CITIZENS UTILITY BOARD
Fighting for Illinois Consumers

Comments of the Citizens Utility Board

On the Adjustable Block Program

Request for Stakeholder Feedback – Marketing Guidelines

April 28, 2020

The Citizens Utility Board ("CUB") is glad to provide comments on the Illinois Power Agency ("Agency")'s request for stakeholder feedback on revisions to the Adjustable Block Program ("Program") Marketing Guidelines ("Guidelines"). CUB thanks the Agency for its consistent commitment to stakeholder engagement during Program revisions.

1. **Are the alterations made in the draft Marketing Guidelines sufficient to capture the spirit and purpose of the HEAT Act? If not, what provisions should be included to ensure that HEAT Act protections are extended to Program participants under the Marketing Guidelines?**

The Home Energy Affordability and Transparency Act (Senate Bill 651, Public Act 101-0590, or "HEAT Act") introduced much-needed residential and small commercial customer protections to the retail energy supply market. CUB recognizes and appreciates the proposed revisions to the Guidelines in light of the HEAT Act. CUB strongly supports expansion of the term "Approved Vendor" to include "that entity's affiliates, employees, [etc.]". All entities engaging with customers on behalf of an Approved Vendor should be held to the same standards as the Approved Vendor itself. CUB suggests that the Agency consider other requirements of the HEAT Act when revising the Guidelines.

The HEAT Act requires that the Price to Compare ("PTC"), or the sum of the utility supply rate and the transmission services charge, be disclosed on all retail supplier marketing

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materials, as well as bills.[1] CUB recommends that all Approved Vendors promising a savings guarantee be required to provide the "specific method and formula" of that calculation.

According to the current Guidelines, in the case of a community solar subscription being jointly offered with a Retail Electric Supplier ("RES") plan, the Standard Disclosure Form ("Form") must include the "initial energy supply rate," as well as "the specific method and formula used to determine the energy supply rate over all the years of the community solar contract." But if a customer is being promised a percentage of savings, they should know that formula as well. It is not sufficient to refer to the formula as a percentage based on "your solar credits" or "your utility bill."

CUB recognizes that the Agency did not adopt Part 412.110(j) in the Guidelines, but the HEAT Act's passage affirms the importance of transparent terms when promising savings. If the Approved Vendor's savings guarantee is based on the utility supply rate, or Price to Compare ("PTC"), this should be explicitly stated in all marketing materials as well as the Form. The language should also address whether the savings calculation is based on the PTC at the time of contract signing, or based as a percentage as the PTC fluctuates over the term of the contract. If the savings calculation is not based on the PTC, that should be explicitly stated as well.

CUB strongly supports the Program Marketing Guidelines provision that the Agency can substantiate a savings guarantee by requesting billing information. Particularly in the case of a billing dispute, it is vital that savings claims be verified.

The HEAT Act requires that before an RES can switch a customer, they must provide a written disclosure of terms to the customer in a language that the customer can understand.[2] The

[1] 220 ILCS 5/16-115A(e)(i) and 220 ILCS 5/16-118(f) and815 ILCS 505/2EE(a)(ii).

Guidelines include the requirement that “Marketing materials shall be provided in a language in which the customer subject to the marketing is able to understand and communicate.” CUB suggests that this language be expanded to explicitly include the Form.

The HEAT Act requires that “all marketing materials, including, but not limited to, electronic marketing materials, in-person solicitations, and telephone solicitations, shall include” a statement that the RES “is not the same entity as your electric delivery company. You are not required to enroll with (name of alternative retail electric supplier).”[3] Approved Vendors should not only be prohibited from making false claims, but should also be required to assert that they are not the utility company, and participating in their offer will not mean that the customer is no longer a utility customer, and the customer will still be responsible for a utility bill.

The draft community solar marketing guidelines require that Approved Vendors “clearly and conspicuously make available the ABP informational brochure prior to collecting any personal information other than a zip code or electric service territory." CUB strongly agrees with this requirement and recommend expanding what Approved Vendors are required to present on their community solar enrollment sites. The HEAT Act mandates, "The enrollment website of the alternative retail electric supplier shall, at a minimum, include: (i) disclosure of all material terms and conditions of the offer; (ii) a statement that electronic acceptance of the terms and conditions is an agreement to initiate service and begin enrollment…. (iv) an email address and toll free phone number of the alternative retail electric supplier where the customer can express a decision to rescind the contract."[4]

[2] 220 ILCS 5/16-115A(e)(ii).
[3] 220 ILCS 5/16-115A(e)(i).
[4] 815 ILCS 505/2EE(c)(6)(C).

CUB recommends adopting these requirements for community solar enrollment pages, and requiring that all Approved Vendors include all material terms of the offer on the enrollment site, in addition to the program brochure. The marketing guidelines should specifically prohibit collecting the customer's utility login credentials until the customer has been presented with the offer details and is ready to sign a contract with the given Approved Vendor.

The HEAT Act eliminates early termination fees or penalties for residential and small business RES customers.[5] Early termination fees should be eliminated for customers who choose to end their association with a community solar project, especially for community solar share subscriptions below 25 kW.

The Agency did not include Part 412.230 in the conditions placed on Approved Vendors, electing to allow uncapped cancellation fees for distributed generation ("DG") systems and community solar share subscriptions below 25 kW. CUB understands that the Guidelines require that the early termination fee must be specified in the Form if included in the contract. Regardless of whether the fee amount is included on the Form, there have already been cases of Approved Vendors signing the Form instead of the customer, or failing to provide the customer with the Form before their contract was signed.[6]

If termination fees cannot be eliminated altogether, a $50 cap should be placed on them. Before Part 412 was amended to impose a $50 cap on early termination fees for RES contracts, CUB heard from many consumers who were in crisis after attempting to cancel their plans and being told they owed large punitive fees. The $50 fee continued to burden customers on RES contracts who had lost money on bad deals. Customers who sign up for a community solar

[5] 220 ILCS 5/16-119.
[6] "Illinois Power Agency Solar Programs Consumer Complaint and Disciplinary Actions Annual Report - 2019," March 2, 2020, https://www.icc.illinois.gov/downloads/public/edocket/517445.pdf.

subscription may encounter a similar predicament, if escalation provisions transform initial savings into overpaying further into a contract term. At the very least, early termination fees should be waived in the case that a customer moves out of their utility territory or in the case of death. There is already a Program requirement that a customer cannot be charged if they find another customer to take their place; adding these other two reasonable scenarios, already voluntarily adopted by some offers, would not place undue burden on Approved Vendors.

Part 412.230 also requires that "any contract containing an early termination fee shall provide the customer the opportunity to contact the RES to terminate the contract without any termination fee or penalty within 10 business days after the date of the first bill issued to the customer for products or services provided by the RES." In the Guidelines, Approved Vendors must provide a contract rescission period of 3 days. If termination fees are allowed for community solar subscriptions, customers must be allowed the 10 day rescission period, as required in the RES market.

The HEAT Act requires RES plans to clearly disclose the terms of automatic renewal, including "a separate written statement titled 'Automatic Contract Renewal'."[7] CUB disagrees with the allowance of automatic contract renewal provisions in solar contracts. The solar contract terms are much longer than RES contracts and a solar panel's annual production decreases over time. Allowing auto-renewal risks the consumer not understanding how their product has changed over time. But if automatic contract renewal provisions are permitted within the Program, the Form should clearly disclose the terms of automatic contract renewal in a clearly delineated section titled "Automatic Contract Renewal."

[7] 815 ILCS 505/2EE(c)(7)(A).

The Agency decided to include Part 412.240 for community solar subscriptions within the Program. The Guidelines for community solar subscriptions already require that "automatic renewal is not permitted if the new contract's terms differ from the existing contract's terms." However, this does not address how automatic renewal is handled in the original terms of the contract. If terms are not clearly disclosed at the outset, including in a clearly marked section of the Form, automatic contract renewal should not be permitted.

The HEAT Act requires that at the end of the initial contract term, the RES must send the customer a disclosure about the renewal terms, including a side-by-side comparison of the current rate and the new rate if automatic renewal is from fixed to fixed or variable to variable.[8] The Approved Vendor should be required to do the same for their customers at the end of the initial term.

The HEAT Act requires that at the time of application to the Illinois Commerce Commission ("Commission"), a RES must disclose other lawsuits and formal complaints in other states, including "the name, case number, and jurisdiction of each lawsuit or complaint."[9] Approved Vendors should likewise be required to disclose this information at time of Program application.

The HEAT Act requires that customers who have applied for the Low Income Home Energy Assistance Program ("LIHEAP") can only be switched to a RES if provided a "Commission-approved savings guarantee plan," including "at a minimum, the savings guarantee plan shall charge customers for electric supply at an amount that is less than the amount charged by the electric utility."[10] CUB recommends that LIHEAP customers be provided a "Guaranteed

[8] 815 ILCS 505/2EE(c)(7)(B).
[9] 220 ILCS 5/16-115(d)(8).
[10] 220 ILCS 5/16-115E(b).

Savings Plan" from the Approved Vendor that includes the same stipulation. LIHEAP customers have a high energy burden and it is imperative that they not be penalized by an excessively high community solar rate.

2. **The disciplinary process that occurs when an Approved Vendor or its designee do not act in accordance with Program requirements is now outlined in the draft Marketing Guidelines. Is this disciplinary process outlined adequately? Are additions needed to clarify this process?**

The HEAT Act outlines a process by which the Commission can require a RES to enter a "compliance plan," and in the case that the RES doesn't implement or comply, they are in violation of the Section.[11] The Guidelines should similarly convey the process by which an Approved Vendor, if notified of a Program violation, can agree to a compliance plan. In the case the compliance plan is not upheld, that would constitute a Program violation and could incur a more severe penalty.

If an Approved Vendor is in violation of a Program requirement, there should be a process by which their customers are notified of the violation. The disciplinary process should include notifying all known customers of the offender as a means of establishing contact with the Program Administrator. Customers are not expected to know the intimate details of the Program guidelines, and thus would often not be in a position to know if their Approved Vendor was miscommunicating or misrepresenting the Program.

3. **Changes were made to the section of the draft Marketing Guidelines that provide examples for what Approved Vendors and their subcontractors may or may not say about the Program in their marketing materials. These changes were made based on review of marketing materials during the first year of the Program. Are these examples sufficiently representative of expected phrasing to support to Approved Vendors in their effort to create viable marketing materials for potential Program**

[11] 220 ILCS 5/16-115B(c).

participants? How else, or through what additional examples, should the IPA provide clarity regarding the application of its Marketing Guidelines?

CUB appreciates the thorough accounting of acceptable and unacceptable marketing pitches. CUB applauds the restriction on using "free" in marketing materials to only offers in which "the customer will not pay anything for the benefits they receive."[12] CUB recommends that this language in the Guidelines be expanded to include "free or any term that implies no cost," as CUB has seen language from Approved Vendors that says "no cost" for the same effect as saying "free."

CUB also strongly supports the requirement that the Form and Informational Brochure be delivered to the customer "as an attachment, or otherwise fully displayed for the customer's review, and not merely hyperlinked for access." It is imperative that a customer be able to clearly view these two documents, which is unlikely if presented with a hyperlink.

4. **The IPA is considering allowing Approved Vendors to use the Illinois Shines logo on materials which state that they are an Approved Vendor in the Illinois Shines Program. Under this proposal materials that use the Illinois Shines Logo (including online or social media posts) must include the legal name of the entity on behalf of whom the individual is marketing, and should also include the actual Approved Vendor participating directly in the ABP where possible, and cannot otherwise imply that the Approved Vendor is acting as a representative of the State of Illinois. Does this seem to be a viable solution to ensure that customers are able to easily identify Approved Vendors as verified and trustworthy program participants? If you are in favor of creating this option, do you have recommendations for how to prevent the misuse or appropriation of the logo by entities not authorized to use it?**

CUB sees no issue with allowing Approved Vendors to use the Illinois Shines logo, so long as the requirements laid out in the question are in place.

[12] Recognizing this was in the previous version of the Guidelines.

5. Are there any other revisions to its Marketing Guidelines that the IPA should consider?

All DG solicitations and marketing materials should be required to explicitly state that the Program includes ownership options. There have been numerous documented cases of Approved Vendors not informing DG customers of the system purchase agreement option.[13] The Illinois Power Agency Act states that "the health, welfare, and prosperity of all Illinois citizens require the provision of adequate, reliable, affordable, efficient, and environmentally sustainable electric service at the lowest total cost over time, taking into account any benefits of price stability."[14] System ownership by Illinois ratepayers, especially at the residential and small business level, certainly affirms that goal. It is imperative that ratepayers funding the Program be adequately informed about how to access Program benefits.

For those who can afford it, DG system purchase by the property owner can provide the lowest cost over the life of the system.[15] Program incentives through the Small DG and Large DG blocks substantially offsets the cost of installing a PV system. Many customers do not understand that one offer does not represent the full spectrum of offers within the Program, and that even if one Approved Vendor does not offer a purchase option, there are many others who do.

The HEAT Act specifies the language that all RES marketing materials must use in all customer marketing. CUB recommends that Approved Vendors be required to specify the system

[13] "Illinois Power Agency Solar Programs Consumer Complaint and Disciplinary Actions Annual Report - 2019."
[14] 20 ILCS 3855/1-5(1).
[15] Energy Sage, "Should you buy or lease your solar panels?" December 12, 2019, https://www.energysage.com/solar/financing/should-you-buy-or-lease-your-solar-panel-system; this is corroborated by CUB's own calculations when helping individuals evaluate solar offers.

purchase option at the time of all initial customer interactions, including but not limited to electronic and paper marketing materials and in-person and telephone solicitations.[16]

If the contract term is over one year, automatic contract renewal should not be allowed within the Program. Solar contracts can last up to twenty-five years, and it is unreasonable to expect a customer to remember their contract renewal date, especially after the project has fulfilled its solar production requirements.

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[16] 220 ILCS 5/16-115A(e)(i).