To: The Illinois Power Agency, **IPA.Solar@illinois.gov**
Subject: IL Solar for All Working Group-Stakeholder Feedback on CP Proposals
Date: October 7, 2024
From: Members of the Illinois Solar for All Working Group

Dear Illinois Power Agency:

The Illinois Solar for All Working Group is pleased to deliver the enclosed comments in response to the Requests for Comments on the New Consumer Protection Initiatives.

For these comments, specific signatories include:

Citizens Utility Board
Central Illinois Healthy Community Alliance
A Just Harvest
Central Road Energy
Greenlink Solar Solutions, Inc.

I. Escrow
1.What should the minimum threshold be for the number of reports/complaints to potentially lead to the implementation of the escrow process? The Agency is considering a set number of reports/complaints (such as 2 or 5 credible reports within a 45-day period) or a percentage approach (such as 1% of the number of projects included in invoices for the Approved Vendor over the past three months). The Agency is attempting to balance consumer protection risks, which would weigh in favor of a low threshold, against the uncertainty and potential financial risk to Approved Vendors, which would weigh in favor of a higher threshold. Another option could be to use a combination of absolute numbers and percentages, such as "the greater of X reports or Y%."

Answer: More than one credible (verified) report/complaint within a 90-day window should trigger the escrow process

2.If the contract between the customer and the Approved Vendor does not specify a deadline or time frame for the Approved Vendor to pass through the promised REC payment, what timeline should the Program Administrator use as a threshold to determine if there is a high risk that the Approved Vendor will not pass through the promised incentive payment to customers? Would a deadline of 30 or 45 days for the Approved Vendor to pass through a REC incentive payment (measured from the time that the Approved Vendor receives the payment from the utility) be reasonable?

Answer: 30 days should be enough time to determine that the Approved Vendor will not pass through the promised incentive payment to customers

3.What should the standard be for determining if a former-employee whistleblower is making a credible report related to the failure to pass through incentives to customers? Should the

Program Administrator confirm with a certain number of customers that those customers in fact did not receive their promised REC incentive?

Answer: The Program Administrator should determine the credibility of any whistleblower report by confirming at least one customer has not received incentives that they were entitled to receive. The process should also provide a definition of the term "whistleblower".[1]

4.The Agency seeks feedback from stakeholders on whether and/or when an Approved Vendor filing for bankruptcy should activate the possibility of the escrow process being used, and any relevant implications or considerations

Answer: Dissolution and reorganization bankruptcy filings should certainly activate the escrow process. The Agency should consult with business bankruptcy professionals or the court system to determine the relevant implications and considerations.

5.The Agency seeks feedback on the proposal for how the Program Administrator would determine the appropriate amount of payment to each customer whose project is part of the escrow process. Are there any situations or considerations that the proposal does not address? Is the proposal fair to both customers and Approved Vendors/Designees?

<u>Proposal:</u> The Agency expects that determining the exact amount of money promised to the customer may, in some situations, be difficult, and that the Approved Vendor and customer may disagree on the appropriate amount. The Agency intends that the Program Administrator will consider all information available to it before arriving at a determination of the amount that should be paid to the customer. If the customer's Disclosure Form was generated on or after June 1, 2023, it will include a field indicating the amount of the pass-through payment to the customer. For these customers, the Agency proposes that there will be a rebuttable presumption that the amount disclosed on the Disclosure Form is the amount that the customer should receive. This presumption may be rebutted by information presented by the Approved Vendor (or Designee) or the customer. If the Disclosure Form was generated prior to June 1, 2023, it will not include a field for the REC payment pass-through and the Program Administrator will rely on other documentation. The Program Administrator may request from the Approved Vendor any information or documentation related to the pass-through payment amount owed to customers. The Program Administrator may also request information and documentation from customers regarding the amount of pass-through payment that they were promised. The Program Administrator may also request information or documentation from any involved Designees.

In determining the amount of the pass-through payment, the Program Administrator may consider sizing or other changes to the system design that would affect the overall REC payment amount, if relevant based on other documentation of the specific offer. For example,

[1] See Whistleblower Information, Office of Inspector General. https://www.energy.gov/ig/whistleblower-information

the Agency understands that some Approved Vendors promise to pass through a certain percent of the total REC payment amount, and that if project specifications change, this may affect the total REC payment amount and also the amount promised to the customer. The Agency proposes that the Program Administrator will endeavor to make its determination as fair as possible. For example, say a solar project was initially designed at 8 kW AC and the customer's Disclosure Form stated that the pass-through payment would be $6,000, and the customer's contract stated that the pass-through payment would be 75% of the total REC incentive payment. If the Approved Vendor or Designee actually only installed a 5 kW AC system, such that 75% of the total REC incentive would be only $3,500, but the customer was unaware of the change and did not sign a change order or an updated Disclosure Form, the Program Administrator may find that the proper payment to the customer would be the full $6,000 originally promised. If on the other hand, the customer signed a change order and an updated Disclosure Form that disclosed the updated passthrough amount as $3,500, the Program Administrator would find that the payment to the customer should be $3,500. If the Approved Vendor does not submit information or documentation about the amount of the passthrough payment, but the customer does present information that is reasonably substantiated, the Program Administrator may make a determination based solely on the information presented by the customer, and vice versa if only the Approved Vendor submits information.

Answer: We agree with the Agency's proposal, however, we believe the following language changes should be made:

If the Disclosure Form was generated prior to June 1, 2023, it will not include a field for the REC payment pass-through and the Program Administrator will rely on other documentation. The Program Administrator shall ~~may~~ request from the Approved Vendor any information or documentation related to the pass-through payment amount owed to customers. The Program Administrator shall ~~may~~ also request information and documentation from customers regarding the amount of pass-through payment that they were promised. The Program Administrator shall ~~may~~ also request information or documentation from any involved Designees.

We also suggest that the Agency give the customer an opportunity to dispute the "as fair as possible" determination of REC amount by an independent decision maker.

6.How long should the Program Administrator wait—while attempting to obtain information about the promised pass-through payment, or while attempting to get necessary payment information from the customer—before directing the escrow agent to disburse the entire incentive payment to the Approved Vendor?

Answer: Forty-five days seem reasonable given the customer's knowledge of the failure to receive promised REC payments from the AV.

7.What is the best method for the escrow agent to make payments to customers and Approved Vendors? What considerations are important to assess for different payment approaches?

Answer: Payment by check seems reasonable and safe.

ii. Stranded Customer REC Adder

1.Are the proposed REC adder values adequate to incentivize Approved Vendors and Designees to assist stranded customers in each of the categories listed in Tables 1 and 2 of Attachment A? If you believe the REC adder values should be higher or lower, please provide an explanation and any supporting data.

Answer: We believe there should be no REC adder where a customer is stranded prior to installation and prior to the beginning of the original AV's Part I application process. In this situation, AVs have little to no customer acquisition costs and no additional burden relative to other new customers.

2. Are there additional categories that should be added to the Tables in Attachment A (either to cover additional types of customers or to split an existing category into multiple categories with different REC adder values)?

Answer: Unfortunately, our groups do not have the capacity to fully review this table and all of its implications in the time provided. We do believe that what would really be helpful to stranded customers is that the REC adder be paid in an up-front lump sum so they can have an installer do the work to secure the rest of the REC contract.

3. Is the proposed approach of having different REC adders for Illinois Shines and ILSFA appropriate?

Answer: Yes.

4. Should the REC adder values proposed herein be amended to differ based on the type of utility customer or sub-program/program category?

Answer: Yes, they should be adjusted to reflect differences in utility REC prices as these differences are in part based on different development costs.

III. Restitution

Approach: The amount of the restitution payment would be limited to actual economic damages. The amount of actual damages would be discounted if a customer did not take reasonable actions to limit the harm. Restitution payments would be capped at $30,000 per project. Other state consumer restitution funds have a similar cap. For example, California's Solar Energy System Restitution Program caps individual claims at $40,0007 and the Virginia Contractor Transaction Recovery Fund caps individual claims at $20,000.8 The Agency will also have a cap of $200,000 for restitution payments based on a single Approved Vendor's or Designee's conduct. This is also a common element of restitution programs.9 The Agency has not yet determined whether the cap per Approved Vendor or Designee will be on a "first come, first served" basis or whether there would be a pro rata distribution amongst claims filed within a certain time period

1.Is the above a reasonable and fair approach to prioritizing customer claims when program caps are implicated? Or should claims be paid out on a first-come, first-served basis?

Answer: We support the approach of using prorated partial payments to ensure benefits are spread wide and that each harmed customer is able to recover some cost, with some exceptions, noted below. The customers who do not receive full restitution should not be prohibited from filing legal claims against the Approved Vendor for the damages not recovered via this program.

We do have concern regarding the contractor caps and recommend the use of an annual restitution budget. While we understand that the cap has been suggested in an effort to cast a wider net of benefits and with a concern of running out of funding, it is not clear how the amount of these caps has been set, but for the stated examples of California and Virginia with no discussion on how those states' programs and costs compare to Illinois'. The Agency seems to have just chosen the average of the two state's caps for Illinois. Clarity in this regard would be helpful.

Also, the suggested approach may unnecessarily prevent full customer restitution. Perhaps at the end of year one, should annual restitution funding not be exhausted, any customer who did not receive full restitution due to an AV cap could be made whole with the remaining funds in that year's budget, or provided additional restitution based on a pro rata share of remaining annual funds. Annual budgets should be adjusted over time based on restitution claim data collected by the Agency.

2. Are the proposed waiting periods appropriate? Should these waiting periods be shorter or longer?

Answer: It is difficult to answer this question without a better understanding of how notice will be provided to the customers of AVs under investigation. The Agency should specify what actions will be taken to notify potentially harmed customers. Also, please keep in mind that some customers will not know or remember who their AV is. Special consideration should be given to this fact in the customer communication.

3. How long should the Program Administrator wait for required information from a nonresponsive customer before closing out their restitution claim and moving forward with funding later-filed claims?

Answer: We suggest the Program Administrator develop an outreach protocol when communicating with harmed customers who have filed restitution claims. We believe at least 30 days should be given for a customer to respond and that the Program Administrator should make at least four attempts to contact the customer during that 30 day period.Customers should also be informed when this thirty day period will begin to run when the first contact with the Program Administrator is made.

4. If the Program Administrator receives Restitution Program claims submitted after an Approved Vendor cap is reached, should the Program Administrator fully investigate the claim at that time, even though there would not be available funding to pay out the claim? Or should the Program Administrator wait to investigate the claim until additional funding is available (with the drawback of it potentially being more difficult to investigate the claim due to the passage of time)?

Answer: The Program Administrator should fully investigate the claim at the time the claim is submitted, even if the Approved Vendor cap has been reached. Evidence is more likely to be available and reliable at that time.

5. Is the above proposed approach to deadlines fair and appropriate? (limit on claims)

Answer: We agree with a two year limit on claims.

6. How long should customers have to file a restitution claim after their complaint is closed as unresolved (or, for customers harmed prior to the establishment of the Restitution Program, after notice of the availability of the Restitution Program)?

Answer: If the customer's complaint was closed as unresolved, prior to the establishment of the restitution fund, they should have two years to file a restitution complaint, as it may take a longer time for the customer to become aware of the program. If a customer's complaint is closed as unresolved once the program has already been established, they should have six months to file a restitution claim. There should also be an outreach protocol in place to ensure the harmed customer is fully aware of the restitution program and informed on the steps that need to be taken to file a restitution claim.

7. Are these appropriate limitations on eligibility for the Restitution Program?

Answer: We agree with the limitations on eligibility for the Restitution Program.

8. Is the above proposal for reviewing and making recommendations related to claims appropriate? Is the proposal for processing and making payments sensible and feasible?

Answer: The above proposal seems reasonable and we agree with giving the harmed customer a chance to appeal the Agency's decision. There is concern around the potential for the restitution amount to be reduced based on if the customer failed to take reasonable actions to limit harm. Please define or give examples of what would constitute "reasonable actions to limit damages" on the part of the customer claiming restitution.

9. Should an independent third-party entity be used to process and send payments to individual customers?

Answer: Yes, using the same third-party agent as used for the escrow process makes sense.

10. Are there alternative methods for processing and making payments that the Agency should consider?

Answer: Payment by check seems reasonable.

Additional Comments*:*

Reasonable Actions to Limit Harm

The Solar Restitution Program Proposal states, "Upon the submission of a restitution claim, the Program Administrator would investigate the claim and make an initial determination regarding customer eligibility and, if eligible, the amount of payment, as well as whether the customer failed to take reasonable actions to limit the harm. This information and any proposed reduction in payment amount would be included in the recommendation submitted to the Agency for a final determination (pg 4)."

What constitutes "reasonable actions to limit the harm" should be clearly specified in any program rules or guidebook, as should examples of failure to take reasonable action to limit harm. Should the Agency make a determination that reasonable actions to limit harm were not taken by a claimant, those failures should be clearly specified in writing.

Phased Approach

The Solar Restitution Program Proposal states, "The Agency intends to use a "phased" approach to implementing the restitution program. In the first phase, the program will only be available for customers who were promised a direct REC payment lump-sum pass-through and did not receive it.

Given the seriousness of customer harm (and its implications for public perception of both programs) we fail to see the wisdom of limiting the Restitution Program in this way, even in these early stages, particularly given the availability of relief via the escrow program. Issues like stranded deposits seem potentially more reliant on the restitution fund as there are no other processes in place (short of a lawsuit) to recover that money. While we recognize that setting this up will not be easy, we are in PY 7 for IL Solar for All, making it due time to get started on providing more expansive restitution.

Delays in Processing of Restitution Complaints.

As noted in the proposal, "The Agency acknowledges that it is possible that delays in processing a customer's complaint could potentially contribute to a customer not submitting a restitution claim in time to receive a payment, in the case of an Approved Vendor cap being reached, since the customer cannot submit a restitution claim until their complaint has been closed as resolved. The Program Administrator will make reasonable efforts to process all customer complaints in a timely fashion, to the extent doing so is within the Program Administrator's control, but cannot make any guarantees about the time for processing a complaint."

The Program Administrator should extend the deadline for filing claims for restitution where delay in complaint processing is not caused by any fault of the customer. .