should be uncritically posted to a complaint database (even stripping out confidential information first).

4. **Should Approved Vendors (and/or their designees) be allowed to provide a response to be included in the public database?**

The Joint Solar Parties are open to a database that is made public only after the complaint is adjudicated and confidential information is redacted.

Again, if transparency of the process is the primary goal, the first level of transparency must be with the accused to allow the Approved Vendor to amicably resolve the issue(s) with the customer. Also, no party benefits from publication of the content of unfounded complaints, because it provides misinformation to the market (falsely suggesting bad acts when in fact none were established).

5. **What information about a complaint would be appropriate to redact or withhold from disclosure?**

As stated in JSP response to Question # 1, confidential, sensitive or proprietary information should be redacted and not disclosed on a public database. The JSP suggest that the Program Administrator refer to customary standards and practices of well-established consumer databases such as Google reviews, Yelp and the Better Business Bureau.

6. **Are there other complaint databases which the Program Administrator should look to as models in publishing complaint information for the Adjustable Block Program?**

   Please refer to JSP response to Question #5.

7. **Should the Program Administrator look to work with the Office of the Attorney General, the Illinois Commerce Commission, Citizens Utility Board, and other entities in attempting to create a more comprehensive database? Or only disclose those items brought directly to its attention?**

Nothing should prevent the IPA from working with these other entities to ensure that questions about subscriptions within the Adjustable Block Program are referred to the Program Administrator. The Program Administrator (and IPA) should make their own determinations about each complaint and go through its own process so that all are handled in a consistent manner. For instance, CUB (as a not-for-profit and not a state agency) does not have due process obligations,

and the Illinois Commerce Commission does not directly regulate subscriptions or the Adjustable Block Program (as the IPA emphasized related to a different issue in ICC Docket No. 19-0441).

8. **Are there specific risks which the Program Administrator and IPA should be mindful of in developing and publishing a complaint database?**

The IPA should review consumer privacy laws to ensure that it does not release sensitive information. For instance, the customer may include the name of third parties (such as a family member), account number, address, phone number, etc. Because there is no statutory mandate to publish this information, it is not clear that the Program Administrator would benefit from a legal safe harbor from federal or state requirements simply because the IPA directed it to publish certain information.

9. **Should this database be located at the Adjustable Block Program website, the IllinoisShines.com website, or both?**

Should the IPA decide to publish a database against our recommendation, the most efficient location for a published database as it concerns the Adjustable Block Program would be the ABP website.