COALITION FOR COMMUNITY SOLAR ACCESS

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Comments on Behalf of the Coalition for Community Solar Access

I. Introduction

The Coalition for Community Solar Access ("CCSA") appreciates the ongoing efforts of the Illinois Power Agency ("IPA") to carry out the requirements of the Future Energy Jobs Act and its proposal to address marketing materials and behavior. CCSA is a business-led trade organization, comprised of over 50 member companies, that works to expand access to clean, local, affordable energy nationwide through community solar. Our trade association has a vested interest in ensuring a long-term, sustainable market that is founded on the good reputation of industry members.

CCSA recognizes that this document is not intended for community solar providers, and that another proposal will be issued for the community solar segment. However, based on the expectation and that community solar guidelines would likely be similar, CCSA wanted to provide early feedback to the IPA in order to identify several significant initial concerns and issues. Moreover, CCSA requests the IPA consider expediting the current timeline to release draft Community Solar Marketing Guidelines since the IPA is requesting Approved Vendors to attest to complying with these guidelines when the industry has not seen any details on what these guidelines will look like. The following suggestions, feedback and requests for clarification are based on our members' experience working in other community solar markets. The blue, italicized font below is used to directly reference language used in the proposed *Guidelines for Distributed Generation Marketing Materials and Marketing Behavior* form.

II. Application of requirements

> *This document provides marketing guidelines for Approved Vendors in the Illinois Power Agency's Adjustable Block Program ("ABP") and their employees, contractors, and subcontracting or partnering solar installers and marketers.*

CCSA strongly believes that the IPA should be more specific regarding the application of these guidelines, clarifying that *any entity creating customer-facing materials* regarding the Adjustable Block Program ("ABP") should be expected to adhere to these guidelines. This would include but not be limited to utilities, municipalities, Citizens Utility Board, Elevate Energy, and any other Illinois energy stakeholders, including the IPA itself and

the Program Administrator. It is essential that all entities creating customer-facing materials be held to the same set of standards and guidelines.

III. Guidelines for marketing materials

2. a. What is the Adjustable Block Program?
2. a. i. The Adjustable Block Program is an Illinois state incentive program for new solar photovoltaic ("PV") systems. It provides payments for the Renewable Energy Credits produced by solar photovoltaic systems through the purchase of the Renewable Energy Credits by Illinois utilities. These payments vary depending on the size of the system and where it is located.

CCSA requests clarification on whether this question and answer are required in all or some marketing materials. CCSA suggests that this should not be required on all marketing materials, but that it could be included at the election of Approved Vendors. Furthermore, the sentence in subsection (i) is confusing and may warrant further clarification if it is intended to be helpful to customers. This sentence essentially says that the ABP provides payments for RECs through the purchase of RECs. To the extent that the IPA desires to create a standardized response to this question, CCSA suggests language similar to what is currently posted on the Illinois ABP website, such as "The Illinois Adjustable Block Program supports the development of new solar photovoltaic ("PV") distributed generation systems and new community solar projects in Illinois through the purchase of Renewable Energy Certificates."

*2. a. iv. Companies may not make any demonstrably false or **unsubstantiated statements** about the ABP.*

CCSA agrees that it is imperative for companies not to make demonstrably false or misleading statements, but requests clarification on how the above guideline regarding "unsubstantiated statements" is different from the term "misleading statements" referenced in the first guideline in this document. Is this intended to impose a requirement that all statements regarding the ABP be "substantiated"? Additional information must be provided to understand what would be required to substantiate a particular statement.

2. b. What are RECs and why are they valuable?
*2. b. i. Renewable Energy Credits ("RECs") are created when renewable generators, including solar panels, generate electricity, but they are not the electricity itself. Instead, they represent the environmental value of the electricity. RECs can be bought and sold, and whoever owns the RECs has the legal right to say they used that renewable power. **This right is important to utilities that are required to supply a certain amount of their power from renewable sources**. If the RECs from a customer's PV system are transferred to the utilities through the ABP, then that*

customer cannot claim to be using renewable electricity. Approved Vendors and their subcontractors may not suggest that customers will be receiving or using renewable electricity.

CCSA requests clarification on whether it will be required to make this statement in marketing materials, how was it developed or where it came from, and information on the intended purpose of this statement. Is this intended to be informative to customers or to Approved Vendors conducting marketing or sales? This language seems to blend a definitional answer of "what" RECs are with an assessment of "why" RECs are valuable to Illinois utilities for RPS compliance (i.e. "this right is important to utilities…"). A more commonly accepted factual definition of RECs is as follows[1]: "A renewable energy certification or REC is a market-based instrument that represents the property rights to the environmental, social, and other non-power attributes of renewable electricity generation. RECs are issued when one megawatt-hour (MWh) of electricity is generated and delivered to the electricity grid from a renewable energy resource." CCSA also finds it helpful to state that RECs can be bought and sold, and that whoever owns RECs has a legal right to claim they used renewable power. However, the bolded statement is a limited assessment of why RECs may be valuable and is non-exhaustive.

As an example of what another state has done to educate customers about RECS within a renewable energy program, the IPA could look to the Massachusetts Community Solar Customer Disclosure Form which states, "A Renewable Energy Certificate (REC) represents the Environmental Attributes associated with one megawatt-hour of renewable energy as defined by Massachusetts law. RECs generated by a facility participating in the SMART Program are transferred to the utility company in exchange for the incentive payments made to the facility owner under the program. Therefore, while you are not using the solar power generated by the facility, your purchase of credits does support solar development in Massachusetts and increase the amount of solar energy consumed by all electric ratepayers in the Commonwealth."

If IPA wishes to include a statement about RECS vis a vis utilities, CCSA suggests something factual, such as "Illinois utilities purchase and retire RECS to demonstrate compliance with Illinois renewable energy procurement goals" or something substantially similar to the statement included in the Massachusetts example above.

2. b. iv. Companies may not make any demonstrably false or unsubstantiated statements about RECs.

Similar to our response in 2. a. iv. above, CCSA agrees that it is imperative for companies not to make demonstrably false or misleading statements, but requests clarification on how the above guideline regarding "unsubstantiated statements" is different from the term "misleading statements" referenced in the first guideline in this

[1] See https://www.epa.gov/greenpower/renewable-energy-certificates-recs

document. Is this intended to impose a requirement that all statements regarding RECs be "substantiated"? What would be required to substantiate a particular statement?

2. c. iii. All marketing materials must be consistent with the IPA informational brochure, and, in particular, with the following items from the brochure:…

Will an informational brochure specific to community solar be created? For example, the Draft Brochure for the Adjustable Block Program states on page 2 that "You are not guaranteed to save money." However, a common way to structure a community solar subscription is to offer credits from the project at a specified % discount (i.e. 10% discount on the dollar amount of the credits allocated to the customer's utility bill).

2. c. vi. Companies may not make any demonstrably false or unsubstantiated statement about whether solar will save customers money.

Similar to our responses in 2. a. iv. and 2. b. iv. above, CCSA agrees that it is imperative for companies not to make demonstrably false or misleading statements, but cautions that many generalized statements regarding savings may not require substantiation. CCSA suggests that this guideline be revised to clarify that statements about whether solar will save customers a specific amount of money should be substantiated.

IV. Guidelines for marketing behavior

3. Customers shall not be required to sign up for a specific Alternative Retail Electric Supplier as part of their solar contract.

CCSA would like clarification on the intended purpose of this guideline. To the extent that this guideline is advanced, CCSA suggests it be revised to be competitively neutral by also stipulating that customers not be required to receive utility's default service as a part of their solar contract. Additionally, to the extent that this guideline is advanced in the community solar guidelines, CCSA suggests it clarify that this provision does not inhibit the ability of a customer to switch their energy provider or for an Approved Vendor to allow such switching to occur. Further, this provision should be clarified to make clear that it does not inhibit the ability of an Approved Vender to modify the particular *terms* of a solar contract based upon any number of customer specific variables, including but not limited to supply choice.

*4. a. Approved Vendors shall conduct all aspects of their business that touch on customers or their interests without any unfair, deceptive, or abusive acts or practices ("**UDAAP**").*

CCSA suggests that if guidelines want to address consumer protection issues more broadly, the IPA should incorporate a specific reference to the Consumer Fraud Act or other law. Using this term without referring to a specific law may be confusing.

4. b. Approved Vendors shall regularly examine and consider the possibility of UDAAP violations in all aspects of their business that touch on customers or their interests, including but not limited to marketing, sales, origination, contract terms, contract options, installation, servicing, and loss mitigation.

CCSA requests further clarification on the intended purpose of this guideline. This seems like general guidance regarding business practices, rather than a specific, actionable request or requirement. CCSA does not see benefit to the IPA offering generic business advice to Approved Vendors.

5. b. ***All claims*** *must be supported by factual, verifiable sources.*

"All claims" is extremely broad. If taken literally, compliance with this guideline would be very difficult and onerous. For example, if a brochure states, "People are increasingly interested in renewable energy options," would this claim be subject to verification? At a minimum, the IPA should provide a definition of "claims" so that Approved Vendors can make a reasonable determination as to whether particular marketing copy constitutes a claim.

6. a. Approved Vendors shall comply with, and shall ensure that all of its employees, agents and contractors comply with any and all federal, state, and local laws regarding restrictions on contacting its customers, including but not limited to the federal Do Not Call Registry, the CAN-SPAM Act of 2003, the Telemarketing Sales Rule, the Telephone Consumer Protection Act of 1991, ***Direct Marketing Association's Business Code Article 47, 48,*** *and any analogous state or local laws.*

While this appears to have been taken from the Solar Energy Industries Association Solar Business Code[2], the Direct Marketing Association's Business Code is not a law and inclusion of a Code of Conduct here is inappropriate.

6. d. Approved Vendors must ensure that employees, agents and contractors (e.g., solar lead generators) have access to up-to-date "do-not-contact" lists, and that all comply with ***this Code section****.*

CCSA requests clarification on the relevant "Code section" referenced here.

6. f. Approved Vendors, their agents and contractors may contact customers previously listed on a "do-not-contact" list who later initiate contact with Companies,

[2] See https://www.seia.org/initiatives/seia-solar-business-code

their agents or contractors, but subject to all applicable local, state and federal limitations on the breadth of such contact.

It is unclear to CCSA why there are several provisions related to do-not-contact lists in this document. CCSA suggests consolidating these requirements to avoid confusion and promote efficiency.

6. g. Approved Vendors should seek openness and transparency and not seek to take advantage of a customer's lack of knowledge. If an Approved Vendor becomes aware that a customer clearly misunderstands a material issue in a solar transaction or that the system will not work as intended to be used by the customer, the Approved Vendor should ***correct that misunderstanding****.*

CCSA suggests striking this provision, or at the least, clarification of the intended purpose and any required action. The suggestion that Approved Vendors should seek "openness and transparency" is something CCSA already supports but these terms, in this regulatory proceeding, are unacceptably vague. It is unclear how an Approved Vendor would assess whether a customer "clearly misunderstands a material issue" or be made aware of a customer's "intended" use of a system. Further, while CCSA believes that Approved Vendors to have an obligation to present truthful and accurate information to customers, it is unaware of what specific actions an Approved Vendor would be expected to take to "correct" a misunderstanding of the customer and when. Good business practices suggest that companies address customer concerns but without a definition of "correct," it is impossible to assess the merit of this proposed language. Further, it's unclear whether this obligation would apply only prior to or at the point of sale, or whether it would extend throughout the term of the customer's contract. If an Approved Vendor becomes aware 10 years into the term of a contract that a customer "misunderstood" a material issue how is the Approved Vendor to "correct" that misunderstanding? CCSA suggests striking this provision as it is vague and unworkable.

9. a. An Approved Vendor agent shall state that he or she represents an independent seller or third-party owner ("TPO") of PV systems and that he or she is not employed by, representing, endorsed by, or acting on behalf of, a utility, or a utility program, a consumer group or consumer group program, or a governmental body (unless the Approved Vendor is a governmental body or consumer group).

CCSA would like further clarification for how this guideline would operate in a real-world application. This is a lengthy statement to expect agents to repeat verbatim. CCSA suggests revising this provision to include a requirement that the agent clearly state the company he or she is working for and avoid any statement that implies he agent is working for or on behalf of any other entity, including utilities.

10. a. In addition to complying with the Telephone Solicitations Act [815 ILCS 413], an Approved Vendor agent who contacts customers by telephone for the purpose of

*selling or leasing PV systems or signing up customers for PPAs **shall provide the agent's name and identification number**. The Approved Vendor agent shall state that he or she represents an independent seller or TPO of PV systems. An Approved Vendor agent shall not state or otherwise imply that he or she is employed by, representing, endorsed by, or acting on behalf of, a utility or a utility program, a consumer group or a consumer group program, or a governmental body or a program of a governmental body (unless the Approved Vendor is a governmental body or consumer group).*

CCSA requests clarification on how the agent would provide this information. CCSA also provides the same feedback as we provided on 9. a. regarding the statement.

*13. a. An Approved Vendor agent shall be knowledgeable of the requirements applicable to the marketing and sale of PV service to the customer class **that he or she is targeting**.*

CCSA recommends changing this language to "applicable customer class" rather than "customer class that he or she is targeting." Use of the term "targeting" is inappropriate. CCSA member companies do not "target" customers.

13. d. No Approved Vendor agent shall make a record of a customer's account number until a contract has been signed.

CCSA requests clarification on the purpose of this guideline. It is very common for community solar companies to request a utility account number in advance of executing contract to request historical usage information. If the purpose is to ensure that an Approved Vendor does not inappropriately use a customer's account number, CCSA suggests revising accordingly.

*13. e. All Approved Vendor agents shall complete a training program that covers the applicable Sections of these marketing behavior guidelines. The Approved Vendor shall document the training of its agents and provide a **certification** to the Program Administrator showing that an agent completed the training program prior to an agent being eligible to market or sell PV that will be part of the ABP. Upon request by the Program Administrator or the IPA, an Approved Vendor shall provide training materials and training records within seven business days.*

CCSA requests clarification on the meaning of certification in this guideline and how an Approved Vendor would submit that to the Program Administrator. For clarity and ease of implementation, CCSA suggests the guidelines simply state that it is the Approved Vendor's responsibility to ensure that its agents and contractors are property trained to comply with these guidelines.

13. f. The IPA and the Program Administrator reserve the right to produce standardized training materials and to require vendors to use those materials to supplement whatever other materials they may use.

CCSA requests more information about whether the IPA anticipates producing standardized training materials and to requiring vendors to use those materials. We also request more information on how the supplemental information would be disseminated to potential customers.

*17. b. If the identification only includes the required information listed above (agent's name, agent's ID number, agent's photo, and trade name and logo of the Approved Vendor), no review as marketing materials is required**. If the identification displayed by Approved Vendor agents includes additional information, it is subject to review to ensure that it does not conflict with the guidelines for marketing materials.***

CCSA supports a requirement that an agent's identification include the agent's first name, ID number (if applicable), agent's photo and the trade name of the Approved Vendor, but objects to the IPA's review and approval of individual Approved Vendor identification that may include additional information. Additional information could include a customer care telephone number or website or other factual information that does not merit the IPA's review or approval. If the IPA is concerned that Approved Vendors may use misleading or other inappropriate content on agent identification, CCSA believes that other guidelines prohibit such content. CCSA suggests revising this provision to require that identification includes the items specified in the first sentence, but omit references to IPA's review and approval because they are unnecessary.

Regarding the potential for this requirement to overlap with guidelines for community solar, the requirement to show an Approved Vendor's logo may be problematic. If an Approved Vendor contracts with another company to do customer acquisition and management, which is a common practice in community solar, that company (not the Approved Vendor) would have the direct relationship with the customer. Requiring representatives of the customer acquisition and management company to wear IDs with the name and logo of the Approved Vendor could cause customer confusion if the Approved Vendor is not the entity providing customer service for the project.

19. b. Approved Vendors may be subject to conditional approval and other forms of progressive discipline upon discovery of any problems related to consumer protection.

What other forms of progressive discipline are contemplated? CCSA suggests additional clarification on this issue.

20. Approved Vendors should be aware that the ABP program administrator will follow up with selected customers to confirm that they received, understood, and signed the disclosure form.

CCSA objects to this provision as written. A state agency follow up is potentially very confusing to customers. It is unclear whether a customer would consent or wish to receive communications from a state agency. It's also unclear how the Program Administrator would assess whether a particular customer "understood" the disclosure form. If there is any question as to whether a customer received a particular document it should be the responsibility of the Vendor to demonstrate to the IPA or Administrator that such materials were provided.

V. Conclusion

Thank you for the opportunity to provide feedback on this process. CCSA looks forward to continued dialogue on this topic.

Respectfully submitted on October 26, 2018.

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