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

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 proposed updates to the Adjustable Block Program ("ABP") and the Renewable Energy Credit ("REC") delivery contract (the "REC Contract").

Updates to the REC Contract began in 2020 but was not implemented because, due to budget constraints addressed at great length by the IPA in other forums, the ABP had no new block openings. The IPA referred to the resulting updated language as the "Refreshed" REC Contract, which the Joint Solar Parties understand was never used by an Approved Vendor. However, Public Act 102-0662 (the "Climate and Equitable Jobs Act") will open new blocks in December of 2021 and sets new mandatory terms and conditions for the REC Contracts. The IPA used the Refreshed REC Contract as a basis and made further changes intended to comply with the new requirements of Public Act 102-0662.

During the webinar held on October 21, 2021, the Joint Solar Parties got the sense and impression that proposals to modify the changes made during the process that led to the Refreshed REC Contract are unlikely to be considered as part of this process. While the Joint Solar Parties believe the Refreshed REC Contract improved the original REC Contract, the Joint Solar Parties recommended some changes that were not implemented. Examples included:

- The Joint Solar Parties requested that Approved Vendors have the option to allocate collateral from Designated Systems that are small (now under 25 kW, then under 10 kW) DG projects that withdraw before the Part 2 application to other small DG projects that have not yet posted collateral.
- The Joint Solar Parties recommended a reduced fee structure for certain assignments pursuant to Refreshed REC Contract Section 13.1.
- The Joint Solar Parties recommended changes to the binding arbitration provision (Section 15.2 of the Refreshed REC Contract) to make clear that the parties are not required to submit to binding arbitration.

The Joint Solar Parties have not changed their position on these matters and continue to recommend these changes, as explained more fully in the Joint Solar Parties' last round of comments in the Refreshed REC Contract development process.

Setting aside those issues, based on the Joint Solar Parties' review the REC Contracts for comment generally comply with the new statutory requirements. The Joint Solar Parties note that some of the new requirements in statute may be handled "programmatically," in other words through guidelines and guidance of the Adjustable Block Program put out from time to time by the IPA or

the Program Administrator. The Joint Solar Parties assume that to the extent a statutory requirement is not addressed in statute the IPA will address the requirement programmatically.

Even with the caveat that some statutory requirements are not in the REC Contract but the Joint Solar Parties assume will be handled programmatically, the Joint Solar Parties wish to point out a few areas where the Joint Sola Parties recommend changes.

RPS Budget Shortfall (Both REC Contracts): The first paragraph in Section 5.4 tracks statutory changes, but the second paragraph—largely a holdover from the original REC Contract—still reads as though utility Buyers are within their rights to suspend payment *before* the point where making payments would exceed recoveries pursuant to the pass-through tariff. The Joint Solar Parties suggest triggering the right to suspend at the point when invoices due exceed funds collected pursuant to the pass-through tariff. This avoids the ambiguity as to what happens when there are sufficient funds to cover all *current* invoices but projected shortfalls later in the delivery year that that the utility cannot pay *future invoices* without potentially exceeding Available Funds.

To address this issue, the Joint Solar Parties recommend the following changes to the second paragraph of Section 5.4:

> . . . If, for whatever reason, Buyer is not allowed to or cannot recover such costs from its customers through its pass-through tariffs, then, ~~notwithstanding anything to the contrary in the Agreement,~~ **upon the occurrence of and notice from Buyer to Seller that invoices currently due and owing exceed Available Funds,** the obligations of both Seller and Buyer, including Delivery of and payment for RECs, shall be suspended upon written notice from Buyer to Seller until Buyer provides written notice to Seller that **Available Funds exceed currently due invoices (including any amounts accruing during a such suspension)** ~~Buyer is able to recover all of its costs under this Agreement through its pass-through tariff,~~ whereupon the respective rights and obligations of the Parties under this Agreement shall resume as of the effective date indicated in such notice (pro-rated, as applicable, based on the duration of such suspension**, which, for the avoidance of doubt, invoicing for payments that would have been due during the suspension**). During any such Suspension Period, Seller shall have no obligations to Buyer with respect to RECs from the Designated System(s) except for RECs that have already been paid. If the Suspension Period continues for more than three hundred sixty-five (365) consecutive days, then Seller may terminate this Agreement and if the Suspension Period continues for more than seven hundred thirty (730) consecutive days, then Buyer may terminate this Agreement. No Settlement Amount or Termination Payment shall be due from or to either Party as a result of any such termination.

Waitlisted CS Project Nameplate Capacity Change (REC Contract #2): Section 1-75(c)(1)(G)(iv)(3)(B)(iii)-(iv) of the IPA Act—addressing waitlisted community solar projects selected through May 31, 2023—provide in full that:

> (iii) Assuming all other program requirements are met, applicant firms may adjust the nameplate capacity of applicant projects without losing waitlist eligibility, so long as no project is greater than 2,000 kilowatts in size.

(iv) Assuming all other program requirements are met, applicant firms may adjust the expected production associated with applicant projects, subject to verification by the Program Administrator.

In other words, the nameplate capacity and capacity factor submitted in the Part 1 application should, for waitlisted community solar systems selected in the 1-75(c)(1)(G)(iv)(3) process, no longer constrain an Approved Vendor from further modifications.

As a result, the following changes are necessary:

- *Section 1.4*: ""Actual Capacity Factor" means, with respect to a Designated System, the capacity factor of such Designated System indicated by Seller in its ABP Part II Application and as recorded in Schedule B to the Product Order. The Actual Capacity Factor shall be less than or equal to the Proposed Capacity Factor **unless Designated System is selected pursuant to Section 1-75(c)(1)(G)(iv)(3)(D) or (E)(iii) of the Illinois Power Agency Act, in which case the Actual Capacity Factor exceed the Proposed Capacity Factor**."
- *Section 1.22*: "…The Contract Nameplate Capacity shall be the Actual Nameplate Capacity if the result obtained by multiplying the Proposed Nameplate Capacity by Proposed Capacity Factor is equal to or greater than the result obtained by multiplying the Actual Nameplate Capacity by the Actual Capacity Factor**. For a Designated System selected pursuant to Section 1-75(c)(1)(G)(iv)(3)(D) or (E)(iii) of the Illinois Power Agency Act, Contract Nameplate Capacity shall be Actual Nameplate Capacity if Actual Nameplate Capacity multiplied by Actual Capacity Factor is less than or equal to the capacity factor and nameplate capacity identified one business day after selection pursuant to Section 1-75(c)(1)(G)(iv)(3)(D) or (E)(iii) of the Illinois Power Agency Act and otherwise shall be the nameplate capacity identified one business day after selection of the Designated System pursuant to Section 1-75(c)(1)(G)(iv)(3)(D) or (E)(iii) of the Illinois Power Agency Act.**
- *Section 2.5*: add new subsection (iii) stating as follows: "**The provisions of this Section 2.5 do not apply to Designated System is selected pursuant to Section 1-75(c)(1)(G)(iv)(3)(D) or (E)(iii) of the Illinois Power Agency Act, in which case the Actual Nameplate Capacity may be set by Seller at any time after December 14, 2021 through selection pursuant to, as may be applicable, Section 1-75(c)(1)(G)(iv)(3)(D) or (E)(iii) of the Illinois Power Agency Act**."

In the alternative, the IPA can either allow creation of a new Part 1 application or amendment to the old Part 1 application to reflect the new nameplate capacity and capacity factor.

Adders (REC Contract #2): As quoted in footnotes 4 and 28, Section 1-75(c)(1)(G)(iv)(3)(E)(i) of the IPA Act fixes the REC price for community solar projects selected pursuant to Sections 1-75(c)(1)(G)(iv)(3)(D) or (E)(iii). However, to the extent that this REC Contract is intended also be applied without further modification to systems selected on or after June 1, 2023, to non-waitlisted projects—to which Section 1-75(c)(1)(G)(iv) does not apply—Sections 1.22 and 2.6(a) will have to be amended to reflect that any future adders (if any exist) will be calculated annually.

Post-Energization Performance Assurance/Collateral Requirements (REC Contract #2): The post-Energization 5% Performance Assurance requirement in the original Adjustable Block Program REC Contract was introduced as a way to ensure compliance with ongoing REC (and, in the case of community solar, subscription percentage and Subscription Mix) obligations even though full payment was made on an accelerated basis. Under Contract 2, this disconnect no longer exists for the Community Solar and Schools programs where payment for RECs will occur concurrent with REC delivery per new statutory requirements. Given this change in REC Contract payment and performance structure required by statute, there is no longer a need to maintain 5% of contract value as performance assurance throughout the 20 year term. Doing so is overly burdensome on developers. It serves no purpose in the case of system underperformance and would not be drawn upon under this contract if such an underperformance event occurred.. The Joint Solar Parties recommend that post-Energization Performance Assurance be set at $0; any pre-Energization performance assurance should be released (if a letter of credit) or reverted (if cash) with the first REC payment. The Joint Solar Parties note that reversion of pre-Energization (or the equivalent) collateral is concurrent with the first REC payment in other markets.