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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 determine Vendor Approval Requirements. 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 offers the following suggestions, feedback and requests for clarification, 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 Approved Vendor and Application Standards form.

### II. Distinction between Vendors that apply for one vs. multiple projects

*Items in blue type will not be required for single project Approved Vendors, and item in green type will only be required for Approved Vendors who wish to act as an Approved Vendor for one or more Community Solar projects.*

CCSA does not believe that this distinction is warranted.<sup>1</sup> Approved Vendors with only one project could still interface with hundreds of customers and CCSA believes the same consumer protection standards should apply whether an Approved Vendor has one project or 20 projects. The Long Term Plan specifically states,<sup>2</sup>

The Agency recognizes that there may be certain projects where the Approved Vendor model may not be completely appropriate, and therefore will allow an Approved Vendor who has only one project to apply under a more limited set of

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<sup>1</sup> CCSA understands that this distinction is contemplated generally by the Long Term Plan, but nonetheless finds it problematic in the proposed Approved Vendor Application.

<sup>2</sup> Long Term Plan at 119, available at <http://illinoisabp.com/wp-content/uploads/2018/08/Long-Term-Renewable-Resources-Procurement-Plan-8-6-18.pdf>

requirements as a Single Project Approved Vendor. Specifically, this designation may apply to a project that is owned by that Single Project Approved Vendor (as opposed to a situation where the Approved Vendor is an intermediary between the system developer and/or owner and the contracting utility).

Based on the uncertainty of the lottery, why would there be a distinction between Approved Vendors who only apply one project into the lottery versus those who only have one project selected by the lottery? Furthermore, it would be administratively burdensome for the IPA if an Approved Vendor initially intends to have only one project, but later adds additional projects in later rounds of the program. In such a case, would the Approved Vendor be expected to submit additional information voluntarily or only upon request, and who would be responsible for ensuring all information is collected? CCSA recommends a consistent Vendor Application for all potential market participants.

### **III. Vendor Application Confidentiality**

CCSA has several general questions about the confidentiality of information provided in the Approved Vendor Application.

1. Will all or only a portion of the information submitted in this Application be subject to confidential treatment?
2. If only a portion, how will applicants know which information will be treated as confidential?
3. Will this protection be automatic or do Vendors need to file a request for protective treatment?

While these questions were raised on the Approved Vendor webinar, they are important to establishing a legal and trustworthy process and bear repeating. The IPA should provide written guidance as to whether information submitted in the Application will be given confidential treatment and if such treatment is not automatic, should advise Vendors on how to seek such treatment.

### **IV. Vendor Contact Information**

#### *4. Primary point of contact name, phone number, and email address*

CCSA suggests specifying the *purpose* of identifying a primary point of contact. For example, is it required that the primary point of contact be an officer of the company? Should it be a contact familiar with regulatory policy or governmental affairs? Should it be an external affairs or media contact? Is it intended that the primary contact would be made available to the IPA and Program Administrator or for customers? For larger companies, it's very difficult to accurately identify a "primary" point of contact without understanding the purpose of the intended communication.

## **V. Company Background**

*14. Provide company balance sheet and profit and loss statement for the last full fiscal year.*

This is too broad of a request that is problematic for a number of reasons. For example, if a company has multiple divisions within the company, which would apply? Different companies and organizations have different financial structures so it is not clear how this information would be evaluated. Furthermore, this information is not required for Approved Vendors in other states. If Approved Vendors are able to secure project financing, that should be a sufficient gauge of an organization's creditworthiness. This requirement should be removed.

*15. List three current or prior customers who can act as references.*

The intended purpose of providing customer references is unclear and therefore this proposed requirement is problematic for CCSA. While this type of request is common in an RFP or other process in which a Program Administration is seeking to identify one preferred Vendor from a larger applicant pool, it is unnecessary and inappropriate in the context of this Vendor Application. Customers do not routinely consent to be contacted by state agencies and may not want to be contacted by a state agency or the Program Administrator regarding their private purchasing decisions. If there are specific business capabilities that the IPA wishes to evaluate relating to customer experience processes or protocols, the Vendor should be requested to provide such information directly to the IPA and Program Administrator rather than seeking to solicit it from customers. CCSA suggests removing this requirement.

## **VI. Legal and Regulatory Information**

Consistent with the Joint Solar Parties' comments, CCSA recommends that the vast scope of questions 24 - 33 be restricted to better balance useful information about Approved Vendor practices with the applicant burden. The following comments reflect certain questions within this section that are particularly problematic.

*24. Within the past five (5) years, has the business, any affiliates of the business, or any current or former owner, partner, director, officer, principal, or any person in a position involved in the administration of funds, or currently or formerly having the authority to sign, execute or approve contracts for the business...*

CCSA requests clarification that this question seeks information relating to conduct of employees while they were employed by the Vendor. Companies typically do not track the behavior of former employees and as currently drafted, this could be interpreted to

be seeking information about actions taken by a former employee outside the scope of their work for the Vendor.

*30. During the past five (5) years, has the proposed Approved Vendor or any of its affiliates been the subject of **any complaints to any public consumer protection authority** (including but not limited to a federal/state/local attorney general’s office, consumer protection bureau, or other consumer protection entity) in any jurisdiction? **If yes, provide any remedial or corrective actions(s) taken and current status of the issue(s).***

The potential scope of the phrase “any complaints to any public consumer protection authority” is extremely broad. Additionally, the last statement in bold is vague and unclear. Is the Administrator asking for the specific remedial or corrective action taken to address each individual complaint that has been filed by an individual consumer to any authority? Community solar companies or their affiliates may serve thousands of customers or hundreds of thousands of customers. Often, customer “complaints” or inquiries to a state agency relate to bill credits provided by the utility or other issues outside of the company’s control. It’s impractical to request that an Applicant detail the remedial or corrective action(s) it has taken to resolve individual complaints. CCSA suggests that the bolded sentence be revised to, “If yes, please provide a general description of how consumer complaints are addressed.”

*31. During the past five (5) years, has the proposed Approved Vendor or any of its affiliates been the subject of any Better Business Bureau complaints in any jurisdiction? **If yes, provide any remedial or corrective actions(s) taken and current status of the issue(s).***

Same comment as above.

*33. During the past five (5) years, has the proposed Approved Vendor or its affiliates been suspended from participation or denied the ability to participate in a **government-administered renewable energy incentive program**? **If yes, provide the name of the program and jurisdiction, an explanation of the issue(s), and the current status of the issue(s).***

CCSA requests clarification on the definition of “government-administered renewable energy incentive program.”

## **VII. Additional Questions Not Used for Qualification**

Regarding this section of questions, CCSA requests clarification on the purpose of these questions if they are not being used for qualification.

**VIII. Attestation – Approved Vendor will e-sign the following attestation**

*c. I agree to participate in registration and any initial or recurrent required training.*

CCSA requests more information on what initial or recurrent training the IPA is contemplating at this time. Without that information it is difficult to comment on this statement.

*f. I agree to provide updated information to the Administrator on any complaints, lawsuits, legal or regulatory action, bankruptcy, or any other adverse changes in business condition when it becomes available.*

This attestation is overly broad and it is unreasonable to expect Vendors to immediately notify the Administrator of every complaint, legal or regulatory action. As noted above, many “complaints” community solar providers receive are the result of customers not receiving bill credits and are resolved in a timely manner. CCSA suggests modifying this statement to specify to “I agree to provide updated information regarding a lawsuit, bankruptcy or other action that is expected to have a material impact on the company’s ability to participate in the Program in a commercially reasonable timeframe.”

*g. I agree to provide samples of any marketing materials or content used by our company or our subcontractors/installers and affiliates, to the Program Administrator for review and approval prior to their use. I furthermore agree to make any changes to marketing materials as instructed by the Administrator.*

CCSA strongly objects to this attestation. Language in the IPA’s Long Term plan that was approved by the Commission suggests that marketing information would be provided “as requested,” not “for review and approval prior to their use.” Furthermore, as noted above, it is unclear why a Single Project Approved Vendor would not be required to make these attestations. The scope of what could be included in “sample marketing materials or content” is vast. It’s reasonable to expect that a Vendor will use multiple channels (print, digital, telesales, in-person) for sales and each of these channels may have unique associated marketing materials. Additionally, an individual community solar company may spend tens of thousands of dollars on legal review of its own marketing materials. It is unreasonable for the IPA or the Program Administrator to be expected to review and approve all marketing materials of all Vendors prior to use. That type of oversight is completely unprecedented in the solar market (and all other consumer product categories). If the IPA believes that specific marketing guidelines are necessary to ensure the success of the market, CCSA would prefer to see more specific guidance issued as opposed to delegating “review and approval” to the IPA or Program Administrator.

While CCSA supports the ability of the IPA or Administrator to notify the Vendor of any concerns and to suggest changes to marketing material, CCSA also opposes a

requirement that Vendors be required to agree to make any changes to marketing materials as instructed by the Administrator.<sup>3</sup> Despite what was approved in the Long Term Plan, the Administrator should not be permitted to instruct Vendors to make changes to marketing materials, nor should a Vendor be required to agree to make any changes that may be requested. CCSA suggests this section be modified to, “Upon request of the IPA or Program Administrator, I agree to provide a sample copy of marketing materials for review.”

*h. I agree to comply with all consumer protection guidelines published by the Program Administrator.*

Such guidelines have not yet been published for community solar providers so it would not be possible to make such an attestation until these guidelines are available for review. CCSA requests that the IPA release final guidelines at least a week before the vendor registration process opens so that vendors understand the full terms and conditions of the attestation.

*j. I agree to complete annual reports by the report deadline, disclosing names and other information on installers and projects, and documenting that all installers and other subcontractors comply with applicable local, state, and federal laws and regulations including ICC registration as Distributed Generation Installers, providing current status of unfinished projects and credits generated and delivered by completed projects, **and any other annual report requirements as determined by the Administrator.***

This last statement in bold font is too broad. CCSA requests further specificity and requests that the final annual report requirements be issued at least a week before the vendor registration process opens so that vendors understand the full terms and conditions of the attestation.

*j. I agree to complete annual reports by the report deadline, disclosing names and other information on installers and projects, and documenting that all installers and other subcontractors comply with applicable local, state, and federal laws and regulations including ICC registration as Distributed Generation Installers, providing current status of unfinished projects and credits generated and delivered by completed projects, **and any other annual report requirements as determined by the Administrator.***

This last phrase in bold is too broad and should be removed. It is difficult for Vendor Applicants to attest to specific community solar provisions without knowing what will be in those provisions.

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<sup>3</sup> CCSA notes that the ability of the Program Administrator to “instruct” changes referenced in the Long Term Plan was associated with the proposal that marketing materials would be provided “as requested” not “for review and approval prior to their use.” This is a wholly different proposal.

*k. I will comply with all community solar subscriber reporting requirements including providing **updated and accurate subscriber data**.*

This last phrase in bold font should be clarified as to the frequency and type of subscriber data that would need to be provided.

*m. I will comply with all other Program rules.*

As noted above, is difficult for Vendor Applicants to attest to specific community solar provisions without knowing what will be in those provisions. Including them in these requirements seems premature.

*I attest that the statements above are true and correct.*

This statement is duplicative of subsection b, which states, “The information provided on this form is true and correct to the best of my knowledge.”

## **IX. Additional Comments**

CCSA has several other general comments on this process and form, some of which were raised in the Approved Vendor webinar. CCSA is concerned that the requirements may not be entirely accommodating of the diversity of corporate structures that exist in the solar industry. As such, we ask the Program Administrator to consider ways to provide flexibility in the final requirements so that companies can ensure they are able to organize their project entities in a way that suits their needs. For example, if a company were to create project LLCs for separate projects, where each LLC contracts for RECs, it would be more efficient for everyone if the company only had to apply once as an Approved Vendor. It appears that would be possible through the identification of affiliates in question 6 but CCSA requests clarification in the instructions provided for the Approved Vendor guidelines.

Additionally, CCSA would like to note that final lottery rules could impact which entity registers as the approved vendor. The original switching proposal only allowed switching among projects of the same Approved Vendor but the Reply Comments alluded to the possibility of switching among affiliates. It will be difficult to ascertain the impact of that on the decision to register an entity as an approved vendor until the lottery proposal is finalized and CCSA requests clear guidelines on that prior to the Approved Vendor registration process.

**X. 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 19, 2018.

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