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October 17, 2018

Via Electronic Mail

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Re: Reply Comments re: IPA's October 5, 2018 Request for Follow-up Comments re: Block 1 Lottery

Dear Director Star,

United States Solar Corporation ("US Solar") files this letter in response to the Illinois Power Agency's October 5, 2018 Request for Follow-Up Comments regarding its Block 1 Lottery Proposal ("Request for Comments").

As with other Commenters, we'd like to start by thanking the Agency and the Program Administrator for all their good efforts in developing the program to date. As stated in our initial comments, US Solar is excited to participate in the Illinois community solar market.[1] And we're also excited for the Illinois market overall.

Although the community solar program hasn't yet opened, policy implementation has been moving quite quickly, and we look forward to the application window opening on or around January 15th as planned. Arguably, the program is already a success at this point in its implementation – as it's currently on track to fetch over 1,000 MWs of clean distributed generation across the state of Illinois, with capacity build-out taking place over the next 4-5 years (assuming the allocation of sufficient REC blocks under the ABP).

This high level of upfront project demand, while perhaps surprising to some, is also a predictable result of the Agency's program and lottery guidance published to date.[2] For example,

[1] US Solar Sept. 28, 2018 Comments, at 1 ("US Solar is a community solar farm developer/owner/operator that is currently developing projects in four states, with over 50 MWs of community solar installed and subscribed to date.").

[2] *Contra* Cypress Creek Sept. 28, 2018 Comments, at 2, we oppose any non-refundable bid assurance or requirement to pay a non-refundable program or interconnection deposit before the utility delivers its final revised / most rigorous cost estimate.

the Agency's September 2018 guidance injected a serious sense of urgency into the market by signaling that any post-Lottery applicant (*i.e.*, after the 14-day window) would be placed at the tail end of the REC wait list. Heeding that signal, many site hosts and project developers appear to have accelerated their pace (rather than risk getting stuck behind a multi-year construction queue).

As a result, the state is now expecting a handsome supply of permitted, pre-qualified community solar projects. Many of these projects may ultimately have to withdraw from the utility queue due to high interconnection costs (which may actually result from insufficient grid- and interconnection-cost transparency prior to the program opening). But the projects that are better situated on the grid will face lower interconnection costs, and developers will (if allowed by the policies now under debate) likely build these lower-cost projects first.[3]

Meanwhile, the resulting REC-contract wait list will put the Agency in a great position to procure significant additional community solar capacity over the coming years, at declining block prices, by simply allocating funds for additional REC Blocks under the Adjustable Block Program. For all these reasons, US Solar does not see a "crisis" in the Agency's program, or in the proposed lottery element of the program – though of course the Agency should continue to perfect its approach via this final round of comments.

Topic 1: PROJECT SUBSTITUTION/REALLOCATION

As mentioned in our initial comments, US Solar supports the Agency's proposed clarifications to:

- **Allow switching of non-winning projects in the lottery waitlist as well as switching of winning projects**; and
- **Clarify that reallocated projects swap lottery selection positions**.[4,5]

We also support the Agency's proposed clarification that "**reallocation can occur between projects owned by the same developer or their affiliate (rather than only by the same Approved Vendor)"**.[6] Absent a strong policy justification, the program rules should provide developers flexibility in structuring their project entities, and entity relationship, to allow for project financing.

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[3] This is true today in Ameren territory, and will become true in ComEd territory via ComEd's proposed queue-restudy process.

[4] *See* Request for Comments, at 1.

[5] In these Comments, we employ **bold font** to highlight each provision we support for Agency adoption.

[6] *Id.*

We further support the proposal raised for consideration in the Agency's Request for Comments to:

> **allow[] project substitutions beyond the one-time substitution date** (including for previously-substituted projects) should [they] receive an updated interconnection cost estimate above a certain threshold.[7]

In particular, **we propose a $500,000 threshold for ComEd & Ameren interconnection cost estimates** – enabling a project that is restudied (*e.g.*, after the initial REC reallocation period, due to an ahead-in-queue project sliding back) the option to cancel the project (and preserve the REC contact via transfer to affiliate) if the actual cost estimate comes in higher than the threshold as the project at that point may well become economically infeasible.

This approach would help mitigate uncertainty about the ultimate cost of connecting a given community solar project in ComEd's service territory. For example, one of our ComEd interconnection studies is showing a $13.6 million interconnection cost estimate, based on extending a 3-phase line over 10 miles to a remote substation (on the assumption that all projects ahead of us in the queue on the nearest substation will move forward). We anticipate that the estimated cost would come down significantly if the projects ahead of us in queue opt to slide back (*e.g.*, due to lack of REC contract). But we won't know the project's actual interconnection-cost estimate on the nearest substation until our project is restudied by ComEd post-lottery.

Therefore, allowing for a project substitution after the interconnection cost is restudied (if the project is indeed restudied) would be very helpful. Otherwise, we would have to make a firm decision as to which project will use the REC contract before having any clear idea as to what the actual ComEd interconnection costs will be.

For purposes of finality and repose, there probably **should be a point during the project-development process when the REC contract is signed and finally bound to the facility being developed. It would be logical to attach this requirement to a standard project milestone, such as project commissioning**. That is the project milestone after the community solar project has been energized by the distribution utility for electrical testing, but before the utility has provided permission to operate.

By the same token, the Agency could choose to attach the REC finality decision to an earlier project milestone, as long as it is after the utility has delivered its final revised (*i.e.*, most

[7] *Id.*

rigorous) cost estimate – which, during the early years of a new program like this, could come in significantly higher than the project's initial (less rigorous) indicative cost estimates.

Topic 2: SYNCHRONIZATION OF THE IPA LOTTERY WITH THE UTILITY INTERCONNECTION QUEUE PROCESSES

US Solar is active in developing community solar projects in both ComEd and Ameren, so we have been closely watching this synchronization issue. In order to improve this synchronization and allow for orderly and efficient project sequencing, we support adoption of the following Agency proposal:

> To the extent that the utilities will require non-refundable deposits for projects to remain in the queue upon publishing of lottery results, the Agency is considering **allowing for a project to still be considered qualified for the Adjustable Block Program by virtue of its prior-executed interconnection agreement submitted at the time of the initial application to the Program**, even if the project officially exits the utility interconnection queue.[8]

We support this proposal because it would allow projects that do not have a REC contract after the Block 1-3 lottery to exit the queue (to allow others behind them to move forward) and re-enter the queue later, without having to forfeit their ordinal rank for later blocks in the Adjustable Block Program. This would be especially helpful in Ameren territory, where it is unknown whether the utility will allow for projects to move to the back of the substation queue.

Topic 3: REDUCING APPLICATIONS FROM SPECULATIVE PROJECTS

US Solar has seen no evidence of speculative projects being used to inflate the community solar program queue, or anything else to suggest that this could be a "false demand signal".

Instead, what Illinois is seeing is pent-up demand (until now, community solar projects were effectively not allowed), combined with the next 4-5 years of actual demand being compressed forward to January 15th – the market's opening date. A similar "opening-date effect" was noted when Colorado and then Minnesota first opened their community solar markets. Like Illinois, those states designed a project-and-market model that allowed for efficient project formation and financing - and the solid market elements that attracted one solar developer (and its project partners) naturally attracted many. This should be seen as a good-news story.

[8] Request for Comments, at 2.

Proposals Aimed at Reducing the Size of the Lottery Pool

That said, US Solar does support reasonable, non-retroactive Agency clarification to mitigate against a serious concern that many legitimate projects developers may receive *zero* REC contracts in the initial lottery for Blocks 1-3. That would be a hard result after having paid many thousands of dollars upfront to advance each community solar project through site control, interconnection studies, and local permitting.

We see this issue – the risk of getting "zeroed out" in the initial lottery – as perhaps the key unresolved concern arising from the sheer number of community solar projects now expected to qualify for the lottery. Fortunately, other Commenters have proposed a minor fix to the lottery procedure that would help mitigate this downside risk for developers.

We thus support the proposal, by SGC Power, SunVest New Energy LLC, and perhaps others, that the Agency **establish a cap equal to 20 percent of the available Block 1-3 capacity that could be awarded to a single applicant and/or its affiliates from Blocks 1-3**.[9]

This common-sense tweak is superior to artificially limiting the number of legitimate projects that can participate in the Block 1-3 lottery. Unlike the two approaches discussed below, this tweak would likely not disadvantage any Approved Vendors – except, perhaps, one that would be otherwise lucky enough (by dint of the random lottery) to secure over one-fifth of the entire lottery capacity in ComEd or Ameren.

This tweak would not reduce the size of the lottery pool *per se*, but it would help ensure that a few large developers don't end up owning a majority of all Block 1-3 community solar REC contracts, squeezing out smaller community solar applicants.

If adopted, this approach would also help de-risk the lottery mechanism for smaller entities that won't be able to cover their out-of-pocket project costs (or continue as an active participant in the IL community solar market) until they win at least one REC contract.

Alternatively, if the Agency can't adopt that approach but does wants to reduce the size of the Block 1-3 lottery pool, we would alternatively support the idea of "Limiting a developer and its affiliates' applications to the maximum capacity in Blocks 1-3 of each Group."[10] This would, in effect, cap the number of eligible community solar applications that a given Approved Vendor and its affiliates could submit into the initial lottery – regardless of whether they have

[9] *See* SGC Power Sept. 28, 2018 Comments, at 1; SunVest New Energy LLC Sept. 28, 2018 Comments, at 3.

[10] See Request for Comments, at 3.

additional qualifying projects ready to submit during the initial 14-day window.

Finally, we ***strongly object*** to the idea of a retroactive September 10 interconnection-application cutoff date as arbitrary and lacking prior notice. Retroactively adopting a September 10th cutoff date would also disadvantage small developers who are less risk-averse and waited until the LTRRP was finalized on August 6th, 2018 before they began submitting permit and interconnection applications. (The proposed arbitrary cutoff date of Sept. 10 would, in effect, retroactively create a mere 5-week window for submitting interconnection requests after the final LTRRP was published.)

Moreover, ComEd and Ameren have already both proactively communicated their own (separate) lottery-eligibility cutoff dates for interconnection applicants (pre-September 10th and September 15th, respectively), and we have abided by those dates – so it would be unfair and punitive to retroactively select a cut-off date prior to the two utilities' already-expired cut-off dates. In short, the Agency would be changing the rules after the fact. Geronimo Energy made the same point in their initial comments:

> "An arbitrary cutoff date harms developers that have been working closely with the utility prior to submitting an [interconnection] application and who understood they had more time."[11]

Proposals to Help Ensure that Legitimate Projects are Submitted into the Lottery Pool

US Solar does support Agency adoption of the three reasonable project-maturity requirements raised for consideration in the Agency's Request for Comments. Specifically, with the minor redlines changes shown, we support:

- "**Requiring a signed lease or option**, or a recorded memorandum or lease, option, or purchase agreement, to demonstrate host acknowledgement (and not merely a letter of intent)."[12]

A copy of the recorded memorandum should be sufficient evidence of a signed lease or option for the Agency. The memo is sufficient evidence of site control for county land records, and there is no justification for requiring the entire lease or option agreement, particularly since these full agreements contain proprietary terms and conditions.

[11] Geronimo Energy Sept. 28, 2018 Comments, at 3.

[12] *See* Request for Comments, at 3.

- "**Requiring that projects upload a copy of any zoning permit(s) required** (or attest that no zoning permit is required), as well as attesting that all other non-ministerial permits have been obtained."[13]

As a practical matter, the Agency could implement this maturity requirement by simply requiring the applicant to submit either (1) a copy of the Special Use Permit or other required land-use permit, or (2) a formal written statement from the local jurisdiction, such as official meeting minutes showing that the land-use permit was granted. Since these land-use approvals are the primary discretionary permits needed to develop solar projects, evidence of these permits should be sufficient evidence that the project will move forward.

- "requiring those community solar projects that make the small subscriber commitment to **provide information at the time of application showing that those developers have a plan** to actually solicit and enroll small subscribers."[14]

We support this proposed requirement, because if an Approved Vendor wants the benefit of committing to serving numerous small subscribers, it seems reasonable for the Agency to require the developer to demonstrate that is has the ability to successfully accomplish that goal.

For example, the Agency could require applicants that opt into the small-subscriber requirement to submit copies of the following information:

- copy of the applicant's residential subscription agreement;
- copy of marketing materials for residential/small subscribers;
- website landing page for residential/small subscribers;
- the applicant's track record of serving residential/small subscribers in other markets; and
- if a developer is relying on a third party to accomplish these goals, a copy of the marketing agreement between the applicant and a reputable third-party marketer.

For each of such category of information, the applicant should be allowed to mark as "Trade Secret" any confidential materials that would lose their value if it became known to the applicant's competitor, with such materials viewed only by Agency and Program Administrator and not disclosed or subject to Freedom of Information Act disclosure.

[13] *Id.*

[14] *Id.*

Topic 4: "GROUPING" OF PROJECTS INTO A SINGLE LOTTERY ENTRY

No comments at this time.

Topic 5: TRANSPARENCY OF INFORMATION

In its Request for Comments, the Agency asked whether "as a matter of public policy, a landowner or zoning board that has permitted a project may have a right to know" that a project was selected (via the random Block 1-3 lottery) but then "substituted out for a different project through a business decision of the developer".[15]

The Agency also considering whether it should require that:

> [A]ll projects submitted include an attestation by the Approved Vendor that the Approved Vendor will inform project hosts that there will be a reallocation process that, even if the project is selected for a REC contract by the Illinois Power Agency, may result in the project not moving forward.[16]

We object to this proposed requirement. As an experienced community solar developer, US Solar use an industry-standard approach to establishing site control that does not obligate us to move forward with any given project under any circumstances. Our land agreements instead provide us the ability to conduct due diligence on a broad range of items before moving forward on a solar project. This is a standard approach, given the contingent nature inherent in solar-farm development, particularly under a new state policy, program, and market (as here).

More generally, we do not believe the Agency should attempt to insert itself into the bilateral contractual relationship between solar developers and their landowner partners. But despite that, if the Agency does decide to impose an attestation requirement such as the one above, we would urge the Agency to **limit the requirement to those Approved Vendors and projects where the site-control agreement itself obligates the developer** to disclose such information to the landowner, or to give that particular project priority in the developer's build order, etc.

[15] Request for Comments, at 4.

[16] *Id.*

Topic 6: LOTTERY WITHIN 45 DAYS

No comments at this time.

Topic 7: DISCRETIONARY CAPACITY

We agree with Trajectory Energy Partners and other stakeholder that **the Agency "should be prepared to quickly apply a portion of the 25% discretionary funding towards the Community Solar ABP if Blocks 1 through 3 are filled by the lottery, after a 20 business day evaluation period."**[17]

If the Agency adopts this position in its next guidance, we believe that could go a long way towards calming the nerves of community solar developers who, based on the size of the overall interconnection queues, worry that the REC lottery may be significantly oversubscribed and that they consequently may receive zero REC contracts in the initial Block 1-3 lottery.

Conclusion

Thank you for the opportunity to provide this reply to the Agency's October 5, 2018 Request for Comments regarding its Block 1 Lottery Proposal. We look forward to participating in the Adjustable Block Program and the Illinois community solar market.

Sincerely,

s/ *Ross Abbey*

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[17] *See* Trajectory Energy Partners Sept. 28, 2018 Comments, at 10.