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

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 questions regarding stranded customer and escrow processes initially proposed and approved in the Long-Term Renewable Energy Resources Procurement Plan approved on February 20, 2024 and issued as a final document on April 19, 2024. The Joint Solar Parties respond below to selected questions (including providing a few comments that do not directly address any specific questions.

I. STRANDED CUSTOMERS

Questions:

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?

JSP RESPONSE: The Joint Solar Parties recommend that the IPA pay out claims on a *pro rata* basis at the end of the year (calendar year or delivery year). A *pro rata* approach that pays out at the end of the year ensures there is not a race to claim when the per-Approved Vendor maximum is threatened. A year-end *pro rata* approach ensures that all with a valid claim receive some restitution rather than some receiving their entire claim and others getting none. While the Joint Solar Parties acknowledge that this means some customers will have to wait for their payment, the Joint Solar Parties further note that setting all customers on equal footing during the year eliminates the incentive to claim restitution faster before attempting to exhaust options with the Approved Vendor.

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

JSP RESPONSE: Please see above—the Joint Solar Parties recommend payouts on an annual (delivery or calendar year) basis rather than based on an initial triggering complaint.

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?

JSP RESPONSE: The Joint Solar Parties believe 30 days is appropriate, especially given the lower burden of the restitution fund as opposed to seeking redress in the court system.

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)?

JSP RESPONSE: The Joint Solar Parties urge the Program Administrator to investigate all claims. At minimum, fully investigating claims is important for data collection and potential Approved Vendor/Designee discipline (including implementing escrow, increasing the obligations in a performance improvement plan, or increasing the reentry requirements). The Joint Solar Parties fear that not investigating complaints will discourage impacted customers. In addition, while funds may not be available immediately, circumstances could change either due to factual considerations (for instance the restitution limit ends up not being exhausted) or structural considerations (for instance, if during the LTRRPP approval process the Commission increases or removes the per-AV/Designee restitution payment cap or changes it to an annual cap).

5. Is the above proposed approach to deadlines fair and appropriate?

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)?

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

JSP RESPONSE: The Joint Solar Parties wish to share their experience in other states as potentially instructive for Illinois. In general, each state with a contractor recovery fund (similar to the Restitution Fund) has a law that allows or directs the state's contractors licensing board (or equivalent agency) to establish and manage a recovery fund for all contractors, not just solar contractors, operating in the state. Monies for the funds typically come from license and registration fee surcharges, and the fee surcharge can depend on a contractor's size. Eligible customers must have an agreement with a licensed contractor, won a binding final judgment, and exhausted reasonable steps to collect on the judgment. Then, a customer may file a claim with the state contractors licensing board, which checks that the customer meets all the requirements. Recovery fund laws tend to cap disbursements per claimant and the aggregate disbursements against a single contractor. If the total amount of the awards against a contractor exceeds the cap, the agency distributes awards on a pro rata basis.

While the Joint Solar Parties recognize the difference in origin (regulatory approval vs. statutory obligation; funding sources; etc.) the Joint Solar Parties note that the to-be-implemented Restitution Fund can draw inspiration from the limitations and responsibilities within the programs to pick the best balance for Illinois.

8. Are there other limitations on eligibility that the Agency should consider?

JSP RESPONSE:

- **Outside of Illinois, California is unique in that allows customers to file a claim without a judgment. To the Joint Solar Parties' knowledge, every other equivalent state program requires a binding judgment to have been entered against the contractor in order to apply to the restitution fund.**

- **If Illinois—like California—does not require a judgment from a court and instead only requires a Program Administrator determination, then lower the**

award cap to something closer to $15,000 to reflect the relative ease and simplicity, lower cost, and lower burden of proof/persuasion in the Program Administrator process.

- **However, nothing would prohibit—and the Joint Solar Parties encourage—the Program Administrator from offering a higher cap (perhaps double or more) for a complaining customer with a binding judgment from the court system to recognize factors including the additional customer cost and higher degree of effort.**

- **Agree with the $200,000 cap per AV to start off.**

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

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

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

ADDITIONAL JSP RESPONSES NOT DIRECTLY RESPONSIVE TO NUMBERED QUESTIONS:

- **Upon the first complaint to the Program Administrator against an AV or Designee, the IPA/Program Administrator should consider whether the alleged behavior is likely to be a one-off issue or a flaw in the approach of the Approved Vendor or their Designees.**

- **If the behavior is likely to be one-off, then a first come/first served is more fair but if the harm is based on a structural issue then the limit will likely be hit before claims are exhausted.**

- **If the behavior is structural, the AV and/or the associated Designee should be investigated for possible suspension.**

- **The IPA should ensure that replacement AVs are provided sufficient protections from liability of previous AVs or Designees. Specifically, the IPA should permit (and in fact encourage):**

    - **Replacement Approved Vendors to enter into new contracts with the customer, at minimum for Approved Vendor services;**

    - **Additional delays under the REC Contract (including delivery deadlines for a period after the transfer to the replacement Approved Vendor) to address potential delays from AHJ approval of reinstallation or major repairs;**

- **The IPA should evaluate the stranded customer program and include as part of that evaluation the barriers and risks faced by potential and actual replacement Approved Vendors.**

II. STRANDED CUSTOMER REC ADDER

Questions:

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.

JSP RESPONSE: The IPA should first clarify that the "REC Adder" is paid to the new Approved Vendor whether or not REC payments have been exhausted. In many cases for REC Contracts with accelerated payments, a REC Contract could be fully paid out prior to the original AV leaving the market. This may require alterations to the REC Contract to reflect the potential lump sum (rather than per-REC to be paid) nature of the payment.

Of note, stranded customers tend to demand significantly higher processing times for ABP milestones and present higher risk to the Approved Vendor for full, timely delivery of estimated REC quantities. For accelerated payment contracts, the underdelivery risk translates into substantial clawback dollars. Not only does the original workmanship impact delivery quantities, but customers frequently will delay engaging a replacement installer or an installer to perform critical maintenance, leading to underdelivery in the interim and/or downtime to reinstall or perform major maintenance.

For these reasons and other reasons related to customer management—especially where the substitute Approved Vendor is not itself fixing the installation or performing maintenance and especially for accelerated payment contracts—the current proposed REC values are not likely to be sufficient to incentivize a substitute Approved Vendor in many (if not most or virtually all) cases. Because of that disconnect, the Joint Solar Parties fear that few substitute Approved Vendors will participate or if they do only certain lower-risk customers will find a willing alternative Approved Vendor. According to feedback received by the Joint Solar Parties, REC adders should be at least $6/REC for low risk, $9/REC for medium risk, and high/very high should have an adder of at least $16/REC.

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)?

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

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

JSP RESPONSE: Yes. Under, for instance, the 15-year REC Contract, there is direct liability for underdelivery—which is especially problematic if a fair amount of the REC

Contract has already been paid to a previous Approved Vendor and that value will not be realized by the new Approved Vendor. On the other hand, under the 20-year contract, there is no liability for underdelivery other than lost payments during that specific delivery year.

In addition, the IPA should determine a policy for assumption of REC Contracts where the original Approved Vendor was an EEC and the project was applied to the EEC Block—specifically, must the new Approved Vendor be an EEC in that case (assuming the six-year window where Seller must be an EEC).

Third, with regard to underdelivery, the IPA should consider additional protections for underdelivery under the REC Contract for the new Approved Vendor. Otherwise, the new Approved Vendor will be forced to diligence the system fairly extensively relative to the REC Contract even if no REC payments have been made (but especially if payments have started) because of the liability for under delivery under accelerated payment REC Contracts.

Fourth, the eligibility for an adder (or the size of the adder) should depend on the state of payments to date and the performance of the system (including the ability of the new Approved Vendor to diligence the system)—including a review of customer obligations the new Approved Vendor would be taking on. A new Approved Vendor that is to receive all REC payments would take on far less risk than an Approved Vendor that is contractually required to pass through all REC payments to the customer.

Fifth, taking on stranded customers should always be voluntary for an Approved Vendor. That means that not all stranded customers may be taken on at a scheduled or standardized pricing. If the IPA is unable to secure an Approved Vendor willing to take on a stranded customer at the proposed REC adder (or other payment) level, then the IPA should in that case consider asking Approved Vendors participating in the program to propose why a higher price is necessary. If the higher price is rejected, either an Approved Vendor will step forward at a reduced price or it will not.

5. Which approach should be used for REC adder values for larger projects (100kW and above)?

JSP RESPONSE: The Joint Solar Parties recommend a simpler approach for predictability and ease of administration. However, the Joint Solar Parties do not necessarily agree with the caps, noting that the risk particularly for accelerated payment contracts where RECs have already been delivered remains substantial and for certain systems the risk of underdelivery may exceed the upside of taking on stranded customers.

6. If the first approach described above is used for larger projects, are the proposed caps appropriate? Should the caps be the same for Illinois Shines and ILSFA?

7. If the second approach described above is used for larger projects, how should the REC adder values be set?

8. Is the above approach an appropriate standard or burden of proof that should be required for an exception to the normal REC adder requirements?

9. If an Approved Vendor submits a request for a REC adder (or higher REC adder), what REC adder values should be possible? Should the Approved Vendor have to select from one of the values set for the standard low, medium, high, or very high REC adders? Or should the Approved Vendor be able to request a custom REC adder value?

JSP RESPONSE: Approved Vendors should be permitted to seek custom or otherwise higher REC prices in the case of particularly risky customers. An example is a customer whose system needs repair and that is a credit risk. Otherwise, replacement Approved Vendor interest in very risky customers will almost wholly depend on the top REC adder allowed (taking into account any payment cap).

10. How should the REC adder be applied if a customer is stranded by both their Approved Vendor and also by an installer Designee? Should the higher applicable REC adder apply? Should both potentially applicable REC adders be awarded? Should the customer be automatically eligible for the highest possible REC adder value?

JSP RESPONSE: The current categories appear to address the issues raised in this question but the maximum/expected REC values as proposed do not necessarily reflect this complexity.

11. How should the REC adder be reflected in invoicing, in different situations (e.g., invoicing has not started yet, invoicing has started but not finished, invoicing has finished).

JSP RESPONSE: Like all other invoicing, it should be reflected on the invoice and quarterly netting statement generated by the Program Administrator. For RECs that have already been paid, the REC Contract should be amended to reflect a lump sum payment for those RECs after the assignment. Note that this would likely require an amendment of existing contracts as well. For RECs that have not been paid, the adder should be applied on a going forward basis.

12. When a stranded customer REC adder is applied, should the REC Contract go back to the Illinois Commerce Commission for re-approval?

JSP RESPONSE: Yes if any of the terms and conditions of the REC Contract are going to change or the REC Contract was terminated due to bankruptcy which—as FAQs on the Illinois Shines website confirm—is an Event of Default under the REC Contract. The REC Contract may be terminated on its own terms and thus need to be re-created. However, the IPA should also be mindful of concerns about fraudulent transfers of assets nominally owned by an entity in a bankruptcy proceeding from these steps.

Generally speaking, these issues can be avoided by properly drafting the stranded customer procedure into the REC Contract (or at least adequate reference) so that the REC Contract itself does not need modification or re-affirmation by the Commission. Waiting for Commission approval would substantially delay the process, harming both the customer and the replacement approved vendor.

The Joint Solar Parties assume that no additional collateral will need to be posted by the replacement Approved Vendor for contracts that are not paid on an accelerated basis and only for REC Contracts paid on an accelerated basis where the collateral was not returned

to the original Approved Vendor unused (such as cancellation of a letter of credit prior to any draw). To the extent that additional or different collateral must be posted by the replacement approved vendor, there must be a known timeframe (and the REC Contract must reflect that timeframe).

III. ESCROW

Questions:

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%."

JSP RESPONSE: If the Program Administrator is going to use a set number of complaints or a percentage-based limit to trigger the escrow, the complaints should be founded (and not satisfactorily resolved) and the Approved Vendor should otherwise be subject to discipline. Basing escrow on complaint volume alone without investigation and determination of complaints (specific to not passing through payments) is not appropriate.

Furthermore, if the Approved Vendor presents credible evidence of payment to a customer, the escrow payment should not be made even if the customer claims that the payment was not received.

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?

JSP RESPONSE: If non-payment of passed through payments after 45-60 days (or whatever the timeframe) is grounds for escrow, that timeframe should be a program requirement. That change should be implemented in at minimum the Consumer Protection Handbook as soon as practicable.

I**n addition, the Consumer Protection Handbook should make clear the standard for evaluating whether an Approved Vendor presents a risk for non-payment. Legitimate reasons for non-payment may exist, such as customer default, loss of customer creditworthiness triggering a smaller payment to the customer, or a customer dispute, including with regard to customer maintenance of their system (where improper**

maintenance can lead to underdelivery and put the Approved Vendor at risk for a clawback)

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?

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.

JSP RESPONSE: In a bankruptcy situation, there may be fraudulent transfer or other bankruptcy code issues with a forced escrow after bankruptcy has been declared or imposed. The escrow should at minimum be worked into the REC Contract so it is not extra-contractual and the IPA should consult with bankruptcy specialists to determine how (if at all) imposing an escrow is possible after a bankruptcy proceeding has been initiated.

5. The Agency seeks feedback on the above 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 above proposal does not address? Is the proposal fair to both customers and Approved Vendors/Designees?

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?

JSP RESPONSE: In order to avoid duplicate payments or inadvertent escrow when not necessary, the Program Administrator should not start the payment clock based on the time of the complaint but instead based on the time of resolution of the complaint by the Program Administrator. This reduces the potential for serious errors. The payment clock should be at least fifteen days after notice is provided to all parties of the payment.

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?