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

January 27, 2023

The Solar Energy Industries Association, Coalition for Community Solar Access, and Illinois Solar Energy Association (collectively the "Joint Solar Parties" or "JSP") appreciate the opportunity to respond to Proposals #2-13 of the IPA's Consumer Protection Proposals for Public Comment dated December 2, 2022. The Joint Solar Parties responded to Proposal #1 on December 30, 2022. The Joint Solar Parties further appreciate the IPA providing extra time for responses to these later proposals in the new year.

The Joint Solar Parties wish to note that, if adopted in full, the proposals identified by the IPA could require extensive changes to procedures, processes, and systems. The Joint Solar Parties recommend that Approved Vendors (and Designees as applicable) have at least 45 calendar days—if not 60 calendar days—from announcement of any new requirements to comply.

Proposal #2 – Designee Management Plan

The LTRRPP makes clear that under the current construction of the Adjustable Block Program and Solar for All, Approved Vendors are ultimately responsible for their Designees and each Designee upon registration also must commit to following the requirements of the applicable program. (*See, e.g.*, Final LTRRPP dated August 23, 2022 at 191, 295.) Approved Vendors also must ensure that individuals that are (or employed by/contracted by) Designees that interact with consumers are trained. (*See* Consumer Protection Handbook dated July 14, 2022 at 23.)

Against this background and recognizing that the IPA raised that it would impose such a requirement in the LTRRPP, the Joint Solar Parties do not object to the concept of a Designee Management Plan ("DMP"). The Joint Solar Parties in particular support the IPA's proposal to not approve individual Approved Vendor DMPs but to simply confirm they exist.

The Joint Solar Parties wish to make a few notes. First, the IPA should allow affiliated Approved Vendors to share a DMP, especially when the same developer or owner/operator (or Approved Vendor-as-a-service provider) will be responsible for carrying out the DMP in each case. In some cases, the Approved Vendor may be owned by a financing vehicle in which a long-term owner/operator has a small stake. The IPA should allow those entities to join the long-term owner/operator's DMP.

Second, some Approved Vendors may not use Designees. While the Joint Solar Parties understand that use of Designees is common, it may not be universal. Such Approved Vendors should be exempt from DMP requirements unless/until they retain Designees. Similarly, some larger customers with behind-the-meter systems end up buying both the system and the Approved Vendor; in such cases the protections from the DMP make little sense because the customer itself is making the decisions and a DMP only adds red tape.

Third, the best practice (and typical if not near-universal) practice is for Approved Vendors (or their affiliate) to enter into written contracts for the services provided by the Designee. While there are exceptions (for instance, when a community group must register as a nested Designee because it assists with solicitation), virtually all business-to-business transactions will have a written contract. Many of the items in the DMP are best suited to be placed in that contract rather than an internal document sitting with the Approved Vendor that does not have binding effect on the Designee.[1] To that end, perhaps the most valuable service the IPA can provide is *suggested* minimum Approved Vendor-designee contract provisions that put these issues on the radar of Approved Vendors that are newly getting into solar or that are small/emerging businesses. Alternatively, the IPA should provide information about best practices for Approved Vendors to manage such matters either formally by contract or informally through communication. The Joint Solar Parties recommend that the DMP itself (to the extent required) focus on Approved Vendor internal procedures and commitments.

Turning to the proposed contents, the Joint Solar Parties respond as follows:

- *A process and criteria for vetting new Designees*. The Joint Solar Parties appreciate that allowing unqualified or unscrupulous Designees into the program leads to negative experiences for all involved. Also, a commercially reasonable amount of vetting the counterparty is typically part of every contracting process in the private sector (as well as the public sector). The Joint Solar Parties expect that vetting criteria will vary widely between Approved Vendors, including by sector (i.e. Small DG vs. Large DG vs. community solar), the function of the Designee (*e.g.*, installer vs. marketing agent), and the type of Designee (*i.e.*, natural person, not-for-profit, corporation). The IPA should bear this in mind if and when it considers an Approved Vendors vetting process, including accepting minimum threshold criteria that cuts across the diverse types of Designees even a single Approved Vendor might have.

- *A plan for onboarding and setting expectations for new Designees*. It is a best practice to have at least an outline of onboarding processes, even if they will vary wildly for the same Approved Vendor depending on the function and type of Designee. Expectations, however, can and should be set by the contract between the Approved Vendor and the Designee—not a DMP. At best, the DMP would provide a framework for what goes into binding contracts; best practices for contracts include standards of care, scopes of work with detailed minimum activities, and monitoring mechanisms. As such, the IPA should not expect (or require) a DMP to contain a detailed onboarding plan and detailed expectations for Designees.

- *A process and criteria for reviewing Designee marketing materials, scripts, and channels*. While some Approved Vendors may be large and sophisticated enough to have a formal process, in many cases the process for reviewing materials will be certain individuals, groups, or job titles (internal staff or external sources such as outside counsel) for program/legal compliance. Even for bigger and more sophisticated entities, the review

[1] Even to an Approved Vendor on a going forward basis was able to negotiate with its vendors that they all must comply with the DMP, as applicable, an Approved Vendor would have to amend existing contracts to include a reference, which is not commercially feasible.

process is likely to be conducted by a department or team and (in addition to compliance) non-program review such as consistency of national or local messaging are likely to be the criteria. In other words, it is not clear how much marginal value including such procedures in the DMP would add beyond the Approved Vendor's preexisting obligation to monitor Designees and upload marketing materials periodically. Instead, the focus of this element should be on education (training) of Designees and an expeditious remedy for any instance where a Designee's marketing strays.

- *A process and criteria for reviewing Designee enrollment processes (including generation and signing of Disclosure Forms and execution of contracts)*. In the experience of the Joint Solar Parties, the best practice is for the Designee enrollment process to be spelled out in the Designee-Approved Vendor contract or related documents. Given the robust consumer protections in Illinois that place substantial structure on the enrollment process, program compliance is best assured by addressing enrollment in the contract between the Designee and the Approved Vendor.

- *A process for ensuring adequate training of Designee employees and agents (including training on Program requirements and updates)*. While training of Designee employees and agents may be part of the Designee-Approved Vendor contract, the Joint Solar Parties appreciate that review of whatever training or training materials the Designee must provide is likely outside of the contract and logical for inclusion in the DMP.

- *A plan for regular communications and/or check-ins between the Approved Vendor and Designees*. In many cases, especially for smaller Approved Vendors or with Designees that provide on-demand services (such as O&M on a customer site), this section regarding communication frequency may be very short. The Joint Solar Parties appreciate that the DMP can and should be more extensive for other categories of Designees, such as sales. The IPA should recognize that the frequency of communications between an Approved Vendor and Designee will vary based on the nature of the relationship.

- *A process and guidelines for when Designees need to update the Approved Vendor on material changes in the Designee's marketing materials or channels, enrollment processes, or other business practices.* The Joint Solar Parties recommend that this type of standard for performance of the Designee should exist in the Approved Vendor-Designee contract rather than a DMP that is an internal procedure document for the Approved Vendor.

- *[For Approved Vendors that offer distributed generation projects] Requirements to ensure Designees submit project application materials to the Approved Vendor in a timely manner*. The Joint Solar Parties recommend that minimum timelines should be provided in the Approved Vendor-Designee contract, rather than a DMP.

- *A process for Designees to report customer complaints to the Approved Vendor*. The process by which a Designee performs its obligations should be in the Approved Vendor-Designee contract rather than in the DMP.

- *A plan for responding to Designees' violations of Program requirements or the management plan*. The Joint Solar Parties agree that it is important to have a plan for

addressing violations of the applicable program, but the variety of potential violations and issues makes creating a unified set of procedures other than internal alerts challenging. The Approved Vendor-Designee contract should contain terms and conditions related to notification of and response to customer concerns or alleged ABP or SFA violations. The DMP would be an internal Approved Vendor document that would not necessarily have a binding effect on the Designee and thus it is unclear what it means for a Designee to "violate" a DMP.

The question prompt specifically asked about hurdles to implementation. The Joint Solar Parties fear that given that many of the items should be addressed by contract, overlap one another, and in some cases are very context-sensitive as to the identity or nature of the Designee, it will be difficult to create a truly useful DMP document without substantial cost and extensive preexisting knowledge of the Adjustable Block Program or Solar for All. While the Joint Solar Parties agree the issues raised in the bullet points above are important considerations for Approved Vendors, attempting to create a universal document may lead to a less-than-useful document being generated in many cases despite best Approved Vendor intentions because of the complexity of some questions and the difficulty of addressing others in an Approved Vendor internal document. The Joint Solar Parties note that nothing in these comments should be construed as attempts to limit the Approved Vendors' responsibility for the actions of their Designees, but instead the oversight of the specific manner in which that oversight is to be exercised.

Proposal #3: Clarification about Approved Vendor Responsibility for Designees that Market "TBD" Community Solar Offers.

The Joint Solar Parties do not generally object to Approved Vendors being responsible for Designee behavior because it is already part of the program. However, the Joint Solar Parties urge the IPA to consider that marketing of a product an Approved Vendor does not offer should be a defense to certain violations. For instance, if Approved Vendor A only offers a percentage of bill credit pricing term and a Designee is making misstatements about savings for a product with a fixed rate (that does not change with the bill credit rate) offered by Approved Vendors B and C, Approved Vendor A should not face discipline. Similarly, if Designee is causing issues for customers in the Ameren service territory and Approved Vendor A only has system(s) in the ComEd service territory, Approved Vendor A should not be disciplined. Other than these two caveats, the Joint Solar Parties appreciate that under the existing program framework the IPA may be able to discipline any of Approved Vendors A, B, and/or C for the actions of their shared Designee. The Joint Solar Parties note that nothing in this response should preclude a defense or mitigation by an Approved Vendor that it did in fact take reasonable steps to monitor behavior of the Designee.

Proposal #4 – Restrictions on Marketing ARES Products in Conjunction with ILSFA Offers

Other than not noting the two exceptions (a Commission-approved guaranteed savings program and municipal aggregation) to the prohibition of Section 16-115E(a), the Joint Solar Parties otherwise agree with this proposal. While in the future an ARES may offer a guaranteed savings program that runs concurrently with a behind-the-meter system for some amount of time, the Joint Solar Parties believe that an Approved Vendor seeking to offer that product should request a waiver or variance from the IPA or the Program Administrator.

Proposal #5 - Exception to Allow ILSFA Approved Vendors to Use the ILSFA Logo with Approval of the Program Administrator

The Joint Solar Parties prefer this formalized and acknowledged process, which puts market participants on more equal footing.

Proposal #6 - Community Solar Billing Issues – Notification and Payment Plan

Unfortunately, there have been many incidents noted by Joint Solar Parties members of inaccurate utility billing of either individual customers or market-wide delays related to changes in tariffs. The Joint Solar Parties note that some Approved Vendors will delay billing if there are issues (frequently caused by the utilities) in placing bill credits on subscribers' bills. However, this proposal creates a perverse incentive for Approved Vendors to simply bill customers as the bill credits *should* be generated—under both Ameren and ComEd's tariffs, the system owner must confirm periodically and not less frequently than each month the total production, which allows calculation of the kilowatt-hours associated with any subscription—without regard to whether the utility is correctly placing bill credits or not. While arguably an issue between the customer and utility because under 16-107.5(*l*)(3) bill crediting is exclusively the obligation of the utility, many Approved Vendors do not take that stance and instead take actions including delaying billing and helping customers work with the utility to correct billing. The proposed approach would complicate those Approved Vendors' attempt to do right by their customers. The Joint Solar Parties further note that not all billing systems are equipped to provide an automatic (or even opt-in with notice) billing plan in the event of billing delays.

To the knowledge of the Joint Solar Parties, there are few instances where the bill credits are being properly placed on customer bills that the Approved Vendor substantially delays billing. Rather, the driving reason for delayed bills to the understanding of the Joint Solar Parties is delayed or inaccurate provision of bill credits. While there may be limited relief from the *results* of incorrect utility bill credit placement, a more powerful approach is to work with utilities, the Commission, and other stakeholders to ensure utilities maintain billing systems that issue accurate bill credits.

As an aside, the Joint Solar Parties understand that at minimum ComEd's (and potentially Ameren's) "net crediting" approaches provide a major disincentive to system owner participation. Not only must all customers on a system participate if any do, but ComEd will not carry forward a balance if a customer does not pay during the current month. In other words: if a customer forgets to pay their January bill, the February bill will reflect both current and past ComEd charges but only current (and not past) charges for the subscription. (*See, e.g.*, IL C.C. No. 10, 1st Revised Sheet No. 344.20 ("Under no circumstances is the Company obligated to collect unpaid balances . . ."; separately providing for *notification* of unpaid balances to the system owner).) Unless or until the utilities change their approach, "net crediting" tariffs are not a solution.

The Joint Solar Parties also note that in some cases, where the Approved Vendor is not the system owner, the Approved Vendor is not the counterparty to the subscription agreement. Placing the obligation on the Approved Vendor may unintentionally require a third party that does not directly interact with the customer to address payment plan issues.

Proposal #7 - Adjusted Disclosure Form Execution Process for Community Solar for Large Commercial and Industrial Customers

The Joint Solar Parties are comfortable with this modification. If the IPA does go forward with this proposal, the Joint Solar Parties suggest the IPA go further and also allow any non-residential customer to avail themselves of bulk signing. The Joint Solar Parties note that entities with multiple separate accounts (i.e. separate facilities) are likely to be sufficiently sophisticated to review subscriptions with internal or external energy consultants or counsel. It is far more likely that there will be many smaller (under 100 kW) accounts than a large number of DS-3 or above accounts in Ameren or Medium Load or above accounts in ComEd. Alternatively, it makes little sense for a sophisticated industrial user with a small office to be able to use bulk signing for their manufacturing operations but not for their sales outpost just because the small office is under 100 kW in peak demand.

The Joint Solar Parties note that ensuring the signature bundling function is fully working and the CSV/API functions are stable and fully functional should be the highest priority for non-residential subscribers.

Proposal #8 - Clarification on Restrictions for Offering Distributed Generation Projects that Cannot Take Advantage of Net Metering Crediting under the Public Utilities Act

At a fundamental level, the Joint Solar Parties suggest the disclosure should not be what the customer's net metering is not (i.e. 16-107.5 standards) but what the net metering approach *is*. That information is far more valuable to the customer, and should be part of the sales presentation. An affirmative explanation of net metering actually available to the customer provides far more insight than the fact that the customer is not getting an approach memorialized in statute for other customers.

The Joint Solar Parties are confused by the references to the competitive declaration in the new text. Competitive declarations are by specific utility customer class. A better approach is to define residential customers and the smallest commercial classes that include a peak demand of 100 kW (the cutoff for Small Load in ComEd). Alternatively, the IPA should use ComEd's definition of small load and seek documentation of the customer's peak load over the past year and determine if it is under 100 kW.

Proposal #9 – Program Violation Response Matrix

The Joint Solar Parties appreciate the effort that went into the Matrix and are generally supportive if the concerns and recommendations raised elsewhere in these comments are adopted. However, the Joint Solar Parties have some limited, specific recommended changes.

First, under Section X.B. Process for Consumer Protection Violations and Potential Violations, the proposal states that "[w]ith the limited exception of emergency situations requiring immediate action (as determined at the discretion of the IPA), the Program Administrator will allow a reasonable time for the entity to respond before determining what response to take." The Joint Solar Parties recommend a consistent minimum deadline for responses, such as ten business days, with the understanding that such minimum schedule may be extended by request or in the case of

extensive inquiries. This will remove any ambiguity as to the necessary next steps when the Program Administrator is seeking a written response from an Approved Vendor or Designee.

Second, under Section X.B. Process for Consumer Protection Violations and Potential Violations, the proposal states "[i]f the Program Administrator determines that the Approved Vendor or Designee has violated a Program requirement, the Program Administrator will select the appropriate response from the Program Violation Response Matrix, based on the specific circumstances and facts." The Joint Solar Parties respectfully request that the IPA clarify—or at least provide examples of—what violations of Program requirements may rise to the level of suspension or revocation of Approved Vendor/Designee status. Such examples will not only communicate IPA enforcement priorities to the market but also encourage proportionate responses. In the alternative, if warning letters are published, they should be subject to appeal and the IPA should remove warning letters if the Approved Vendor makes appropriate changes in response to the warning letter.

Third, under Section X.B. Process for Consumer Protection Violations and Potential Violations, the proposal identifies "formal disciplinary actions" as "suspensions or revocation of Approved Vendor/Designee status." The Joint Solar Parties agree with this definition. Yet later, the proposal states that "[i]f an Approved Vendor or Designee receives a formal warning letter, is suspended, or has their Approved Vendor or Designee status revoked, this fact, along with a summary of the Program violations, will be published on the website(s) for the Program(s) in which the Approved Vendor or Designee participates." The Joint Solar Parties believe that only formal disciplinary actions should be subject to disclosure on the program website and thus receipt of a warning letter should not be published on the Program website. The Joint Solar Parties fear that publishing warning letters would be overly punitive for an Approved Vendor that is otherwise committed to compliance and change in response to the warning letter.

Foruth, as a general matter, the Joint Solar Parties recognize the need to clearly delineate the pathways to remedy potential consumer protection violations. However, the Joint Solar Parties also believe that informal dialogue with the customer in many cases is productive and fruitful as an initial step rather than an immediate escalation to a formal process (unless informal discussion is in fact one of the early steps in the formal process). The Joint Solar Parties urge that except for serious violation informal dialogue with the customer should be encouraged to reach a mutually agreed resolution by recognizing good-faith attempts to resolve as a mitigating factor in any discipline.

Proposal #10 - Requirement to Provide a Copy of Executed Disclosure Form and Contracts to Customer

The Joint Solar Parties do not object to this requirement, except that there should be at least five business days to send out a paper copy. Some Approved Vendors have a substantial volume of contracts and the amount of paper could be non-trivial in some cases; a few extra business days will allow flexibility in times of heavy flow and ensure documentation that a copy is sent for later audit purposes if necessary. The Joint Solar Parties also recommend—given that all customers are required to include an e-mail address on their Standard Disclosure Form unless they fill out an attestation that they have no e-mail address—that sending a copy electronically should always be an option except for customers that have signed the no e-mail address attestation.

While generally speaking the Joint Solar Parties do not object, the Joint Solar Parties believe that this proposal is largely unnecessary. In cases where there is a legal "cooling-off period" or extended rescission period under state or federal law (such as door-to-door sales), the rescission window does not begin its countdown to closing until the customer is sent a copy of their contract or at least notice of the right to rescind. (*See, e.g.* 815 ILCS 505/2B.) Thus, counterparties are incentivized to send copies of contracts to their customers.

Proposal #11 - Community Solar Contract Requirements – Insurance and Maintenance

The Joint Solar Parties appreciate the IPA engaging and adopting the Joint Solar Parties' proposal. The Joint Solar Parties agree with this implementation.

Proposal #12 - Community Solar Contract Requirements – Assignments

The Joint Solar Parties note that if the Approved Vendor must send a new disclosure form, the assignor (or assignee) must provide the Approved Vendor with all of the information necessary to fill out the Standard Disclosure Form, including accurately reporting the name of the utility account-holder, the utility account number, e-mail address, etc. The Joint Solar Parties understand that many Approved Vendors have had issues with a person living at a residence signing a disclosure form even though their specific name is not on the Standard Disclosure Form—this would be even harder to verify in the event of an assignment. These errors are not typically caught until review of subscriptions by the Program Administrator, at which time it is frequently too late to correct errors.

The proposal requested feedback on whether the qualification standards at the time of the assignor's enrollment or the Approved Vendor's current qualification standards should apply to assignments. The Joint Solar Parties note that the ABP and SFA have already evolved over time and continued evolution and change is likely. With those changes, the minimum qualifications for subscribers in many cases have likely changed in parallel. Requiring the Approved Vendor to use the same standards as when the customer enrolled locks the Approved Vendor into dealing with the customer under circumstances that may no longer exist.

The Joint Solar Parties note initially that some subscriptions require additional agreements, such as an autopay agreement, that are not assignable and would need to be executed by the assignee. The language should reflect that if the subscription requires such an agreement to be signed by the subscriber, the Approved Vendor/system owner may make full execution by the customer a prerequisite to assignment.

The Joint Solar Parties oppose being required to adjust the subscription size downward upon request. The portion of the nameplate capacity subscribed—particularly under the 2019 REC Contract—by all customers and small subscribers in particular impacts Approved Vendor revenue under the REC Contract. Customers insisting on smaller subscriptions will require partial subscription replacement, including in small increments (i.e. 1 kW) that are not easily placed individually.

Finally, the Joint Solar Parties urge the IPA to allow one of the reasonable restrictions to be that the Approved Vendor can refuse an assignment where the assignor had a small subscription but the assignee would not (for instance, an assignment from a DS-2 customer to a DS-3 customer).

Under all REC Contracts, lowering the Subscription Mix (the small subscriber percentage) could lead to substantial losses.

Proposal #13 - Replace References to "Adjustable Block Program" and to Separate ABP and Illinois Shines Websites

The Joint Solar Parties do not necessarily object, however the Joint Solar Parties urge the IPA to continue to host the robust information, FAQs, etc. on the unified website that Approved Vendors, Designees, and others rely on. This is especially important given that some of the FAQs and other informal guidance documents provide unique information not found elsewhere but that is binding on program participants.