VIA ELECTRONIC MAIL

Illinois Power Agency

180 N. Wabash Ave., Ste. 500

Chicago, IL 60601

*Tel:* (312) 793-0263

*Email*: IPA.Solar@illinois.gov, eec@illinoisshines.com

**REC Contract Modifications Request for Stakeholder Feedback**

The Joint EEC Parties appreciate the opportunity to provide feedback on the Illinois Power Agency's (IPA) proposed modifications to the REC Contracts posted on December 6th, 2024.

1) An updated deadline for the submission of annual reports under the applicable Program

To reduce liability for customers and improve submission flexibility, the Joint EEC Parties support the Agency's initiative to modify the deadline rules for the submission of annual reports. The Joint EEC Parties agree with terms stating that AVs must file their Annual Report by August 1 following each delivery year. We appreciate the addition of a 90-day cure period to cure any deficiencies found by the Agency and/or utilities within a submitted report or submit an Annual Report if no report was provided by the August 1 deadline. The Joint EEC Parties request for the annual report template to still be released during the first week of July so that AVs have a full month to collect all necessary data, not two weeks.

2) Unbatching and rebatching process to facilitate assignment of projects

The Joint EEC Parties agree with proposed function to unbatch projects to facilitate the assignment process to address consumer protection concerns or resolve customer complaints:

- 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"
- the contracting utility agrees to the "unbatching"

However, there are situations in which projects need to be unbatched and assigned related to the EEC SPAV process. Projects are oftentimes submitted with EEC SPAVs to individualize a project to be included on its own, independent, Master REC Contract. This eliminates liability between different customers whose projects would otherwise be contained on the same Master REC Contract with the same parent company EEC AV. Each AV receives one Master REC Contract for Ameren and one Master REC Contract for ComEd. If an AV is working with a number of different customers with projects in the same utility group, customer #1's projects will be affected by customer #2 if customer #2's projects do not produce. The 2024-2025 Illinois Shines Program Guidebook states:

*"Assignments may not be made within a) 30 business days of contract execution (or the posting of collateral, whichever is later) or b) 30 business days of a prior assignment of the same batch or same master agreement. In the case of the assignment of an individual batch, any surplus RECs associated with the batch remain with the original master agreement."*

Due to submission timing purposes, EEC AVs must submit projects with the parent company AV entity and then assign the projects to the EEC SPAV entity. If the assignment request is done prior to REC Contract execution, then an Approved Vendor Project Transfer agreement must be submitted to the program administrator executed by the EEC AV parent company and the EEC SPAV entity. Alternatively, according to a customer's request, the EEC AV will oftentimes need to assign the project from their EEC AV parent company to the EEC SPAV post ICC Trade Date and REC Contract execution. In this instance, an official Assignment Assumption Agreement and an Exhibit C-5 - Form of Acknowledgement of Assignment must be submitted 30 business days of contract execution or the posting of collateral, whichever is later. The Joint EEC Parties request a modification to the REC Contract that would allow an EEC AV to "unbatch" a project after the Commission's approval of REC a Contract - in the scenario where an EEC AV would need to assign the project to their affiliated EEC SPAV - without needing to wait 30 business days following REC Contract execution or the posting of collateral.

3) Implementation of an escrow process

An escrow process should only be applicable for DG projects to prevent AVs from avoiding the obligation to pass through REC Contract payments to their customers. For community solar projects, it is standard practice for AVs to set up a lockbox account in which the customer is the only party that can withdraw funds from the protected account. Using RPS funding held by the public utilities to hire third-party professional escrow service agents is not a necessary procedure. To prevent wasted RPS expenditure and administrative burden on the Agency, the REC Contract should incorporate language that requires an AV managing a DG project to set up a lockbox account instead of an escrow account. The LTRPP states that the Agency intends to develop an escrow process to be activated in situations where an AV is very likely not going to pass through promised incentive payments to customers. Under the proposed REC Contract Section 5.7, the Joint EEC Parties seek clarity on how the Agency will determine which AVs will be required to implement this escrow process. The Agency shall only make this determination upon its finding that an AV has not met its contractual obligations to pass through incentive payments to at least five customers based on customer complaints received from such customers. In response, the Joint EEC Parties request for the Agency to define "contractual obligations" by adopting a requirement for the Agency to verify that such customer complaints are proven valid under REC Service Agreements between the AV and the customer. If five complaints are proven valid and if the AV is in default of their REC Service Agreement with the customer, the Agency should require a lockbox account to be listed on each REC Contract Exhibit B by requesting the AV to provide their executed Deposit Account Control Agreement with the customer and the bank for any new or pre-existing REC Contracts under that AV's account. Since the Agency is not a party to the REC Contract and generally does not have authority to interfere with the flow of money for projects that are under contract between the utility and the AV, the Joint EEC Parties urge lockbox account implementation, not escrow implementation, <u>to only be required for relevant DG projects</u> where the AV has five <u>legitimate</u> complaints made against them that are proven to be true.

4) Provision of economic incentives for stranded customer projects

The Joint EEC Parties agree with the Agency's proposed REC adder for AVs that acquire stranded customer projects. As group, we align with the Agency that REC adders may be small when the risk of taking on a type of stranded customer is minimal such as when the project is built and functioning properly, the application materials are available, and the customer simply needs a new Approved Vendor to actually submit the application. We also agree that the REC adder should be much higher with more risk when a project is partially installed and the original installer is unresponsive. However, if the AV becomes bankrupt, Article 9 of the REC Contract specifies that the AV would be in default of the REC Contract which would cause an automatic termination of the REC Contract between the Buyer and Seller. According to Section 1.12 of the REC contract, "Bankrupt" means:

*"an entity that has (i) filed a petition or otherwise commenced, authorized or acquiesced in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, (ii) had any such petition filed or commenced against it and not dismissed within 60 days, (iii) made an assignment or any general arrangement for the benefit of creditors, (iv) otherwise become bankrupt or insolvent, however evidenced, (v) had a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (vi) become generally unable to pay its debts as they fall due.*

In order to prevent risk for the customer forfeiting incentive payments, adding an estoppel to the REC Contract to allow for a clear cure period in the case of AV bankruptcy would be a solution to this issue. Prior to the utility terminating the REC contract due to bankruptcy, and after all AV cure periods are exhausted, the customer should have the ability to assign the REC Contract to another AV.

Respectfully Submitted,

The Joint EEC Signatories:
ADL Solutions
ARF Solar
Black Tech Solutions
LiveWire
Millennium Solar Electric
Sesenergi
UpSouth Energy
Windfree
Staylitt Electric
548 Energy Solutions