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

December 2, 2021

The Solar Energy Industries Association, the Coalition for 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 related to the second draft post-Public Act 102-0662 Renewable Energy Credit ("REC") delivery contract (the "REC Contract").

In comments submitted on November 4, 2021 on the first draft post-102-0662 REC Contract, the Joint Solar Parties made the following recommendations:

- Modify Section 5.4 to make clear the utility cannot suspend payment before payments exceed recoveries through the pass-through tariff (*both REC Contracts*)
- Modify the REC Contract—the Joint Solar Parties proposed changes to Sections 1.4, 1.22, and 2.5—to make clear that waitlisted community solar systems could *increase* their output if their nameplate capacity increased as permitted under Section 1-75(c)(1)(G)(iv)(3)(B)(iii)-(iv) (*REC Contract 2*)
- Modify Sections 1.22 and 2.6(a) to reflect that this REC Contract is not only applicable to the waitlisted projects but may be in effect for future block openings where there may be applicable adders (*REC Contract 2*)
- Reduce post-Energization performance assurance to reflect a move from highly accelerated payments to pay-as-you-go based on actual REC deliveries (*REC Contract 2*)
- Effectuate requests made by the Joint Solar Parties in the previous REC Contract revision process that led to the "Refreshed REC Contract" that was the basis for the post-Public Act 102-0662 REC Contract but never itself in use, including:
    - Reallocation of collateral for under 25 kW systems under certain limited circumstances (*REC Contract 1*)
    - Reduced fee structure for assignments (*both REC Contracts*)
    - Changes to the binding arbitration provision to allow for non-arbitration remedies (*both REC Contracts*)

The Joint Solar Parties appreciate that the IPA appears to have made the proposed changes to Section 1.22 and 2.6(a) in REC Contract 2 as requested. In addition, the Joint Solar Parties understand that the IPA could (as noted in the November 4, 2021 comments) address the issue of increased outputs for waitlisted community solar systems programmatically, which would be outside the scope of these REC Contract revisions (which the Joint Solar Parties recommend if the IPA declines to amend the REC Contract).

The Joint Solar Parties have not changed their position on the other matters where the proposed or alternative changes did not appear to be made. The Joint Solar Parties continue to respectfully recommend these changes for the same reasons provided in the November 4, 2021 comments.

In addition to these recommendations, the Joint Solar Parties have the following observations about the changes in REC Contract 1 and REC Contract 2 in this second draft from the first draft:

- In Section 2.6, the Joint Solar Parties have proposed adders other than Subscription Mix that may be applicable to community-driven community solar (*REC Contract 1*) or post-June 1, 2023 community solar (*REC Contract 2*). If the IPA accepts any of these suggestions, the Joint Solar Parties note that a new subsection would be required to address compliance with proposed adders. The exact language will depend on the adders adopted. The Joint Solar Parties note that if adders are approved in the LTRRPP, the IPA could seek approval (similar to in the reopening of ICC Docket No. 19-0995) of an amendment that effectuates those adders either concurrently with the LTRRPP proceeding, as a reopening/rehearing, or as a separate proceeding.
- In Sections 1.47-1.49 (*REC Contract 1*) and 1.41-1.43 (*REC Contract 2*), while the Joint Solar Parties do not disagree with the summary of the statutory provisions, the Joint Solar Parties do note that: (1) over the course of the REC Contract, the statute may change, and (2) the IPA or its designee is likely to impose additional registration and qualification criteria. As a result, the Joint Solar Parties recommend that in each case the definition reference the statutory section "or its successor, as may be amended from time to time," explain that the definition "as of Effective Date is" and that qualification "may be subject to additional terms and conditions by the IPA or its designee [*i.e. the Program Administrator*]." As an example, this ensures that an entity that qualifies for the statutory definition of an EEC that either does not register or is suspended from the program does not still qualify under the REC Contract.
- In Section 2.2(e) (*both REC Contracts*), the additional language after the deleted footnote is better served to be in the Program Guidebook. Especially the final sentence, which is a compliance obligation that is going to have to be demonstrated to the IPA—not the utility Buyer—consistent with the IPA's role as the primary determiner of compliance under the following paragraph. Similarly, new Section 6.4 is better handled programmatically than as a term in the REC Contract; the obligation to pay prevailing wage (unless statutorily exempt) remains in the language of 2.2(e) that the Joint Solar Parties do not seek to change. The Joint Solar Parties stress that moving these discussions to the Program Guidebook would not shrink or otherwise weaken prevailing wage obligations; the purpose is to prevent conflicts between the REC Contract and changing laws and interpretations.
- In Section 2.2(f)(ii) (*REC Contract 2*), there appears to be a minor typo at the end of the final sentence where (i) both precedes and follows the section reference. The Joint Solar Parties assume the preceding use of (i) was unintended.