

US Solar – Stakeholder Feedback re: EEC Requirements

Dear IPA,

US Solar respectfully submits this feedback regarding the IPA's April 11 Stakeholder Feedback Request re: Eligibility Criteria for Equity Eligible Contractors and the Equity Eligible Contractor (EEC) Category. As an active developer and owner-operator of distributed generation and community solar projects under the Adjustable Block Program (ABP), we based these comments on our experience in Illinois and several other states.

Although the feedback request did not specifically call out the ABP's equity accountability system and standard, the IPA did include a quotation and reference to the relevant statutory citation, 20 ILCS 3855/1-75(c-10). That subsection states, in pertinent part:¹

Equity accountability system. It is the purpose of this subsection (c-10) to **create an equity accountability system**, which includes the minimum equity standards for all renewable energy procurements, the equity category of the Adjustable Block Program, and the equity prioritization for noncompetitive procurements, **that is successful in advancing priority access to the clean energy economy for businesses and workers from communities that have been excluded from economic opportunities in the energy sector, have been subject to disproportionate levels of pollution, and have disproportionately experienced negative public health outcomes.**

Upon reviewing this section, we agree at a high level that it would be appropriate to evolve the EEC category requirements to align with and support the ABP's overall equity accountability system. Especially now that the program's new Minimum Equity Standards Compliance requirements have been fleshed out, we think it could make sense to apply those same requirements to EEC approved vendors (AVs) – rather give them an exemption for the requirements (via Section 10.1.1.3 of the Long Term Renewable Resources Plan).² This simply means that an AV that is majority owned by an equity investment eligible person (aka "equity eligible person" or EEP)³ would have to participate in the Minimum Equity Standard (MES) process, just like every other AV. We do not believe that EECs would find the compliance process to be overly burdensome, and any *bona fide* EEP-owned AV should be able to successfully demonstrate compliance.

We also provide initial feedback on the five topical prompts, below.

¹ 20 ILCS 3855/1-10 (emphasis added)

² See also ABP Program Guidebook dated April 17, 2023, at 89 ("Approved Vendors who are Equity Eligible Contractors . . . do not need to submit a Compliance Plan.").

³ See 20 ILCS 3855/1-10

Topical Prompts for Feedback (in italics)

1. *Should an Equity Eligible Person be able to serve as the qualifying EEP for more than one Equity Eligible Contractor?*

a. *The Agency is concerned that allowing a single Equity Eligible Person to serve as the majority-owner of multiple Equity Eligible Contractors could result in concentration of the benefits of state incentives, where the benefits that are supposedly going to multiple companies are in fact benefitting a single person.*

If the IPA is concerned that the benefits meant to flow to EEPs are being unreasonably concentrated by a single EEP serving as the majority owner of multiple EEC Approved Vendors, we would not object to a rule preventing one EEP from simultaneously owning a majority stakes in multiple active EECs. Before articulating such a rule, however, we recommend the IPA consider how this problem (and potential solution) may interface with the 20% EEC Approved Vendor (AV) cap now under consideration in ICC docket 20–0231. For example, if one EEP is the majority owner of multiple EECs, it may be appropriate to batch those EECs together for purposes of applying any 20% application cap.

2. *Should the Agency require additional demonstrations of equitable impact for [AV] companies seeking EEC certification based on majority-ownership of a silent partner Equity Eligible Person? If so, what might those entail?*

It is unclear what the IPA means by a “silent partner” in this context. For this reason, we suggest the IPA define this term in its forthcoming proposed LTRRPP, if the IPA decides that it does want to create different standards / requirements for EECs on the basis of whether or not the EEP is a “silent partner.” A quick review of CEJA’s test turned up zero references to the term “silent partner” (or even “silent”), so it’s not clear why that construct (however defined) would be proposed as a decisive factor in establishing multiple tiers of EEC AV requirements, as IPA’s notice appears to suggest.

We do understand the IPA is likely seeing a lot of different and/or novel ownership structures in the EEC space, some of which were formed specifically to develop projects for the EEC category. But that does not mean these approaches are *prima facie* bad (or should be discouraged). Quite the opposite: we know EEC joint ventures are allowed because CEJA specifically established a 51% minimum ownership threshold. It was thus contemplated that a new-entrant EEP could and most likely would want to partner with other entities or persons who provide skills or resources required for successful development and ownership of these projects, that the EEP owner itself doesn’t possess. This is especially true given that the EEC AV cannot assign those projects to a non-EEC AV during the first six years of project operation (unlike other project categories), so EEPs will likely want a partner with a successful track record of raising construction capital, navigating complex tax equity structures, and achieving and maintaining commercial operation.⁴ With this context in mind, it would be strange if an EEP did chose to

⁴ Long Term Renewable Resource Procurement Plan, Section 7.4.6.2

partner with a non-developer or another non-experienced partner for the purpose of developing MW-scale solar projects.

In other words, EEP partnerships are designed in a bespoke fashion, with parties coming together to bring their own unique and valuable skills, resources, knowledge base, community and professional networks, etc. to the task of building – and in the case of community solar gardens, fully subscribing – new solar projects across Illinois. For this reason, we suggest the IPA focus on the delivery of actual benefits to individuals and communities that “have been excluded from economic opportunities in the energy sector, have been subject to disproportionate levels of pollution, and have disproportionately experienced negative public health outcomes”(as required under the minimum equity standards).⁵

The IPA should also consider that the first and highest goal of the ABP is to efficiently develop solar and other renewable energy resources across Illinois in order to achieve the state’s climate and renewable energy goals. Of course CEJA also includes equity goals that must be pursued, but as long as the EEP participants are *bona fide* EEPs, the IPA should take care to not put up additional roadblocks that diminish the program’s ability to bring sufficient levels of solar online in a quick and cost-efficient manner.

- a. *The Agency is concerned about ownership arrangements that may enable large, established, non-EEC companies to access state incentives intended to support [AV] companies facing barriers to business opportunities. The statutory requirement that an Equity Eligible Contractor be majority-owned by eligible persons loses its meaning if the minority owner is a large company and the majority-owner eligible person is a silent partner that would otherwise have no involvement in the solar sector – neither party is a person seeking to access the economic opportunities created by CEJA and facing discriminatory barriers in doing so. Below are some potential strategies for preventing such gaming, with the Agency open to implementing one or all of them, depending on stakeholder feedback.*

We do not support an approach that creates an artificial distinction between different “types” EEC AVs and/or imposes “special scrutiny” or a “heightened standard” for one or the other. We also don’t believe it’s a bad thing that this program may draw in EEPs who are not active in the solar sector today, but who are otherwise active business people – from the exact communities or populations that have likely experienced discrimination in their business lives that this program is meant to address.

- b. *For companies where the minority [AV] share is owned by another company, not a natural person, should the agency require that the applicant must demonstrate one (or more) of the following:*

As stated above, the IPA should consider simply applying the new Equity Accountability System to EEC AVs (just as it does to all other AVs). That would avoid the IPA having to create

⁵ See 20 ILCS 3855/1-75(c-10), directing the implementation of minimum equity standards.

and oversee an entirely new set of requirements (under discussion here). It could also go a long way to ensuring that EEC AVs are operating with equity in mind, and are tracking and regularly reporting on their performance versus the minimum equity standard. In fact, the IPA could look at the pros and cons of imposing an even higher set of equity standards on EEC AVs, if that were thought appropriate in light of statutory intent.

- c. *If the Agency does require one or more of the above additional showings for companies seeking EEC-certification, should it do so only where the minority owner is a large company or where EEP owns less than a certain percentage of the company?*

We don't see any basis in CEJA to establish higher (or lower) standards for EEPs and/or EECs based on the size of the EEP's developer partner. And as long as the EEPs are meeting the majority ownership requirement, there is no basis for IPA to suggest a second threshold ownership level for some EEC AVs but not others.

3. *To increase the transparency regarding companies that qualify as an Equity Eligible Contractor and submit projects to the Equity Eligible Contractor Category, what information might the Agency require be published on the ABP website?*

- a. *Name of companies certified as EECs?*
- b. *Ownership structure and shares?*
- c. *Basis upon which the majority-owner(s) qualified as EEP?*

Our understanding is that each of these items is already presented to the IPA as part of the EEC AV application process. That said, if the IPA wants to publish the EEC AV's company name and basis for EEP qualification (*e.g.*, residency within an equity eligible community) on their website, that may be reasonable. For investor privacy reasons, we do not support publication of the ownership structure and shares.

4. *What forms of documentation could IPA require all companies applying for certification as an Equity Eligible Contractor to submit that would verify the claimed ownership structure? Options include, but not limited to:*

- a. *Articles of incorporation*
- b. *Governance documents*
- c. *Tax documents*

The first document type, articles of incorporation (or in the case of LLCs, articles of organization), should be sufficient. The IPA should thus focus its review on that document, and provide advanced notice to potential EEC applicants explaining the need to clearly set forth the relevant information in their articles of incorporation for purposes of EEC certification. We do not support requiring EEC AVs to submit governance or tax documents. Each partnership is bespoke, likely to have very different agreements between all the parties (for the reasons

outlined above). These agreements and partnership differences should have no bearing as long as the EEC and resulting projects meet or exceed the program’s minimum equity standards.

5. *Are there variations on the above that strike a better balance? For example, the Agency could implement a prioritization system within the Equity Eligible Contractor category based on the above factors, providing bonus points for EECs that meet one or more of those criteria and selecting projects based on points received. Alternatively, the Agency could reserve a portion of that capacity for entities that meet some of the above factors – what might be a reasonable reserve portion to ensure state incentives benefit the intended actors?*

We do not support a prioritization or “points” system based on EEP/EEC characteristics because that would impose additional cost and complexity on both the ABP administrator and EEC applicants. Instead, the IPA should (1) apply the Minimum Equity Standard requirements to EEC AVs as suggested above, and (2) focus on ensuring that EECs have *bona fide* EEP investors, and (if necessary) increase the bar for who qualifies as an EEP.

Specifically, the IPA should consider strengthening the residency requirement for Eligible Equity Persons so the benefits of participation flow as intended to persons that live in and contribute to their local equity eligible community. For example, the IPA should consider adopting a 3 year pre-residency requirement, as shown in the following proposed redline modification to LTRRPP Section 7.7.3:

An Approved Vendor can qualify for an EEC certification by having status under at least one of the following four categories: . . .

- Persons whose primary residence is, **and has been for 36 months prior to certification [or passage of CEJA]**, in an equity investment eligible community.

Thank you for your careful consideration of this matter.

Sincerely,

s/  _____

Ross Abbey
Director, Regulatory and Legislative Affairs
United States Solar Corporation

