Illinois Power Agency
180 N Wabash Ave, Suite 500
Chicago, Illinois 60601

ILLINOIS POWER AGENCY

Rationale Document:

Escrow Process for Approved Vendors that
Do Not Pass Through Promised Incentive Payments
(Illinois Shines)

June 13, 2025

The Illinois Power Agency proposed the creation of an escrow process in Section 9.4.2.1.2 of the 2024 Long-Term Renewable Resources Procurement Plan ("2024 Long-Term Plan"). The escrow process will be used to ensure that customers who participate in IPA solar incentive programs and who have been promised a pass-through of the REC incentive payment in fact receive the payment. Specifically, the escrow process will require that utility REC incentive payments to certain Approved Vendors be placed in escrow if the Program Administrator determines that the Approved Vendor is not passing through promised REC payments to customers. The Program Administrator will then use the escrow funds to pay customers their promised pass-through payments according to the procedures described in the 2024 Long-Term Plan and this document, which incorporates many of proposed details in the Stakeholder Feedback Request.

The Agency requested feedback from stakeholders on September 16, 2024, and subsequently received comments from eight individuals and groups on October 7, 2024.[1] The Agency thanks the commentors for their helpful feedback.

This rationale document outlines the final decisions of the Agency with respect to various aspects of the policy and explains whether and how certain stakeholder feedback was incorporated.

Initiation of the Escrow Process

As described in greater detail below, the escrow process will only be implemented if the Agency receives at least five complaints from customers that they did not receive their promised pass-through payments from a specific Approved Vendor. Although the Agency will not implement the escrow process without the presence of five complaints, the Agency maintains the discretion to not implement the escrow process even if five complaints are received.

In some circumstances, the Program Administrator may investigate whether the escrow process is warranted and reach out to potentially affected customers to see if they have not received their pass-through payments (and if so, offer to open a complaint). The Program Administrator may investigate if it receives a credible report from a current or former employee of the Approved Vendor that the Approved Vendor is not making pass-through payments or if the Program Administrator learns that an Approved Vendor has declared bankruptcy. However, the Agency will always require five complaints from affected customers before the escrow process may proceed.

[1] See the "Public Responses" tab under the heading "September 2024 Request for Stakeholder Feedback on Consumer Protection Initiatives" at https://illinoisshines.com/consumer-protection-initiatives/.

The following subsections discuss specific aspects of escrow initiation as well as the stakeholder feedback that the Agency received regarding the escrow process.

Complaint Threshold

The Agency first requested feedback about the minimum threshold for the number of customer reports/complaints regarding failed REC payment pass-throughs by a particular Approved Vendor before the escrow process is initiated.

In response to this question, one commenter group recommended that the Agency initiate the escrow process after one credible complaint from a customer in a 90-day window, one commenter recommended that the Agency initiate the process after three complaints, and one commenter recommended that the Agency initiate the escrow process after five complaints or three percent of invoiced projects. Another commenter recommended that the agency not pick a particular threshold but rather initiate the escrow process after making a case-by-case determination.

The Agency has determined that it will always require a minimum of five credible customer complaints filed within 180 days against a particular Approved Vendor before it may initiate the escrow process. All five of these customer complaints must be active at the time the escrow process is initiated. That is, if one of the five customers receives their pass-through payment at some point before escrow is initiated, the Agency would need to receive an additional credible complaint of a customer not receiving a pass-through payment from that vendor within 180 days from the first active complaint before the Agency would consider initiating the escrow process.

Once the Agency receives one or more complaints from customers about a particular Approved Vendor, the Program Administrator may reach out to additional customers of the same Approved Vendor to determine if the claim is part of a larger pattern of missing payments. If additional customers report missing payments, these claims will count toward the five-complaint threshold. Although the Agency must receive five complaints within 180 days before it initiates the escrow process, the Agency may exercise its discretion not to initiate the escrow process even after it receives five complaints if certain factors are present. For example, the Agency may consider whether the number of customers who have not received their pass-through payment is a small percentage of the Approved Vendor's total number of invoiced projects. The Agency may also consider whether the missing pass-through payments are part of a larger pattern of missing payments. The Agency considers the escrow process to be a last resort solution for situations in which there are major and consistent failures on the part of the Approved Vendor.

The Agency finds that the above policies strike a reasonable balance between not over-penalizing Approved Vendor participants in the Program while still protecting customers. Although a five-complaint requirement is more stringent than the threshold recommended by two commenters, the Agency finds that the severity of the escrow process merits the safeguard of a higher threshold for complaints. The Program Administrator's practice of contacting other customers in the event of a complaint about a particular Approved Vendor will protect customer interests. In addition, even if the escrow process is not implemented because there are fewer than five failed pass-through payments and/or the Agency, in its discretion, determines that the escrow process is not appropriate, customers of the Approved Vendor who do not receive their pass-through payment may still be eligible to receive compensation through the Solar Restitution Program.

Timeline Threshold

Stakeholders were next asked for their input regarding the number of days that the Program Administrator should wait after the Approved Vendor received the payment from the utility when determining whether there is a high risk that the Approved Vendor will not make the pass-through payment. Two commenters recommended 30 days while one commenter recommended 45 to 60 days. One commenter also recommended that the Agency make the number of days for the pass-through payment to the customer into a Program requirement. That is, Approved Vendors would be required to set the pass-through deadline for payment to the customer in their customer contracts at the number of days chosen by the Agency.

If the contract between the Approved Vendor specifies a deadline for the pass-through payment, the Agency will use that deadline when determining whether there is a high risk that the Approved Vendor will not make the pass-through payment. If the contract does not specify a timeline, the Agency will use a threshold of 60 days from the time of the utility payment when determining whether there is a high risk that the Approved Vendor will not make the pass-through payment. If the amount of time specified in the contract (or 60 days if unspecified) passes with no payment to the customer, the Program Administrator may count the customer complaint as one of the five complaints needed to initiate the escrow process. However, the passage of this time is a minimum requirement—there may still be situations where a complaint will not count toward the 5-complaint threshold even after this deadline has passed. For example, if an Approved Vendor is actively working with the Program Administrator and the customer(s) to make the payment(s), or the Approved Vendor is engaged in a legitimate dispute with the customer, passing the relevant deadline may not cause the Program Administrator to count the complaint towards the five-complaint threshold.

The Agency has selected 60 days as the threshold in order to give Approved Vendors sufficient time to process payments while still protecting customers' interest in receiving prompt payments. Because the Agency will only apply the 60-day threshold in situations for which the contract does not otherwise specify a pass-through timeframe, the Agency sees no need to mandate a certain pass-through deadline in customer contracts at this time.

Approved Vendor Employee Reports

Next, the Agency requested feedback on the question of whether, after a former employee of an Approved Vendor alerts the Agency to the possibility that the entity will not pass through payments, the Agency should confirm this failure to pass through payments with a certain number of customers. One commenter recommended that the Agency confirm the Approved Vendor's failure to pass through payments with at least one affected customer prior to initiating the escrow process.

In the event that either a current or former employee makes a credible report that an Approved Vendor is not making pass through payments, the Agency has decided that it will still require complaints from at least five customers regarding the Approved Vendor's failure to pass through payments within a 180-day period before it will initiate the escrow process. However, the Agency or Program Administrator will actively reach out to reportedly affected customers to confirm the employee's report.

Bankruptcy

Illinois Power Agency
180 N Wabash Ave, Suite 500
Chicago, Illinois 60601

The Agency also sought feedback regarding whether and/or when an Approved Vendor filing for bankruptcy should activate the escrow process. Although three commenters recommended that the bankruptcy of an Approved Vendor should automatically trigger the escrow process, two of these commenters also recommended that the Agency seek advice from a bankruptcy expert regarding the legal challenges of requiring portions of the Approved Vendor's assets to be placed in escrow after the entity has entered bankruptcy proceedings.

As noted above, the Agency has determined that it is always appropriate to require at least five customer complaints before implementing the escrow process. Thus, the Agency will still require five complaints even if the Approved Vendor has declared bankruptcy. The Agency recognizes that there may still be legal complexities associated with implementing the escrow process with respect to an entity that is engaged in bankruptcy proceedings. The Agency may seek advice from bankruptcy legal experts before crafting specific policies for implementing the escrow process for entities in bankruptcy.

Implementation of the Escrow Process

Once the Program Administrator determines that the escrow process could be initiated for a particular Approved Vendor, the Program Administrator will send a formal notice (which may be included as part of a Notice of Potential Violation ("NOPV")) to the Approved Vendor and notify it of the possibility of implementing the escrow process. If, after the Approved Vendor has an opportunity to respond to the notice, the Program Administrator determines that the escrow process is warranted, the Program Administrator will notify the Approved Vendor of the determination and provide the Approved Vendor with an opportunity to respond to this determination. If the Program Administrator still decides to move forward with the escrow process, the Approved Vendor may appeal the final determination to the Agency.

After the escrow process is initiated, and assuming the relevant utility agrees or does not object, the Approved Vendor will submit the invoice to the utility, and the utility will make payments under the relevant REC Contract to the escrow agent. The Program Administrator will determine the amount of payment that each customer should receive and will notify the Approved Vendor and the customers of its final decision regarding payment amounts. The Approved Vendor and customers will then have an opportunity to contest the Program Administrator's decision to the Agency. After the Agency makes its final decision, the Program Administrator will direct the escrow agent to make payments accordingly. The remaining balance for each specific project's REC incentive payment will be disbursed to the Approved Vendor.

The Agency will also implement the following policies, as described in the Stakeholder Feedback Request.

First, the Program Administrator may, at its discretion, temporarily pause the generation of invoices and/or the verifying of an Approved Vendor's Part II project applications during its investigation into whether the circumstances that would lead to the implementation of the escrow process have occurred, during the appeal period or determination of an appeal that the escrow process should be activated, or during the implementation of the escrow process.

In addition, if the escrow process is implemented for an Approved Vendor, the Program Administrator may, at its discretion, implement the escrow process for affiliates of the Approved Vendor.

Next, the escrow process will be implemented at the contract level. The Program Administrator will review the REC Contracts to which the Approved Vendor is a party. For each REC Contract that has at least one project where there is a promised pass-through payment to the customer, the utility will pay the entirety of each invoice under the REC Contract to the escrow agent. The Program Administrator will then determine how much of the escrowed amount is owed to the Approved Vendor and how much is owed to customers, and it will direct the escrow agents to make those payments accordingly.

Finally, once the escrow process in initiated for an Approved Vendor it may submit a request to the Program Administrator to be removed from the program and no longer have its payments diverted to the escrow agent. An Approved Vendor may not make such a request more than once in a 12-month period. In the request, the Approved Vendor must demonstrate to a reasonable degree of certainty that it will not fail to pass through future promised REC incentives. To further elaborate, while an Approved Vendor may submit an initial request to have the escrow process lifted at any time, if the request is denied, the Approved Vendor may not submit another request until a year has passed.

The following subsections provide additional discussion of feedback that the Agency received regarding payments to customers from the escrow and utility participation in the escrow process

Payment to Customers

The Agency requested feedback on various issues related to its process for making the escrow payment to customers.

The Agency did not receive substantive feedback regarding its proposed method of determining the appropriate amount of payment to each customer whose project is part of the escrow process. As a result, it will proceed with its proposal as described in the Stakeholder Feedback Request.

Next, the Agency sought feedback on the number of days the Agency should wait while attempting to get necessary information from the customer about any promised pass-through payment or while attempting to get necessary payment information before directing the escrow agent to disburse the entire incentive payment to the Approved Vendor. One commenter recommended that the Agency wait 15 days, one commenter recommended 30 days, and a third commenter recommended 45 days. The Agency recognizes that a longer wait time will benefit the interests of customers while a shorter wait time will benefit the interests of Approved Vendors. Because the Agency seeks to ensure both that customers have adequate time to respond to requests for payment information and that Approved Vendors are protected from a protracted administrative process, the Agency will wait 30 days while attempting to obtain necessary information from the customer (which may be extended at the Agency's discretion) before it will direct the escrow agent to disburse the entire payment to the Approved Vendor. Even if a customer misses the 30-day window and is unable to receive payment through the escrow process, the disbursal of the payment to the Approved Vendor does not discharge any legal obligations (contractual or otherwise) that the Approved Vendor has toward the customer, and customers may still pursue other forms of relief if they choose.

Illinois Power Agency
180 N Wabash Ave, Suite 500
Chicago, Illinois 60601

Lastly, the Agency requested feedback on the best method for the escrow agent to make payments to customers and Approved Vendors. One commenter suggested that payment be made via wire transfer and another customer suggested that payment be made via check. Because the Agency would prefer to limit the amount of personal identifying information that it collects from customers (such as bank account numbers), it has determined that payments will be made via a mailed check to the customer. After a check is mailed, the Program Administrator will follow up with customers to ensure that they have received their payment.

Utility Implementation and Related Details

One commenter asked the Agency to clarify how costs incurred for use of an escrow agent will be invoiced to the utilities and to provide explicit language regarding the timing of when utilities will be notified that the escrow process has been initiated for a particular Approved Vendor. It also recommended that the Agency use one escrow agent for all Approved Vendors within the Program, rather than multiple.

In June 2024, the Program Administrator solicited interest from entities to serve as an escrow agent and selected and ultimately hired Vendor Capital Finance ("VCF") as a subcontractor. VCF will serve as the escrow agent for all payments that are administered through the escrow process. VCF's fees will be included in the general program administration fees invoiced to the utilities on a monthly basis.

The notice to the utilities is included in the process outlined in the REC Contract amendment. Once the Program Administrator makes an initial determination that the escrow process should be initiated, it will notify the relevant utility, who will have five business days to object to the implementation of the escrow process. If the utility does not object, the Program Administrator will then notify the affected Approved Vendor, who will be given an opportunity to appeal to the IPA. If the Approved Vendor does not appeal, or the appeal is denied, the Program Administrator will then notify the Approved Vendor, utility, and affected customers that the escrow process is being implemented.

A commenter also noted in its feedback that the example provided in the second to last paragraph on page 7 of the Stakeholder Feedback Request set up a situation in which a customer could be awarded a larger REC incentive payment in the escrow process than what the utility is required to pay according to the contract between the utility and the Approved Vendor. The commenter requested confirmation that a utility would not be required to pay additional funds to the escrow agent for a particular customer beyond what it would have been required to pay to the Approved Vendor for that same project.

The Agency clarifies that the example on page 7 contained an error; a utility will never be required to pay a larger REC incentive payment to the escrow than it would have had to pay to the Approved Vendor according to the contract between the utility and the Approved Vendor. The Agency amends the second to last paragraph on page 7 as follows:

> The Program Administrator will endeavor to make its determination as fair as possible. For example, say a solar project was initially designed at 8kW 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 $3,750, 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 customer should receive 100% of the total REC incentive paid by the utility, or $5,000. The customer may then seek to recover the addition $1,000 of the missing REC incentive from the Agency's restitution program. If, on the other hand, the customer signed a change order and an updated Disclosure Form that disclosed the updated pass-through amount as $3,750, the Program Administrator would find that the payment to the customer should be $3,750.

The Agency expects to officially launch the escrow process, such that it is available for implementation, in June 2025. The Agency and Program Administrator will issue an announcement when the escrow process launches.