

**RESPONSE TO ILLINOIS POWER AGENCY REQUEST FOR COMMENTS ON  
BEHALF OF THE SOLAR ENERGY INDUSTRIES ASSOCIATION, THE COALITION  
OF COMMUNITY SOLAR ACCESS, AND THE ILLINOIS SOLAR ENERGY ASSOCIATION**

**November 4, 2021**

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The Solar Energy Industries Association, the Coalition of Community Solar Access, and the Illinois Solar Energy Association (collectively the “Joint Solar Parties” or “JSP”) appreciate the opportunity to respond to the Illinois Power Agency’s most recent solicitation for comments for the Equity Eligible Contractor Proposed process.

As an initial matter, the Joint Solar Parties appreciate that the IPA is soliciting comments by necessity following the passage of the omnibus energy legislation. The significant changes to the Illinois Power Agency Act includes an overhaul of certain elements of the Adjustable Block Program and requires opening of new blocks very soon after the effective date of the legislation. The Joint Solar Parties are thus providing feedback with the understanding that some of the issues in this Request for Stakeholder Feedback will be addressed in the next LTRRPP and potentially litigated before the Commission during the approval process.

The Joint Solar Parties also appreciate that the success of the Equity block and the Equity Eligible Contractor (“EEC”)/Eligible Person (“EP”) programs may require continuous refinement to create meaningful opportunities for the populations they are meant to serve. The Joint Solar Parties plan to monitor the Equity block and EEC/EP programs, work closely with identified EECs, and provide constructive industry feedback to continuously improve the programs. The Joint Solar Parties also appreciate that creating what is contemplated by statute to be a vast and impactful program will take time and active participation by stakeholders in addition to the time and effort undertaken by the IPA.

For this first comment process, it is essential that the IPA hear directly from EPs, representatives of EECs, and other people whom this program is meant to serve, so the Joint Solar Parties has intentionally kept their comments focused on broader industry practices and placeholder recommendations. Because feedback from EPs, representatives of EECs, and others who might benefit from the Equity block, the Joint Solar Parties recommend that on an ongoing basis the solar industry work with the IPA and business stakeholders to identify potential and interested EECs to gather their perspective and input into the process including the questions below.

A. Registration Process

1. What information submitted through the in the EEC application process should be designated as confidential, if any?

**JSP RESPONSE:** The Joint Solar Parties encourage the IPA to be sensitive to privacy concerns of prospective participants, especially EPs and representatives of EECs. Subject to further feedback from EPs and EECs, the Joint Solar Parties recommend that the IPA can provide data in aggregate to provide insight into the success of programs while

preserving at least the option to keep personally identifiable data, such as addresses or years in foster care, private.

2. Will an affidavit from the applicant certifying that the information submitted is complete and accurate be sufficient to verify eligibility, or should some other verification process take place to confirm that the documentation provided by the applicant meets EEC criteria? If some other verification process is needed, please specify how the proposed verification process would work and identify what entity or entities would be best suited to provide documentation that would support verification.

**JSP RESPONSE:** The Joint Solar Parties emphasize that the purpose of the Equity block is to provide increased inclusivity opportunities for the clean energy transition and a reasonable (but not overly burdensome) amount of verification benefits all participants. To that end, the Joint Solar Parties believe that some level of verification beyond an affidavit is appropriate given that the Equity block must serve EPs and EECs that choose to participate. The verification need not be intrusive; proof of residence for EP(s) in the ownership group when the EEC eligibility are based on the residence in an R3 or EJ community could be similar to establishing residence for public school eligibility (which typically includes a property tax bill, a lease, a utility bill, or other proof).

3. What will the qualifying criteria be for eligible persons?
  - a. What documentation should be required for those seeking to verify their classification as an eligible person? Specifically:
    - i. What approach to verification of provided materials should be used to confirm a person is a graduate of or currently enrolled in the foster care system? What approach to verification should be used to confirm graduation from or current enrollment in a foster care system outside of Illinois?
    - ii. What documentation should be required, and which verification method should be used, to verify persons who were formerly incarcerated? Should there be minimum time and level at which a person was incarcerated in order to qualify for eligibility? If so, please explain the rationale for the minimum time/level and how such information could be verified.

**JSP RESPONSE:** The Joint Solar Parties take no position on these questions except to encourage the IPA to develop clear standards, based on already accessible practices from other state agencies. To the extent the IPA needs to access information held by other state agencies, the Joint Solar Parties suggest the IPA consider arrangements such as interagency agreements to allow the IPA to verify information with consent to the extent the IPA chooses to verify information with the applicable agency.

B. Duration of Certification

1. How long should EEC certification last? Should it coincide with the AV renewal process thus requiring reverification each year?

**JSP RESPONSE:** The Joint Solar Parties note that with the exception of the home address of the natural person who qualifies as an EP, the status as an EP will not change during that natural person’s life. For instance, status as a formerly incarcerated person (even if the record is sealed), as a participant in or alum of the foster care system, and as a graduate of the enumerated job training programs will not be diminished by the passage of time.

The Joint Solar Parties recognize that there is a policy choice to be made with regard to a natural person’s residence in an R3 or EJ community. On one hand, the Joint Solar Parties appreciate that the IPA has historically set standards to prevent “gaming” akin to the lookback for co-location purposes for when a property was subdivided. On the other hand, the Joint Solar Parties are uncomfortable with restricting natural persons from moving over the long term as eligibility criteria. The Joint Solar Parties do not have a position on what the correct balance is but suggest that the IPA consider those competing interests in developing a standard.

With that as background, the Joint Solar Parties recommend that EEC certification should last more than one year—at least two or three—but the EEC should have an obligation to disclose a change in ownership or change in residence by an EP in the ownership group if the basis for the individual qualifying as an EP is their residence.

2. How long does eligibility need to be maintained?

**JSP RESPONSE:** To ensure that program capacity is preserved to duly eligible EECs, the Joint Solar Parties believe that EEC status should be maintained generally speaking through Energization if the EEC continues to be the Approved Vendor or through assignment if the EEC assigns prior to Energization. The Joint Solar Parties believe that EEC status must be maintained from submission of the Part 1 application through the Trade Date (as defined in the REC Contract) of a Batch, ensuring that the EEC is responsible for the initial-stage interface with the Adjustable Block Program and taking or directing the preliminary steps such as conducting or overseeing application for interconnection, acquisition of land-use permits, and obtaining site control.

- a. Until project is Part I verified, Part II verified, for the duration of the project’s contracted delivery term under the Program, or for the life of the project?
- b. If certification isn’t maintained, what will the impact be to the project?

**JSP RESPONSE TO (a) AND (b):** The Joint Solar Parties wish to distinguish between two types of eligibility issues. The first is a change in ownership of the EEC itself; the Joint Solar Parties recommend that majority ownership by EPs of each EEC should at minimum start before submission of the Part 1 application extend through Trade Date until the earlier of (1) when the Part 2 application is accepted (i.e. Energization) and (2) sale of

the Approved Vendor to a long-term owner/operator or placement of the Approved Vendor in a financing vehicle. Please also see the Joint Solar Parties' response to (c) below.

The second is the ongoing eligibility of the natural persons who own the EEC in whole or in part. The Joint Solar Parties note that status as a formerly incarcerated individual, a participant/alum in the foster care system, and graduation from the specified job-training programs are permanent statuses. However, where an individual lives (i.e. an R3 or EJ community) may change over time. While the Joint Solar Parties did not make a recommendation about how to handle when an EP (by virtue of their home address) moves outside an R3 or EJ community, if the IPA decides that there are some restrictions then the Joint Solar Parties recommend that the EEC maintain majority ownership by EPs through at least acceptance of the Part 2 application.

- c. What is the impact to projects that are assigned from an EEC AV to a non-EEC AV? Should this be allowed?

**JSP RESPONSE TO (c):** The Joint Solar Parties encourage the IPA to take feedback from EPs and representatives of EECs on this issue. However, given that the broader solar industry has experience in creation, initial success, growth, and scaling of solar developers and owner/operators, the Joint Solar Parties wish to add some observations about keeping avenues open for EECs to maximize the value for the systems they develop as part of the Equity block by preserving sales opportunities and options.

With regard specifically to how solar developers maximize opportunity, selling/assigning a project at start of construction or "notice to proceed" (also known as "NTP") is a common business model in the solar industry. The Joint Solar Parties believe that an EEC should be allowed to sell and a non-EEC AV should be allowed to purchase an Equity block system and receive assignment of the related Product Order at minimum between NTP and Energization. NTP is when the project owner gives their contractor the green light to proceed with construction of the system. While NTP will occur for different systems at different times, it frequently occurs after Trade Date (because EPC does not begin in most cases until the REC Contract is secured).

One reason that the ability to sell/assign at NTP is for financing and revenue maximization purposes: Unless the EEC's owners have substantial tax appetite, ownership of the system will need to change hands to tax equity investors so they can take advantage of the tax credits. Preventing this type of transaction could freeze EECs out of one of the primary revenue streams for a system. A tax equity transaction must be completed before the system is "placed in service," more or less the time a system is energized. By definition, this occurs before the Part 2 application is submitted because a Certificate of Completion is a required submittal for the Part 2 application to achieve Energization under the REC Contract.

Beyond the tax equity financing issue, many participants in the solar industry grow not by starting with long-term ownership and operation of systems (which is capital, risk management, and compliance-intensive) but by acting first as early-stage developers that

sell at NTP. Some will also take a role in the EPC (engineering, procurement, and construction) of the system paid for by the buyer. If an EEC is restricted or disincentivized from making these sales in any way, it could negatively impact the EEC's ability to build capital and take on increasingly complex projects as their expertise and experience increases with successful projects *and successful transactions*. If a goal of the program is to provide revenue to EECs and EPs as EECs gain experience and expertise, the Joint Solar Parties suggest that a critical part of the experience/expertise is handling these transactions, which are the primary revenue stream for early stage developers that do not sell directly to end users.

In addition, EECs selling behind-the-meter systems directly to the end-use customer located on the premises should be allowed (if they choose to do so) to assign the REC Contract to the end-use customer or its designee (provided they register as an Approved Vendor, of course). While some Approved Vendors do provide "Approved Vendor-as-a-Service" services to the end-user buyers of their systems, that arrangement is heavily capital and risk intensive. An EEC should be able to take on that role if they choose but should not be forced to do so by restrictions on assignment of a Product Order.

Finally, the Joint Solar Parties continue to advocate that EECs should have an enhanced cure right for any Adjustable Block Program deficiency so long as the EEC (or a different EEC) is undertaking the cure. This will allow EECs to sell their projects on more favorable terms as well as reduce the pressure on the reps and warranties made by the EEC as part of the sale to the long-term owner/operator (who will ultimately have to rep and warrant to their own financing parties). This is a cost-free benefit for the customer, the EEC, and anybody who does business with an EEC.

### C. EEC Marketing

1. Should EECs be provided with a unique Program badge that they can use to identify themselves as Program-approved EECs? Are there any other unique identifiers that should be provided to EECs?

**JSP RESPONSE:** The Joint Solar Parties do not object to a voluntary identification but look forward to feedback from EPs and representatives of EECs. However, the industry encourages best practices that would not make special badging mandatory because it can lead to confusion or inaccurate perceptions by the marketplace.

2. Should Designees of EECs be provided with a Program badge or other unique branding? Additionally, should these Designees be subject to limitations in identifying themselves as the Designee of an EEC to avoid customer confusion? How will Designees of multiple Approved Vendors identify themselves with respect to the potentially different EEC status of the varied Approved Vendors with whom they work?

**JSP RESPONSE:** The Joint Solar Parties do not have a position at this time and encourage the IPA to seek feedback from EPs and representatives of EECs.

D. Block Sizes and Group Allocation

1. Is the Agency's proposed allocation of the nameplate capacity for the EEC blocks (70% to Group A, and 30% to Group B, respectively), a reasonable allocation? If not, what would a more appropriate allocation be? Please include an explanation of the reasoning supporting this response.

**JSP RESPONSE:** The Joint Solar Parties understand the source of the 70-30 split (from the three public utilities' relative share of statewide load). In this case, the JSP urge flexibility so that demand can be accommodated to the greatest extent feasible. There is precedent for the IPA taking a flexible approach to Group A-Group B allocations which the IPA could repeat here. The IPA, through the upcoming LTRRPP process or in future LTRRPP revisions based on feedback from EPs or representatives of EECs or its own analysis, can revisit in later program blocks whether there is a need to allocate.

2. Should the capacity allotted for EECs be further divided across the Small DG, Large DG, and Community Solar have separate allocations, or should the allocation only exist at the Group level?

**JSP RESPONSE:** While the Joint Solar Parties do not object to targets or goals—or even initial indicative allocations—the Joint Solar Parties believe that if the IPA does elect to allocate by system type especially in this initial block the IPA should reallocate toward programs where there is more EEC demand so that capacity does not sit idle and EECs can obtain the maximum amount of projects as capacity allows. The reallocation is important to ensure maximum opportunity to EECs that present projects in this initial opening of the Equity block. On a going forward basis, the IPA can take feedback from EPs and representatives of EECs as well as conduct its own analysis of block performance and whether future sub-allocations are advisable.