COMMENTS ON MARKETING STANDARDS
ON BEHALF OF THE JOINT SOLAR PARTIES

The Solar Energy Industries Association and the Illinois Solar Energy Association (collectively the Joint Solar Parties or JSP), respectfully submit these comments on the IPA's marketing standards released on October 3, 2018. The JSP respond to: Draft Guidelines for Marketing Material and Marketing Behavior ("Marketing Guide"), the Draft Brochure, and the three Draft disclosure documents.

The JSP agree that marketing standards are helpful in fostering a market where consumers can make choices based on enough information to choose whether to go solar and if so which product best meets their needs. That said, disclosures are only useful to the extent that they provide the customer with actionable information. Both the Draft Brochure and the draft disclosure documents include statements and required disclosures that do not inform customers—and thus should be removed from the larger, useful document.

In comments on the Approved Vendor registration process submitted on October 19, the JSP emphasized the need for clear marketing standards. While the JSP agree with—or at minimum do not oppose—many of the requirements that the IPA has set out in the Marketing Guide, there are several requirements or directives that must be changed for the market to succeed while still protecting consumers.

Background: What Marketing Standards Accomplish

The JSP believe it is useful to start with a discussion of the purpose of marketing standards. In a competitive market to sign up customers for behind-the-meter (or community solar) projects, developers must satisfy customers that the developer offers the best combination of product features and price. Companies are competing on two fronts: whether a customer is interested in solar, and (if the customer is interested) why their product offers the customer the best value. Of course, the "best value" is not necessarily the cheapest or the most full-featured—it is the combination of features and price that best appeals to a customer and his or her needs.

The more and better options that are available, the better off the customer will be. Of course, this benefit is predicated on customers getting a full and accurate sense of the pricing and features of each product. Material information enables customers to better compare products and pick their favorite. Of course, upon review, a customer may not decide to go solar at all; each company is responsible for showing the customer the benefits of solar. In other words: the purpose of disclosures is to facilitate these two decisions.

Customers are able to obtain sufficient information to make a decision much more easily if marketing materials are fair, accurate, and disclose material information. Standard disclosures are an attempt to organize most material information a customer might want to know to make a decision, and make it easier for the customer to compare proposals apples to apples. Marketing standards help ensure customers are not provided with information that confounds a customer's ability to make an informed choice.

In the case of both standard disclosures and marketing guidelines, more is not automatically better. By definition, not all information about a solar contract is material. Needlessly lengthening

required disclosures only buries or obscures material information, or gives customers the false impression of what is or should be material to them. Similarly, while no serious market player supports fraudulent marketing, there is a substantial difference between false statements and legally permissible marketing claims.

In creating and enforcing these standards, the JSP respectfully but strongly urge the IPA to view disclosures and marketing standards as a balance. The customer should neither receive too little information (thus missing material items) or too much (obscuring material items). Marketing should neither allow false statements and fraud nor should it be so regimented that developers are unable to make a pitch for the solar product. When viewed as a balance—rather than through a "some is good, more is better" prism—the IPA can provide a positive customer experience while not scaring away customers who would have greatly benefited from solar but were scared away (or never won over in the first place) by overwrought disclosures and marketing restrictions.

Marketing Guide

The JSP suggest that the Marketing Guide explain or at least mention that Approved Vendors and their agents are required to submit their marketing materials to the IPA for inspection and approval. As the JSP recommended in comments regarding Approved Vendor registration, the Marketing Guide should make clear a timeframe in which the IPA or Program Administrator will respond (the JSP suggested 10 days, with a presumption of acceptance if no response is given within 10 days) and a description of dispute resolution mechanisms.

While it may be intuitively obvious to the IPA and Program Administrator, the JSP nonetheless recommend that the Marketing Guide make clear that the marketing standards only apply to entities to the extent that marketing involves projects submitted to the Adjustable Block program. Approved Vendors and their agents may operate in multiple jurisdictions, and may develop assets in Illinois that do not apply to either the Adjustable Block program or Solar for All. As the IPA has acknowledged in the past, its oversight over Approved Vendors is restricted to participation in the Adjustable Block program—a best practice would be for the Marketing Guide to reflect this.

Another item that may be intuitively obvious to the IPA and Program Administrator that the JSP believes should be explicitly pointed out: In the final approved LTRRPP, the IPA correctly states that the consumer protections inspired by Part 412 only apply to distributed generation systems (and subscriptions) with a nameplate capacity under 25 kW. (*See* Final LTRRPP at 125 n.372.) As the JSP pointed out in ICC Docket No. 17-0838, even Part 412 itself only applies to ARES interactions with residential and very small (under 15,000 kWh annually) commercial customers. The IPA should make the applicability of the Marketing Guidelines clear on its face. To the extent that the IPA believes certain requirements should be applicable to larger systems—and inclusion is consistent with the Commission's Order—those should be explicitly noted.

The JSP recognize that the marketing guidelines are based off of Part 412 of the Commission's Rules, and are adapted from alternative retail electric suppliers. The JSP believe that many of the requirements proposed by the IPA will provide consumers material information or protect from misinformation. some of the proposals still appear to the JSP to be more geared toward the retail electric supply customer acquisition and business model and are impractical in the context of solar. The JSP will identify these instances below.

The JSP recommend that the IPA make changes to the Marketing Guide consistent with the comments and observations below:

- The JSP request the IPA clarify expectations that Approved Vendors make statements not inconsistent with outlines provided instead of requiring verbatim language. It is unclear in some areas whether the IPA wishes Approved Vendors to make a verbatim statement or simply make statements based on or not inconsistent with certain outlines. For example: on page 1, the IPA requires Approved Vendors to "accurately portray the nature of solar power, RECs, and the ABP." It then follows that statement with a subheading entitled "What is the Adjustable Block Program," and proceeds to provide a paragraph of text describing the Adjustable Block program. It is not clear if the IPA is requiring Approved Vendors to make this exact statement (either affirmatively or in response to questions), or whether the IPA is simply providing a sample explanation. There is a similar occurrence under the subheading of "What are RECs and why are they valuable."[1]
- To the extent the IPA intended for the language on page 2, section (b), subsection (i) to be recited verbatim, the JSP are concerned language suggested regarding RECs. This type of verbatim language regarding RECs is not required in other markets where RECs are utilized as an incentive for solar systems (e.g. Massachusetts, New Jersey). The IPA should instead rely on existing REC certification, trading and claim practices.
- The JSP requests the IPA correct guidelines on page 2, under the heading "Will solar save money for the customer":
    - In subsection (i), the requirement that all terms in marketing materials must be consistent with the standard disclosures essentially forecloses PPAs and leases that are not structured as a fixed rate (with or without an escalator). For a more detailed discussion of this issue, please see the discussion of the Draft Brochure and disclosure forms below.
    - In subsection (iii)(1), the IPA states that Approved Vendors must say that "customers are not guaranteed to save money with solar." This is a false statement if the customer is on a guaranteed savings product.
    - In subsection (iii)(2), the statement that the disclosure form has the best estimate of savings is also false if the Approved Vendor has a more sophisticated model for estimating savings that is not accommodated by the IPA's highly prescriptive savings model in the disclosure forms. Please see the disclosure form discussion below for more information on this issue.
- On page 3, under the heading "Approved Vendors and their agents shall accurately portray identities and affiliations," under the "use of utility name and logo" subheading, in subsection (iii), an Approved Vendor must be allowed to identify the utility service territory in which an offer is valid (for instance, ComEd-only pricing). It appears that the Marketing Guide would not allow such a disclosure, which is material to the customer.
- On page 3, the Marketing Guidelines require that "Customers shall not be required to sign up for a specific Alternative Retail Electric Supplier as part of their solar contract." While it is reasonable to prohibit Vendors from requiring that a behind-the-meter customer switch to a particular ARES and remain with the ARES for the length of a long-term distributed

[1] The JSP notes, in contrast, the statements on page 5, in the "In-person solicitation" section: based on similar language in Part 412 of the Commission's Rules, the JSP understand the IPA intends the disclosures in subsection (a) to be verbatim.

generation PPA or lease (that can last over 20 years), the IPA should not impose restrictions on ARES and Approved Vendor joint marketing. Given that the customer of a behind-the-meter system cannot easily "switch away" from its behind-the-meter system (the customer must either continue the contract, buy the system, or seek early termination), the end result is not unreasonable.

- On page 3 under the headings "Unfair, deceptive, or abusive acts or practices" and "Advertising," the Marketing Guidelines should provide a standard by which the IPA or Program Administrator intend to determine whether a statement is deceptive or misleading. The JSP suggests that the IPA adopt the standards for those terms in Illinois case law surrounding advertising rather than create a new standard.
- On page 4, subsections (b)-(d), the IPA should clarify that the obligation to not contact a potential customer on the "do-not-contact" list only extends to the information provided by the customer. For instance, if the potential customer is called by telephone and the customer requests to not be contacted, the Approved Vendor should not be penalized for subsequently knocking on the customer's door. In addition, the JSP note that while respecting a customer's request not to be contacted is in both Part 412 and the SEIA Business Code, the IPA should include an exemption when two installers that are unaffiliated with each other use a single unaffiliated Approved Vendor solely for the purposes of interfacing with the Adjustable Block program. In that instance, the two installers are different companies, and not marketing agents of the Approved Vendors.
- On page 5, Section 7, the IPA should remove the requirement that an in-person site visit should be required before designing a system or signing a contract. Sophisticated sales and design software tools are in use today by the solar industry that allow for design accuracy and customer execution of contracts prior to an in-person visit. An in-person site visit should be required at some point before installation, but the IPA should allow this visit to occur following execution of a contract. In the alternative, the entity conducting the in-person site visit should not be prohibited from charging a (non-refundable) deposit.
- On page 5, Section 8, the specific steps outlined are overly burdensome and could result in unnecessary costs (e.g. requiring each company to establish a unique marketing website specifically for the ABP sales or submitting the brochure multiple times). Instead, the JSP recommends the IPA remove sections a-d and replace it with language simply requiring companies to reference the brochure (including a link to the brochure, if the communication is online) in customer communication at first contact and during contract execution.
- On page 5, Section 9, subsection (a): An Approved Vendor should be allowed to claim it is representing or endorsed by a government or consumer group if that is a factual statement, not only if the Approved Vendor itself is a government or consumer group. As written, the IPA has essentially stripped entities representing consumers (trade associations, social clubs, etc.) from fully endorsing an Approved Vendor. Similarly, if a local government negotiates a special deal with an Approved Vendor, the Approved Vendor must be able to advertise that fact. This same comment applies to Section 10, subsection (a) and Section 12, subsection (a) as well.
- On page 5, section 9, subsection (b), the IPA should clarify that the restrictions on in-person solicitations do not apply to any site-visit or customer interaction that is scheduled in advance. Otherwise, these time limitations will prevent companies from meeting with customers at times most convenient to the customer at the customer's request.

- On page 6, in the "Online marketing" section, subsection (a), the JSP recommends revising this language to ensure it is not overly burdensome and results in unnecessary costs (e.g. requiring each company to establish a unique marketing website specifically for the ABP sales). Instead, the JSP recommends the IPA replace it with language requiring companies to reference the brochure (including a link to the brochure, if the communication is online) in customer communication at first contact and during contract execution.
- On page 6, in the "Conduct and training of agents and contractors" section:
    - Subsection (d): the Approved Vendor or its agent should be allowed to request permission to access a customer's historic usage data from their utility, which—for ComEd and Ameren at minimum—requires the customer's account number. This may be necessary to size a system, especially if the customer does not keep their utility bills. While the system sizing has many components, a critical component in Illinois is passing ComEd's screen of 110% of a customer's previous 12 months of electricity usage.
    - Subsection (h): The IPA should further describe the standard by which it plans to measure whether an Approved Vendor is successfully monitoring marketing and sales activities of agents.
- Pages 6-7, in the "Records retention" section:
    - Subsection (a): The record retention length of the PPA/lease should match the length of the term of the contract, rather than a predetermined length of time for record retention of 20 years. Further a requirement that a copy must be sent to the IPA upon request within seven business days is too quick of a turnaround. 21 calendar days is more reasonable.
    - Subsection (b): Seven days is too quick of a turnaround; 21 calendar days is more reasonable.
- Page 7, Section 16 "Respecting a customer's request to not be contacted or terminate contact" section, subsection (a): The requirement for the in-person sales agent to leave the premises should only apply on the customer's premises or at the customer's place of work. An in-person sales agent should not be required to leave a public location (such as a static booth or a coffee shop) or the sales agent's premises.
- Page 7, Section 17: The IPA should consider whether installers that work with an Approved Vendor solely to submit systems to the Adjustable Block program should have their own company name on the badge rather than the Approved Vendor.
- Page 8, Section 19, subsection (b): The JSP are concerned that conditional approval and forms of progressive discipline is too vague and does not have a standard. The IPA should develop a formal standard for progressive discipline, as well as a formal dispute resolution process in the event an Approved Vendor disagrees with IPA-imposed discipline.
- Page 8, Section 20: The JSP oppose the Program Administrator following up with customers asking if they received and understood disclosure forms. The Program Administrator should follow up with the Approved Vendor and seek records reflecting that the disclosure form was signed. If the Program Administrator wishes to test whether customers understand the disclosure form, the Program Administrator should undertake that research before releasing the form.

In addition to the specific issues raised above, the JSP wish to address two general points. First, as the JSP raised in comments on Approved Vendor registration and above, the IPA has not yet

provided a timeline for review of marketing materials. Without a timeframe for review, the IPA has granted itself the ability to essentially pocket veto a marketing campaign. With stringent deadlines in particular for acquiring subscribers (particularly small subscribers) by energization—a date that the Approved Vendor either does not or does not fully control—the IPA could put Approved Vendors in an impossible situation with regard acquiring the very subscribers for whom the IPA is directed by statute and the Commission's Order to promote opportunities. In order to address these issues, the JSP recommend that the Program Administrator have 10 business days to provide take-it-or-leave-it changes to marketing materials. While the JSP certainly do not wish to restrict the Program Administrator or IPA's ability to reach out informally to Approved Vendors with concerns, if the response comes after 10 business days it should no longer be binding upon the Approved Vendor.

Also, to the extent that these Marketing Guidelines do not apply to systems over 25 kW per the Commission's Order, the IPA and Program Administrator should not require submission of marketing materials for those customers. For larger systems, marketing materials are frequently highly customized to a specific opportunity, requiring an Approved Vendor to submit its (or its agent's) proprietary marketing pitch for larger customers to the IPA. Larger non-residential customers are highly likely to have the resources and wherewithal to evaluate (or hire consultants to evaluate) marketing claims better than the mass market.

The JSP also recommend the IPA should explicitly clarify that it agrees wherever a customer is required to sign a document that electronic signatures are authorized as contemplated in 5 ILCS 175/5-120(a).

Brochure

While well-intentioned, the Draft Brochure causes several incorrect and false impressions and should be revised to remove those. Specific false impressions that must be corrected:

- On page 1, rather than give an estimate for what a typical home may generate with respect to RECs, which can vary widely, the JSP recommend removal of the language referring to "50-200" RECs and instead replace it with an explanation that a REC is equal to 1 MWh which is 1,000 kWhs.
- On page 1, regarding what a customer can claim and cannot claim, as explained above the JSP recommend that the IPA not put itself or the Approved Vendor in the position of policing the claims made by third parties.
- On page 1, the draft brochure states, "allowing your RECs to be sold to utilities is your best financial option" and "selling your RECs through this program will make it much more likely that your PV system will save you money." Neither are necessarily true statements. The JSP recommend removing the second sentence in its entirety and changing the first sentence to "...may be your best financial option."
- On page 2, the Draft Brochure lists three pricing approaches—while these approaches are common in other states, they are not the exclusive pricing mechanisms. Specifically, PPAs need not be a fixed price per kWh (with or without an escalator) and leases are fixed prices per month (again, with or without an escalator). For instance, a PPA approach may split the customer's net metering credit, or guarantee a fixed amount of savings per month. Alternatively, a PPA could be based on a dynamic price (such as the applicable LMP). The

IPA should not incorrectly give customers the impression that such products are not available.

- On pages 2-3, the Draft Brochure sets out "factors" that determine whether a customer will save money. Several of these items are misleading.
    - On page 3, in the section regarding the roof being "good for solar", the JSP note that the characterization of "new roofs" and "south facing roofs" as good for solar creates the false impression that other roofs—such as roofs with a long remaining useful life or southeast or southwest facing roofs—are not "good for solar." To that end, the JSP recommend removal of the phrases "is it south-facing" and "does it get full sun" and "ideally, on a completely unshaded south-facing roof (or other surface). If your system is partially or entirely shaded, or doesn't face south, it will generate less electricity and be less valuable."
    - On page 3, the Draft Brochure states that "how much money you receive for your RECs" will partially determine savings. This is only directly true if the customer buys the system and owns the REC revenue stream. If the customer has an arrangement where a third party owns the REC revenue stream, REC price *might* impact the customer's price—that will be a product of whether the pricing is contingent on Adjustable Block program revenue.
    - On page 3, the Draft Brochure states that a factor determining savings is the customer's monetization of tax benefits. This is only the case if the customer buys the system. Customers are likely to be unnecessarily scared by this bullet point, falsely believing that they can only save if they can monetize tax benefits—especially problematic for a third party-owned system where the customer cannot do so and the monetization of the tax credit is reflected in pricing.
    - On page 3, the Draft Brochure states: "The more the retail price of electricity increases, the more money you can save with solar. If the retail price of electricity decreases, generating your own electricity through solar panels may offer reduced savings or may not save you money at all." At best, this statement simplistically contemplates that customers are not offered a guaranteed savings product. At minimum, the final phrase ("may not save you money at all") should be stricken.
    - On page 3, in the section referring to how long a customer expects to stay in their home should reflect the options in the lease/PPA disclosure form. Rarely are systems removed when a customer moves out.
    - On page 3, it may be helpful to refer to a link referencing a short education video about net metering.
    - On page 3, the section on property tax assessment is lacking correct information. The JSP requests the IPA include information that Illinois Property Tax Code § 35 ILCS 200/10-5 *et seq*., which explains how Illinois offers a special assessment for solar energy systems that may require registration with local assessment office.
- On pages 3-4, the Draft Brochure appears to require that Approved Vendors disclose the REC value they are receiving from the Adjustable Block program. This information is required in the specific disclosure forms, so JSP requests the IPA simply points customers to examine disclosure forms for full description of incentives and REC values transferred to customer. Except to the extent that the customer's pricing was contingent on the REC pricing or the customer is directly receiving the REC revenue, the REC value for the system is irrelevant to the customer.

- On page 4, in the "Complaint procedures" section, the JSP recommend that the IPA encourage consumers to first contact the Approved Vendor to resolve issues. This is consistent with the requirements of Section 412.320.

Disclosure Documents

The JSP have several concerns with the disclosure documents—some are applicable to all three disclosures, and others are exclusive to the PPA and lease:

- For all three disclosure documents, the JSP oppose naming the Qualified Person. Instead, the disclosure should identify an installer, including the docket number of its certification approval. As an initial matter, the JSP understand and appreciate that using a Qualified Person is a prerequisite to the customer taking advantage of net metering in the Ameren and ComEd service territories. However, at the time of contracting, a system is likely not built yet. If a developer or installer uses more than on Qualified Person (or a developer uses multiple installers), it may not be clear at the time of contracting which one will be used. If anything, a certification that the behind-the-meter project was installed by a Qualified Person should be provided after the installation. It is not clear why the Qualified Person's name should be disclosed, as opposed to the contact information for the installer.
- On page 2, there is a statement that a customer can rescind within 10 days. While the JSP appreciate that this is likely inspired by Section 412.210 of the Commission's Rules, the JSP oppose a rescission period other than federal (or Illinois) mandated "cooling off periods" of three business days that are specific to marketing channel, such as door-to-door.
- The system design specifications and calculations should accommodate differences in systems/tools (e.g., PV Watts vs. a proprietary system) companies utilize to design systems and estimate production.
- Unless customer pricing is contingent upon monetizing incentives at a certain level—which should be disclosed—there is no reason to disclose the expected value to the developer of incentive programs from the Adjustable Block REC value to tax incentives. This information provides the customer with no actionable information. If their price is not contingent, the customer can comparison shop against other non-contingent prices—or attempt to assess the chances of different block pricing in a contingent offer. Put another way, it does not help a customer make a decision to know that the developer expects to monetize the ITC at a certain level (again, unless the pricing is contingent). The customer needs the all-in price to make a comparison, and any scenarios under which that pricing would be different. In fact, the customer may be confused because the developer, not the customer, is the one monetizing the incentives in many cases. In addition to not providing the customer with actionable information, the JSP are concerned that a company's proprietary pricing model may be exposed by translating incentive values with impact on pricing (again, unless it is contingent).
- The draft disclosure documents suggest that the Program Administrator will make some sort of savings calculation based on inputs controlled in part by the Approved Vendor and in part by the Program Administrator. This is concerning for at least two reasons:
    - The JSP are concerned about liability under Section 2 of the Consumer Fraud and Deceptive Business Practices Act. Essentially, the IPA is compelling Approved

Vendors to make a savings calculation in a way that the Approved Vendor may not wish to make—or with more extensive or different disclaimers than the draft form makes. The Approved Vendor is then put in the uncomfortable position of either disclaiming the required savings calculation or potentially defending the reasonableness of the disclosure in court (potentially in a class-action lawsuit). The JSP has not identified in the statute or case law an immunity to suit because the disclosure was a program requirement.

  - The JSP believe that Approved Vendors should be responsible for their own savings calculations, if any. While the JSP would understand if savings calculations were subject to some standards—for instance, disclosure of assumptions about future energy prices and customer usage—each Approved Vendor should be allowed to provide its own savings estimate or none at all. In addition, Approved Vendors may have quite sophisticated models that take into account historic insolation and a customer's interval data that better model short-term savings. Given that wholesale energy markets are illiquid more than three years in the future, it is virtually impossible to provide reliable longer-term savings estimates.

- Many systems installed are AC modules and will therefore incorporate a microinverter. As a result, make and model information on an AC module inverter may not be available. The system design specifications should allow for flexibility if make and model information on an AC module inverter are not available.
- The JSP recommends modification of the table in the disclosure forms identifying "fees, amount and when it is due" to allow for disclosure of deposits and payments due at times other than those listed.
- As noted in the Draft Brochure section above, the lease and PPA disclosure forms incorrectly envision the Lease and PPA as simple fixed rate per month (lease) or per kWh (PPA), potentially with an escalator. This ignores pricing models from dynamic pricing (especially if matched with a time-of-use ARES product or utility real-time pricing), guaranteed savings products (with a fixed percentage or fixed dollar amount of savings), and other variations beyond simple fixed or linearly escalating rates. The IPA should not foreclose these types of pricing structures by restricting disclosures to the extent these products are not allowed. As long as they are described accurately, the IPA should not prohibit any otherwise legal pricing approach.
- The JSP are unaware of tax implications on customers from leased systems. The language in the lease/PPA disclosure form stating that leasing a system may have a tax implication may not be accurate. The JSP recommend that either the IPA remove this language or more clearly identify the tax implications the IPA believes there will be.
- Regarding fees and penalties for early termination, the JSP recommend simply cutting and pasting the lease contract terms versus requiring a specific dollar number or calculation, as these fees and penalties can be complex. In most cases, it is simpler and more understandable for the customer to directly insert the fee/penalty terms into the disclosure form—which may include a table. The same section should also cover buyouts, which are a form of early lease termination.
- There should be a check box included that provides the customer the option to renew the lease or PPA at the end of the contract term; currently there are only options to return/remove and own/retain.

- There should be a disclosure in the property transfers section stating that the minimum FICO score is subject to change depending on the lease/PPA holder's credit criteria at the time of transfer.

As a general matter, the JSP recommend that the IPA separate out the educational function—which is most appropriate in the brochure—and the material term disclosure function—which should be in the disclosure. Customers will have an easier time navigating disclosures that are simple, enabling the customer to gather the basic facts. Examples of educational materials that are probably more appropriate for the brochure include the explanation of net metering, utility interconnection rules, the definition of an "escalation rate."