Reply Comments of Cypress Creek Renewables to Illinois Power Agency Request for Follow-up Comments

Introduction & Overview

Cypress Creek Renewables (CCR) is a developer of utility-scale and community solar (CS) generation. CCR is actively developing a portfolio of CS assets across Illinois, and have been working closely with landowners, local and state officials, trade groups and allies to ensure that our project pipeline is as advanced and "shovel-ready" as possible.

CCR appreciates the diligent work the Illinois Commerce Commission (ICC), Illinois Power Agency (IPA) and its procurement administrator InClime have put into the development of this program, and we offer these brief comments in an effort to ensure program success. We also understand that IPA is likely receive a wide variety of comments to this request for comment, so in an effort to expedite the process, we offer these key points:

1. **IPA should add a pre-bid collateral requirement. This single item is the most effective mechanism to bring order to the program and reduce speculative bidding.**
2. **IPA should award the 25% of "discretionary capacity" RECs to the most successful market segment (in accordance with the ICC Order) and do so before any lottery occurs.**
3. **IPA should not implement application caps.**
4. **IPA should not implement vendor caps.**
5. **IPA should only allow vendors one opportunity to switch projects after the lottery**
6. **IPA should eliminate the "waiting list" for projects not selected in the lottery that do not maintain valid interconnection agreements**
7. **Grouped projects are a slippery slope toward gaming, but if it is allowed the IPA needs to reduce pricing and develop a tight standard for such projects**
8. **IPA should not require disclosure about lottery details.**
9. **IPA should make non-ministerial permit rules clear and public**
10. **IPA should launch the program as soon as possible.**

Further detail about the above points is outlined in the following pages.

1. IPA should add a pre-bid collateral requirement.

A lottery with a low bar of entry incentivizes vendors to submit flawed projects as "lottery tickets." Many of these flawed projects could have questionable characteristics, including but not limited to high interconnection estimates, or site challenges such as wetlands or frequent flooding. There is no way for the IPA to perform due diligence on every application, but adding a financial penalty if that flawed project is not able to be constructed would force vendors to self-regulate.

The easiest and most effective way to reduce speculative bidding is to require high bid-assurance collateral to enter a project into the ABP. Pre-bid collateral is required in other markets and would function similarly to the bid-assurance collateral IPA requires in the utility-scale REC procurements. Such collateral payments should be due at the time the project is entered into the ABP and will be forfeited if the project is not able to build. This requires the developer to put "skin in the game" before bidding.

When the qualification criteria were approved by the ICC in April of this year, it was expected that the utilities would require deposits before signing interconnection agreements (IAs), and these would serve as sufficient financial commitment to prevent speculation. However, the utilities abandoned that approach over the summer, and this has dramatically lowered the bar of entry for the lottery. Without that pre-bid financial commitment, vendors are now incentivized to sign IAs with highly-contingent upgrade costs, or costs that are so high the project can never be financed or built.

IPA absolutely must remedy this low bar of entry by adding a pre-bid collateral requirement. Under this proposal, each project to participate in a lottery should post bidding collateral to secure development of the project if selected. As noted in the Coalition for Community Solar Access' comments:

1. Pre-bid collateral should be required for every project submitted to the Community Solar lottery
    a. Collateral must be paid to InClime at lottery submission
        i. $50,000/MW for the first 6MWac ($100K/project for first 3 2MWac community solar projects) submitted by affiliate Approved Vendors
        ii. $100,000/MW thereafter
    b. Collateral is refundable when:
        i. The project withdraws within 14 days of end of swap period from the a) lottery waiting list AND b) the interconnection queue

ii. The project delivers initial RECs under the REC contract

c. Collateral is not refunded if:

i. The Program Administrator/IPA/ICC determine the project or batch containing the project is not eligible for the ABP, post cure period

ii. Approved Vendor does not withdraw from the lottery waiting list and the interconnection queue

2. There is a short swap period (maximum of 14 days) after which RECs cannot be swapped between projects. No re-study will occur before the swapping deadline, and a vendor only has one opportunity to swap
3. Must sign REC contract within 14 days of end of swap period.

The ICC Order approving the Long-Term Plan directs IPA to implement procedures like pre-bid collateral. In the section of its order approving the lottery process:

> *"The Commission encourages the stakeholders to work with the IPA in developing additional alternative proposals, particularly to incorporate the likelihood of project success as a factor in determining which project will receive the incentives."* (ICC 17-0838 Order at 68)

Levying a financial penalty is the most efficient, least-subjective factor the IPA can use to incorporate likelihood of project success into the process, and the Agency should implement this proposal immediately, so vendors can prepare for the requirement. Requiring pre-bid collateral will ensure that projects selected or swapped for REC capacity are mature, quality projects that can actually be constructed.

And while some commenters have claimed that pre-bid collateral will benefit larger developers with access to capital, any vendor participating in this market will already need to have access to capital for construction loans, interconnection deposits, and up-front collateral. Regardless, the above proposal seeks to accommodate smaller developers concerns, and allow developers with fewer projects to pay less for the first three projects submitted into the queue.

2. IPA should award the 25% of "discretionary capacity" RECs to the most successful market segment (in accordance with the ICC Order) and do so before any lottery occurs.

For vendors to have as complete a view of the market, they must at-minimum understand the size of the opportunity. As such, it is imperative that the IPA allocate the full discretionary capacity before any lottery occurs.

The ICC Order approving the Long-Term Plan directs IPA to award the discretionary capacity quickly:

> *"Therefore, the Commission adopts the proposal of the Joint Solar Parties to hold 25% of the Adjustable Block Program capacity by megawatt in reserve. They have raised a valid concern regarding the appropriate reaction of the IPA if a particular block becomes oversubscribed"* (Final Order at 60).

The Joint Solar Parties' recommendation referenced in the above did not just request the holdback, but also the timing of the holdback as summarized in the Final Order:

> *"The remaining 25% would sit idle until the IPA concluded in its own discretion that expanding existing blocks or adding new blocks would be a prudent step,* ***but no later than one of the block categories filling up all three blocks****. In that event, the remaining 25% of Adjustable Block capacity would be used to create an additional block once the last available block in a block category filled up or when, in the IPA's discretion,* ***Approved Vendor demand in earlier blocks warrants expanding Block 3 or offering subsequent blocks, whichever comes first****"* (Final Order at 56 (emphasis added)).

Decisions about allocation of that discretionary capacity should be based on the demand for each market segment, based on applications (by number of MW). The program administrator should then award the discretionary capacity proportionally across categories based on the ratio of that market segment's overcapacity versus the total overcapacity. No switching (nor any reordering of the interconnection queue) should happen until all the capacity in Phase 1 of the ABP (as covered by the first Long-Term Plan) has been allocated to a particular market segment. The discretionary capacity should be allocated prior to the opening of the lottery to discourage developers from holding onto queue positions and delaying the program.

3. IPA should not implement application caps.

In the IPA's Request for Follow-up Comments, the Agency asks about the viability of "Limiting a developer and its affiliates' applications" to the ABP as a means to reduce speculative bidding. The IPA

absolutely should not implement any application caps, primarily because such limits would not be effective at reducing speculation.

For instance, a vendor could have 10 speculative projects and one viable project, but this proposal would not limit their ability to submit the speculative projects. Conversely, a vendor could have 50 viable projects and zero speculative projects, and this proposal would only seek to block those good projects. The pre-bid collateral option proposed above is far more impactful to reducing speculative bidding.

Additionally, such limits would present a fundamental shift in market design very late in the development of the program. Nowhere in the governing statutes, ICC Order, IPA Long-Term Plan, nor at any point during the nearly two years since passage of the law did legislators or regulators propose to limit applications. Had the industry known that program participation would be limited, it would have responded by limiting development activities. This concept is a wholly new proposal that injures companies that responded to the statute and approved LT Plan. Implementing this proposal would likely draw a challenge at the Commission, which could slow program launch and create additional program instability.

4. IPA should not implement vendor caps.

For many of the reasons stated above, the IPA also should not implement vendor caps, as recommended by some stakeholders in the first comment process. Whereas application caps limit the number of projects a developer can put into the lottery, vendor caps limit the number of projects a developer can *take out* of the lottery. Both ideas are fraught with problems and should be rejected.

Vendor caps would hurt companies large and small. Large vendors would be unable to develop part of their portfolio despite having qualified, mature projects. Simultaneously, small developers that sell RECs using aggregators would be disadvantaged because those aggregators would be limited to some arbitrary market share cap.

But again, such limits would present a fundamental shift in market design very late in the development of the program, and the Commission did not approve (nor even discuss) this concept in its Final Order.

While the Commission did direct the Agency to work with stakeholders to amend the lottery process (Order at 68) vendor caps go far beyond that directive. At minimum, the IPA would need to seek approval for vendor limits before implementing such a major change, which could slow program launch and create additional program instability.

5. IPA should only allow vendors one opportunity to switch projects after the lottery

In the IPA's Request for Follow-up Comments, the Agency seeks input about "allowing project substitutions beyond the one-time substitution." Under no circumstances should the IPA implement this proposal. Allowing multiple switching opportunities after the utility completes its restudy process of contingent projects will promote gaming, speculation, and a cascading series of chaotic re-studies and re-swaps that could take a decade to finalize.

Vendors need to make project decisions based on the information available at the time the switching window closes. Even if that information is imperfect, decisions must be made so that projects can be built. Allowing vendors to speculate about re-study costs, then switch if they don't like the re-study results is inherently speculative activity and must not be allowed.

6. IPA should eliminate the "waiting list" for projects not selected in the lottery that do not maintain valid interconnection agreements

As discussed in the IPA's Request for Follow-up Comments, ComEd has proposed a Waiver from certain ICC Part 466 rules. This proposal has not yet been approved by the Commission, and the Agency should not assume the ICC will approve this Waiver as written. Further, the IPA should not finalize any policy that could be impacted by that Waiver. Changes to the Waiver could clearly impact the IPA lottery and vice versa. CCR encourages IPA to work closely with the utilities to ensure their respective policy proposals dovetail with each other.

CCR has nuanced opinions about the Waiver proposal, and these comments are not the proper venue to provide that full perspective. However, at a minimum, we believe that reordering of the interconnection queue should not occur until after the IPA allocates all the discretionary REC capacity to one of the market segments. Further, any project that exits the interconnection queue following any reordering

process should not be allowed to receive REC contracts from the IPA. A project that has exited the interconnection queue no longer has an interconnection agreement, rendering that project unqualified to participate in the ABP. If the utility interconnection queues are "purged" in any reordering process, the IPA has no need to maintain a "waiting list" because all the projects on that list would no longer be qualified.

7. Grouped projects are a slippery slope toward gaming, but if it is allowed the IPA needs to reduce pricing and develop a tight standard for such projects.

CCR is skeptical of the IPA's proposal to allow "grouping" of projects into a single lottery entry and believes it may not be permissible under the ICC Final Order approving the plan. If a project that applies to the ABP but cannot make the economics work at the current REC values, it shouldn't be in the program. If it *can* make the economics work at current REC values, it doesn't need to bid as a grouped project. Allowing advantages for grouped projects could lead to program gaming.

However, if grouping is allowed, IPA should reduce the REC prices for any project that bids as part of a group, similar to IPA's plan to reduce REC prices for co-located 2MW projects, The purpose of the REC adders for smaller projects was to accommodate for the increased development costs of those smaller assets. If those projects are developed as part of a larger all-or-nothing group, it should receive RECs priced as if it were a single project bidding into the ABP at that cumulative size. For instance, if a group of four 500kW projects were to seek RECs in the ABP, all those projects should receive RECs priced for a 2MW facility in the appropriate market segment and utility service territory.

And similar to co-location, IPA must develop a standard to ensure grouped projects are physically located near each other. Allowing a vendor to aggregate geographically dispersed projects into a single bid (especially if that vendor is allowed to secure the REC adders for smaller projects) would amount to gaming of the system. The standard should require some documentation that the grouped projects are physically and economically tied (i.e. at the same housing development, industrial park or shopping mall), and proximity must be severely limited (i.e. measured in feet, not miles).

In any case, it is not clear IPA has the authority to make this change without Commission approval. The Agency sought a formal clarification from the Commission in order to implement co-located pricing. Allowing grouped pricing is as-significant a change as co-located pricing and would likely require ICC approval.

8. IPA should not require disclosure about lottery details.

In the IPA's Request for Follow-up Comments, the Agency seeks input about whether projects should be required to "include an attestation by the Approved Vendor that the Approved Vendor will inform project hosts that there will be a reallocation process." Such an attestation is likely unnecessary. The IPA does not seem to require this for other bidding processes it has undertaken in the past and, given the inherent risk of this lottery system, it is likely that all developers have explained the process to landowners. If such an attestation is pursued, it should apply across the board for all projects, including residential and commercial projects.

9. IPA should make non-ministerial permit rules clear ASAP

There is currently some ambiguity about the definition of non-ministerial permits. While the footnotes of the LT Plan offer much insight, there is still a lack of clarity about the universe of potential permits that IPA considers non-ministerial. While its impossible to list all permits that may be considered non-ministerial, IPA should endeavor to release a list of the most likely permits soon. This especially urgent because some permits that may be non-ministerial require physical studies that cannot be completed when ground is frozen. If vendors are required to seek these permits, they need to know as soon as possible.

10. IPA should launch the program as soon as possible.

By the projected launch of the program, it will have been over 25 months since Governor Rauner signed the legislation commonly known as the Future Energy Jobs Act (FEJA). Lawmakers, stakeholders and community groups that supported the legislation have been waiting a long time to see projects move forward under this statute. The IPA should not delay any further, resolve any problems and concerns quickly, and launch the ABP on January 15th, 2019.