RESPONSE TO 2024 REC CONTRACT REQUEST FOR COMMENTS ON BEHALF OF THE SOLAR ENERGY INDUSTRIES ASSOCIATION, COALITION FOR COMMUNITY SOLAR ACCESS, AND ILLINOIS SOLAR ENERGY ASSOCIATION

April 5, 2024

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 the Illinois Power Agency's (the "IPA") request for comments regarding the Draft 2024 REC Contracts.

The Joint Solar Parties appreciate a number of the changes, or at minimum are neutral. In particular, the Joint Solar Parties appreciate the newly-included ability move a Designated System out of a Product Order in Section 3.5 of the 15-Year REC Contract and alignment of the 90% subscription safe harbor for Solar for All community solar projects with the 20-Year REC Contract. Many other changes appear to be primarily clarification or conforming changes.

However, the Joint Solar Parties have four comments related to new additions:

(1) excess verbiage in the definition of "Environmental Justice Communities" in the 20-Year REC Contract;
(2) inconsistency between the LTRRPP and Section 3.5 of the 15-Year REC Contract, Section 3.5 of the Solar for All REC Contract, and Section 3.4 of the 20-Year REC Contract;
(3) the new section regarding Designated Systems included in error; and
(4) a potential unintended consequence of changes to Section 13.1 of all REC Contracts.

First, the 2024 Draft 20-Year REC Contract adds a new definition of "Environmental Justice Communities" that could cause confusion. Specifically:

> "Environmental Justice Communities" or "EJC" means, communities as defined by the IPA pursuant to subsection (b) of Section 1-56 of the IPA Act, *where residents have historically been subject to disproportionate burdens of pollution, including pollution from the energy sector*.

(Draft 2024 20-Year REC Contract at § 1.42 (emphasis added).) While the Joint Solar Parties do not dispute the descriptive accuracy of the italicized text above, the italicized text is merely an explanation of how the IPA defines an EJC. However, the italicized text could be read as imposing an independent and additional requirement on the EJC map maintained on the Solar for All website, suggesting that merely because a system is within an EJC on the map is not sufficient because there *also* must be a demonstration of historical disproportionate burden of pollution. To the knowledge of the Joint Solar Parties, neither the IPA nor the Solar for All Program Administrator nor the Adjustable Block Program Program Administrator provide separate or additional documentation beyond the map.

To avoid such confusion, the Joint Solar Parties recommend revising the definition to read something similar to:

> "Environmental Justice Communities" or "EJC" means, communities as defined by the IPA pursuant to subsection (b) of Section 1-56 of the IPA Act and as defined in maps or other documents maintained by the IPA or the Solar for All Program Administrator.

The Joint Solar Parties recommend similar changes to Section 1.52(a) of the 15-Year REC Contract and Section 1.46(a) of the 20-Year REC Contract regarding R3 areas (i.e. removing the phrase "where residents have historically been excluded from economic opportunities, including opportunities in the energy sector" that suggests an independent requirement beyond designation by the R3 program).

Second, Section 9.4.2.1.3 of the LTRRPP provides that the "unbatching" process—which as noted above the Joint Solar Parties support as a innovation to improve customer and Approved Vendor experiences—would occur under the following circumstances:

- the Agency, in its discretion, determines that "unbatching" of projects would provide material benefits to one or more consumers who have been (or absent the rebatching, will be) harmed through their participation in Illinois Shines or ILSFA;
- the Approved Vendor agrees to the "unbatching;" and
- the contracting utility agrees to the "unbatching."

(ICC Docket No. 23-0714, Draft LTRRPP for Commission Approval dated October 20, 2023.) However, Section 3.5 of the 15-Year REC Contract, Section 3.5 of the Solar for All REC Contract, and Section 3.4 of the 20-Year REC Contract, only the first bullet (IPA discretion) is addressed and not Approved Vendor (Seller) nor contracting utility (Buyer) agreement. While the Joint Solar Parties appreciate that receiving utility consent may present an administrative burden to all parties and create a longer lead time, utility consent and Seller consent were explicitly required in the LTRRPP. Thus, the 2024 15-Year REC Contract, the Solar for All REC Contract, and Section 3.4 of the 20-Year REC Contract should reflect the requirement that Seller and Buyer agree as well.

Third, the Joint Solar Parties oppose the new Section 3.6 in the 15-Year REC Contract, Section 3.5 in the 20-Year REC Contract, and Section 3.6 of the Solar for All REC Contract.[1] which provide as follows:

> If a Designated System was included in this Agreement in error by the IPA or Buyer, then upon the occurrence of the determination by the IPA of such error, the IPA shall provide written notice of such error to Buyer and Seller, and the Designated System shall be removed from this Agreement twenty (20) Business Days after such written notice by the IPA to Buyer and Seller. As soon as practicable after the IPA's determination, the IPA shall provide to Buyer and Seller a revised Schedule A (and Schedule B, if applicable), Schedule C and Schedule D to the Product Order for such Designated System indicating the removal of such Designated System from the Agreement. If there are RECs that have been Delivered, but that are unpaid, then Buyer shall return such unpaid RECs to Seller to the extent such RECs are not retired If payments have been made in error to Seller with respect

[1] The Joint Solar Parties did not perform a word-by-word comparison but Section 3.6 of the Draft 2024 15-Year REC Contract and Section 3.6 of the Solar for All REC Contract appear to be substantially similar if not identical to the quoted language from the 20-Year REC Contract.

> to the Designated System, Seller shall return the amount of payment equal to the multiplicative product of (A) the Contract Price and (B) the number of RECs that were Delivered but were not yet paid by Buyer. Upon the removal of such Designated System from the Agreement, Seller may request for the reduction of a portion of the Performance Assurance Amount attributable to such Designated System in accordance with Section 7.1(c)(i). Any such request shall be honored by Buyer within ten (10) Business Days.

(Draft 2024 20-Year REC Contract at § 3.5.)

As an initial matter, the REC Contract already provides—and has provided since the initial 2019 version—a process for the IPA to remove systems that do not comply with program requirements. (*See, e.g.*, 2024 Draft 15-Year REC Contract § 2.4(f); 2024 Draft 20-Year REC Contract at § 2.4(f); 2024 Draft Solar for All REC Contract § 2.4(f).) Thus, this new Section cannot be about non-compliance with the Adjustable Block Program or Solar for All. If the issue is accidental inclusion of a duplicate system by the Program Administrator—which the Joint Solar Parties understand has happened in the ABP—then this section should be restricted to just that scenario (duplicates) and the language should be clearer that Seller should be returned their collateral given that in the duplicate system context the error is almost certainly the Program Administrator (or utility) and not the Approved Vendor. If there are other scenarios other than ABP non-compliance—which as noted above is already covered by another provision—or inclusion of a duplicate system, then there should be more explanation of the scenarios this provision is intended to cover and far more precise language.

The Joint Solar Parties note that some members of the trade associations comprising the Joint Solar Parties have indicated that their financing partners have expressed great concern over this draft language. As the Joint Solar Parties understand it, these financing partners are concerned that there is no definition of what an error would be, how that error would be identified and addressed in the event of a dispute, or how the financing parties could potentially diligence whether an "error" occurred. Again, knowing that program compliance is already covered by Section 2.4(f) of both ABP contracts, the Joint Solar Parties understand there was confusion as to what problem this was trying to solve and—conversely—whether this provision could be used (particularly by Buyer) to endanger otherwise legitimately-selected projects.

As a result, the Joint Solar Parties urge the IPA to revise Section 3.6 of the 2024 Draft 15-Year REC Contract, Section 3.6 of the Draft Solar for All REC Contract, and Section 3.5 of the 2024 Draft 20-Year REC Contract by either completely removing the language or being far more specific about the specific issue it is meant to address (for instance, unintended duplication of a Designated System by the Program Administrator or utility Buyer) and ensuring that if the mistake is not from the Seller-Approved Vendor then fully returning all collateral to the Seller-Approved Vendor.

Fourth, Section 13.1 of the 15-Year REC Contract and 20-Year REC Contract includes additional new language that appears to track the current Solar for All REC Contract:

> For avoidance of doubt, any assignment by Seller, regardless of whether the assignment made by Seller requires the consent of Buyer, must be made to an assignee with an ABP agreement with Buyer of the same contract type.

The Joint Solar Parties believe the intention of the language quoted above is to capture the process in the FAQ regarding assignment,[2] but the language is confusing and appears to instead supersede the procedure in the FAQ. The language quoted above suggests that only an Approved Vendor that *previously* has a 2024 REC Contract with that Buyer can take assignment of a Product Order attached to a 2024 REC Contract, meaning an Approved Vendor without a previous award in the 2024-25 program year cannot take assignment because it does not have a 2024 REC Contract with that particular Buyer. This is not current practice—as explained in the ABP FAQ page, if an assignee has not yet executed the appropriate REC Contract with the appropriate Buyer, the Program Administrator presents the Buyer with a shell REC Contract and Buyer presents a partially executed version for the assignee's execution.[3] The new language should be clarified in the Draft 2024 15-Year REC Contract and 20-Year REC Contract (and the existing language clarified in the Solar for All REC Contract) as follows:

> For avoidance of doubt, any assignment by Seller of any Product Order or Product Orders to this Agreement, regardless of whether assignment made by Seller requires consent of Buyer, cannot be completed until Seller's assignee has entered into a fully executed version of this Agreement with Buyer. If Seller's assignee has not yet executed a version of this Agreement with Buyer, an execution copy shall be provided to Seller's assignee by the IPA or its designee as required under the ABP [or SFA].

This language is intended to recognize that while the assignment must wait on execution of the appropriate REC Contract with the appropriate Buyer, it removes the suggestion that an Approved Vendor without the appropriate REC Contract with Buyer cannot enter into one as part of the assignment process, consistent with the FAQ and current practice.

[2] *See* https://illinoisshines.com/vendor-faqs/, "How do I assign Product Order(s) or an entire REC Contract".
[3] *Id.*, Steps 6-7.