

**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 new Prevailing Wage Requirement.

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.

As noted in several responses below, while the Joint Solar Parties appreciate that for this initial block opening there was insufficient time to coordinate with the Illinois Department of Labor (especially given the IPA’s other concurrent workload). However, on a going forward basis, the Joint Solar Parties encourage the IPA to coordinate with the Illinois Department of Labor. The Joint Solar Parties are willing to facilitate such discussions to ensure that views of both agencies and the regulated entities are being raised in a single venue. Notwithstanding the IPA’s typical approach—which the Joint Solar Parties appreciate—of addressing changes through the stakeholder process, technical coordination may be better addressed by having initial smaller group discussions.

**Documentation**

1. Is the Certified Transcript of Payroll (CTP) the appropriate documentation to request as proof that prevailing wage was paid? If not, what forms of documentation should be provided to verify prevailing wage was paid?

**JSP RESPONSE:** The Joint Solar Parties note that the agency primarily charged with administering and enforcing the Prevailing Wage Act, the Illinois Department of Labor, created the CTP form and a set of guidance and forms to allow covered entities to report and the Illinois Department of Labor to confirm compliance. The Joint Solar Parties urge the IPA to not create duplicative or potentially contradictory paperwork and accept the same forms as required by the Illinois Department of Labor. As the Illinois Department of Labor notes in an FAQ for its Prevailing Wage Portal:<sup>1</sup>

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<sup>1</sup> <https://www2.illinois.gov/idol/Laws-Rules/CONMED/SiteAssets/Pages/certifiedtranscriptofpayroll/Certified%20Payroll%20Q%20%20A.pdf> (accessed 11/4/21).

**Q. What if another state agency requires similar information, do I have to fill this out twice?**

A. It is possible that other state and federal agencies will require similar information. We are working with many of them to streamline the process and share information so that you don't have duplication of work.

- a. For facilities that were completed before submittal of Part I of the ABP project application, and which did not pay prevailing wages for the project, should prevailing wages be paid retroactively and be documented through a CTP? If not documented by a CTP, how should the Program Administrator verify that prevailing wage was paid retroactively for already completed facilities?

**JSP RESPONSE:** If a system was completed before submittal of the Part I that did not pay prevailing wage, the Joint Solar Parties believe the appropriate cure is: (1) documentation of actual wages paid, (2) a worksheet generated by or on behalf of the Approved Vendor demonstrating the gap between actual wages and prevailing wages, and (3) evidence of payments (such as redacted check/ACH images) of that amount to the applicable workers.

To the extent that the IPA believes that a system that has already been partially or fully constructed before September 15, 2021 (the effective date of Public Act 102-0662) that did not pay prevailing wage before September 15, 2021 must retroactively do so, the Joint Solar Parties believe that the statutory language does not support retroactive application of the prevailing wage requirement. The Joint Solar Parties also took this question as only applicable to projects that have not yet been awarded capacity as of September 15, 2021.

**Verification**

1. How can the Program Administrator confirm prevailing wages were paid on 100% of the project construction and not only for the CTPs submitted?

**JSP RESPONSE:** The Joint Solar Parties note that an attestation that the CTPs submitted are the only CTPs for a particular project would be an appropriate way to balance the IPA's need for information with the need to avoid compelling an Approved Vendor to prove a negative (i.e. that no other relevant CTPs exist).

Responding further, any entity subject to the Prevailing Wage Act is already uploading CTPs into the Illinois Department of Labor portal and is subject to investigation and enforcement by that body. In response to an FAQ on this topic related to a "public body in charge" (which the Joint Solar Parties understand to be a state agency or local government sponsor of a "public works" that have been subject to the Prevailing Wage Act for some time) confirming CTP submission:

**Q. How does the public body in charge of the project know that a contractor is complying with certified payrolls?**

A. No [sic]. When contractors file certified payroll with the department, they will receive a .pdf copy of their submission to IDOL. Public bodies may request a copy of that email.

2. What would be reasonable benchmark hours of construction labor per kW of installed capacity to use, and how would those vary by project size and type?

**JSP RESPONSE:** As an initial matter, the Joint Solar Parties recommend only using a benchmark at most as a flag for follow-up with the Approved Vendor. Projects may require more or less labor depending on many factors that are not apparent from the CTPs including experience and skill of the workers, the complexity of onsite conditions, and the relative efficiency of the crew as a whole in terms of allowing each other to work on their tasks with minimal down time.

The Joint Solar Parties note that falsifying a CTP can lead to serious penalties or liability from both the Illinois Department of Labor and aggrieved workers. The Illinois Department of Labor (with assistance from the Attorney General) and individual workers have adequate investigation and enforcement mechanisms; there does not appear to be any need for additional layers of IPA investigation especially related to minimum hours.

3. How should the Program Administrator verify that workers were properly classified in the CTPs?

**JSP RESPONSE:** Review of classification of each worker on each project is unlikely to be an efficient deployment of resources for any stakeholder in the process. However, the Program Administrator should hear and investigate complaints from workers that they were misclassified and refer those complaints to the Illinois Department of Labor. If the Illinois Department of Labor determines an error was made, the IPA can direct the Approved Vendor to take appropriate corrective action. The IPA should not implement a parallel investigation enforcement mechanism.

The Joint Solar Parties note that there are likely to be some implementation issues related to classification. For instance, as noted in the Joint Solar Parties' comments with regard to REC pricing for non-waitlisted large DG, there are several classifications of workers (rather than a specific classification) that are capable of installing racking, including but not limited to electricians, carpenters, and laborers. In the event of a dispute, the Joint Solar Parties suggest that excerpts from the EPC scope of work or contract (provided on a confidential basis) would likely be determinative evidence.

4. Are there any best practices for CTP verification that the Program Administrator should use for verification of prevailing wage requirements?

**JSP RESPONSE:** The Joint Solar Parties do not have any recommendations at this time, but recommend that the IPA consult with the Illinois Department of Labor, which has extensive experience with verification. See response to Documentation Question 1 *supra*.

5. The law requires that “*It shall also be mandatory upon the contractor to whom the contract is awarded to insert into each subcontract and into the project specifications for each subcontract a written stipulation to the effect that not less than the prevailing rate of wages shall be paid to all laborers, workers and mechanics performing under the contract.*” Should all contractors using subcontractors provide a copy of their contracts for the Program Administrator to verify this language for all of a project’s subcontracts is in place, or would an attestation that this requirement has been met be acceptable (with the provision that the Program Administrator could request the documentation for verification as needed)?

**JSP RESPONSE:** The Joint Solar Parties believe that an attestation is sufficient, provided that: (1) as the IPA proposes, the Program Administrator could make reasonable requests for additional records, and (2) the prime contractor is required to provide signage at the worksite disclosing that all workers, including for subcontractors, are required to be paid prevailing wages. The Joint Solar Parties believe required signage that employers are required to post under federal and state laws are a model for the required signage.

In addition, while the Joint Solar Parties believe an attestation is sufficient, that in the event that the Program Administrator requests additional documentation that a rider meeting the requirements of the above-quoted text that is either fully executed by the parties is sufficient to demonstrate compliance.