February 25, 2022

Coal to Solar Procurement Administrator
Illinois Power Agency

Submitted via email: Illinois-RFP@nera.com

**Re: Public Comments on Coal to Solar Preliminary Proposal Requirements and Draft Coal to Solar REC Contract**

Dear Procurement Administrator:

[Commenter 3], appreciate the opportunity to comment on Illinois Power Agency's ("IPA") draft Coal to Solar documents. Members and supporters of [Commenter 3] are Illinois residents and advocates that have been adversely impacted by coal usage and coal fired power plants. [Commenter 3] are closely and actively involved in Illinois coal related matters, including, but not limited to, rulemaking regarding coal-fired power plants, coal ash contamination litigation and regulation, and coal-fired power plant retirement and closure standards. [Commenter 3] draw on this experience to offer the following comments and look forward to working with IPA throughout Illinois's transition from fossil fuels to renewable energy reliance.

The Coal to Solar program is an initiative under the Climate and Equitable Jobs Act ("CEJA") under which up to 625,000 renewable energy credits will be delivered annually from renewable energy facilities installed at or adjacent to coal fired power plants. [Commenter 3] appreciate IPA's commitment to renewable energy and the goals of the CEJA. [Commenter 3] further appreciate the Coal to Solar program's intentions to provide economic opportunities for communities near coal fired power plants and to reuse coal sites to support the transition to renewable energy. However, the draft documents lack fundamental protections needed to safeguard from unforeseen expenses for participants and from human health and environmental hazards for all Illinois residents. As such, the following comments are offered to strengthen requirements regarding coal combustion residuals ("CCR" or "coal ash").

## 1. Identification of CCR Surface Impoundments Should be Required in Coal to Solar Proposal and Contract Documents

### a. Hazards of Coal Combustion Residual

CCR is a catch all term for by-products of burning coal at power plants. CCR can contain a myriad of toxic materials including mercury, cadmium, lead, and arsenic.[1] Without proper management, CCR can pollute waterways, groundwater, drinking water, and air to the detriment of nearby

[1] *Coal Ash Basics,* United States Environmental Protection Agency, (Jan. 25, 2021) available at https://www.epa.gov/coalash/coal-ash-basics

communities. Short-term exposure to coal ash can result in dizziness, vomiting, and shortness of breath.[2] Long-term exposure can lead to asthma, respiratory disease, liver damage, kidney damage, cardiac arrhythmia, and several cancers.[3]

CCR is the second largest waste stream in the United States, second only to municipal garbage, with nearly 110-140 million tons of CCR generated by coal fired-power plants annually.[4] Consistent with the amount of waste, CCR pollution is also highly prevalent throughout the United States. In 2018, coal ash constituents like arsenic, chromium, and lead were present in groundwater above state and/or federal standards near 67 coal-fired power plants across 22 states.[5] Again in 2019, extensive groundwater pollution was recorded at or near coal-fired power plants.[6] In the 2019 study, of the 265 plants monitored, 242 showed concentrations of contaminants in groundwater above safe levels.[7] 91% of coal plants had unsafe levels of one or more coal ash constituents in groundwater, 52% had unsafe levels of arsenic, and 60% had an unsafe level of lithium.[8] A similar review of Illinois coal plant sites found, in 2018, that groundwater at nearly all (22 of 24) of the sites with groundwater monitoring had coal ash pollution above safe levels.[9]

### b. Federal and State Regulation

In 2015, after numerous catastrophic CCR releases, United States Environmental Protection Agency ("USEPA") regulated CCR in the Coal Combustion Residuals Rule ("federal CCR rule").[10] The federal CCR rule established minimum standards and set national criteria for existing and new CCR landfills and surface impoundments. Regulations include location restrictions, design requirements, operating requirements, and closure and post-closure requirements.[11] The federal CCR rule defines CCR surface impoundment as: "impoundments that are designated to hold an accumulation of CCR liquids, and that treat, store, or dispose of CCR."[12]

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[2] *Coal Ash is Hazardous. Coal Ash is Waste. But According to the EPA, Coal Ash is Not Hazardous Waste,* Turrentine, J., Natural Resources Defense Council, (Sept. 6, 2019) available at: https://www.nrdc.org/onearth/coal-ash-hazardous-coal-ash-waste-according-epa-coal-ash-not-hazardous-waste

[3] *Id.*

[4] *Coal Ash Basics,* United States Environmental Protection Agency, (Jan. 25, 2021) available at https://www.epa.gov/coalash/coal-ash-basics; *Cleaning Up Coal Ash,* Appalachian Voices, (2021), available at https://appvoices.org/coalash/.

[5] *Utilities Admit Coal Plants in 22 States are Violating Federal and State Pollution Standards by Leaking Toxic Chemicals into Groundwater,* Earthjustice, (Dec. 19, 2018) available at: https://earthjustice.org/news/press/2018/utilities-admit-coal-plants-in-22-states-are-violating-federal-and-state-pollution-standards-by-leaking-toxic-chemicals-into-groundwater

[6] *Coal's Poisonous Legacy: Groundwater Contaminated by Coal Ash Across the U.S.*. Environmental Integrity Project, (March 4, 2019) available at: https://www.eenews.net/assets/2019/03/04/document_gw_01.pdf

[7] *Id.*

[8] *Id.*

[9] Prairie Rivers Network et al., *Cap and Run: Toxic Coal Ash Left Behind by Big Polluters Threatens Illinois Water* at 3 (Nov. 2018) available at: https://illinoiscoalash.files.wordpress.com/2018/12/ilcoalashreport_capandrun.pdf.

[10] U.S. EPA, Hazardous and Solid Waste Management System; Disposal of Coal Combustion Residuals From Electric Utilities, 80 Fed. Reg. 21,302 (Apr. 17, 2015).

[11] *Id.*

[12] *Frequent Questions about Definitions and Implementing the Final Rule Regulating the Disposal of Coal Combustion Residuals (CCR),* United States Environmental Protection Agency, (Sept. 21, 2021) available at:

In 2019, The Illinois General Assembly passed the Coal Ash Pollution Prevention Act ("CAPPA") to promote, in part, "the responsible disposal and storage of coal combustion residuals, so as to protect public health and to prevent pollution of the environment of this state."[13] In response, Illinois Pollution Control Board ("IPCB") adopted 35 Ill. Adm. Code 845 ("Part 845") which promulgated rules regarding the design, construction, operation, corrective action, closure, and post-closure care of CCR surface impoundments at coal-fired power plants.[14] Part 845 defines CCR surface impoundment as "a natural topographic depression, man-made excavation, or diked area, which is designed to hold an accumulation of CCR and liquids, and the surface impoundment treats, stores, or disposes of CCR." Illinois EPA recognizes seventy-two CCR surface impoundments subject to Part 845 located on Illinois coal-fired power plants.[15][16]

Under Part 845, coal-fired power plants must submit CCR surface impoundment closure plans to Illinois EPA for approval. Closure of CCR surface impoundments can include activities such as excavation of the coal ash, or construction of CCR-specific landfills. All of these actions require the use of trucks and heavy machinery. Illinois EPA's review of closure plans for surface impoundments on numerous coal-fired power plants[17] in the state is currently ongoing, and, once the sites obtain approved closure plans, closure will take years to complete.[18]

Following Part 845's passage, several industry participants also filed Adjusted Standards petitions. At the time of writing, there are numerous administrative proceedings before the IPCB regarding these petitions to be determined on a case-by-case basis.[19] Decisions regarding the Adjusted Standards petitions are not expected to be issued prior to May 1, 2022.

### c. Discussion and Recommendations

As detailed above, CCR surface impoundments are already regulated by Illinois and Federal legislation and thus are inappropriate for solar or energy storage technology placement. Required closure activities, post closure maintenance for impoundments that are closed in place, and any corrective action of CCR surface impoundments under Part 845 would most likely require the disruption of land and roadway access of trucks and large machinery. For example, during closure by removal, construction and heavy equipment will need access to the site and the ability to move about while excavating and transporting CCR. Further, corrective action, if necessary, could

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https://www.epa.gov/coalash/frequent-questions-about-definitions-and-implementing-final-rule-regulating-disposal-coal#:~:text=CCR%20surface%20impoundments%20are%20defined,does%20not%20meet%20this%20definition.

[13] 415 Ill. Comp. Stat. Ann. 5/22.59(a).

[14] 35 Ill. Adm. Code 845.

[15] Map of IEPA identified surface impoundments available here: https://illinois-epa.maps.arcgis.com/apps/webappviewer/index.html?id=558102bb7b304d20907d3420ddcdf9eb

[16] Surface impoundments may be active or inactive and still subject to regulations. Further, some retired coal sites will contain active surface impoundments used for activities such as drainage stormwater collection even after plant retirement.

[17] *Coal Combustion Residual Surface Impoundments*, Illinois Environmental Protection Agency, (2022) available at: https://www2.illinois.gov/epa/topics/water-quality/watershed-management/ccr-surface-impoundments/Pages/default.aspx

[18] *See, e.g.*, https://www.duke-energy.com/our-company/about-us/power-plants/ash-management/our-progress.

[19] Open Adjusted Standards dockets available for reference here: https://pcb.illinois.gov/ClerksOffice/SearchCases

include the construction of a slurry wall, monitoring well, lining, or other constructed barrier which would require disruption of the surface for installation. Such activities would almost certainly require disassembly or removal of all or a portion of solar technology installed upon or too close to a CCR surface impoundment. Such disassembly or removal would lead to extensive costs to the Owner and an indefinite disruption in energy generation until reinstallation. Given these harsh consequences, [Commenter 3] urge IPA to consider all activities required for compliance with Part 845 within the draft documents.

Many closure and maintenance activities will also include disruption of land ***surrounding*** the CCR surface impoundment.[20] That is, the physical space needed to conduct activities will extend beyond the confines of the surface impoundment. As such, [Commenter 3] request IPA require identification of any necessary barrier or "buffer zone" surrounding a surface impoundment needed to preserve the integrity of corrective, closure or post-closure equipment, activities, and environmental safeguards. To the extent this buffer zone is unknown at the time of procurement, the Owner, IPA, and Illinois EPA should work in concert to develop and enforce appropriate site-specific buffer zones to maintain the integrity of any closure and post-closure maintenance as required under Part 845.

As noted above, Illinois EPA's review of CCR surface impoundment closure plans at several Illinois coal-fired power plants is ongoing, as are proceeding to determine the applicability of various components of the coal ash regulations – including closure requirements – at several coal plant sites. Decisions from these ongoing proceedings are not expected to be issued before first procurement in the Coal to Solar program on May 1, 2022. This means that site-specific closure and corrective action details are unknown and will most likely be unknown at the time of proposal submission. As such, without identification of any subject surface impoundments, coal-fired power plant Owners cannot satisfy Section 8.1(l) of the proposed contract as ongoing administrative proceedings may materially adversely impact the owner's ability to perform its obligations.

It would be impossible for the Owner to demonstrate "authority" to install and/or operate the required equipment, and that doing so does not "conflict with applicable law," as required under Section 8.1 of the draft contract unless they provide maps that clearly indicate any CCR surface impoundments and appropriate space –not on or within buffer zones for those impoundments– for solar and energy technology. As such, [Commenter 3] propose the IPA include clear identification of all CCR surface impoundments subject to Part 845 requirements on or adjacent to the proposal site within the maps required under the Proposal Requirements. Further, IPA should require the Owner to work in concert with Illinois EPA to ascertain an appropriate barrier or "buffer zone" needed to maintain the integrity of environmental control equipment, maintenance, closure, post-closure and corrective action activities and appropriately identify such buffer zone on proposal maps. Such requirements will protect both the Coal to Solar participants from unexpected costs or prolonged disruptions in energy generation and Illinois residents from CCR hazards.

[20] i.e. roadway construction

Due to the extensive work requirements under Part 845 and uncertainty with site-specific closure and maintenance plans, [Commenter 3] recommend including a surface impoundment identification requirement, acknowledgement of regulations applicable to the proposal site, and certification of compliance with Part 845 and all agreements under such. [Commenter 3] respectfully offer specific recommendations to the language of the draft Coal to Solar documents below.

## 2. Disclosure of Information Regarding Coal Combustion Residual Fill Should be Included in Coal to Solar Proposal and Contract Documents

There is a pending administrative proceeding before the IPCB to regulate unconsolidated CCR fill at Illinois coal-fired power plants. During the public comment period for Part 845, [Commenter 3] and other stakeholders raised concerns regarding the lack of regulations for unconsolidated CCR fill located on coal fired power plants. In response, the IPCB opened a sub-docket to address four issues[21] including temporary CCR storage piles and CCR fill.[22] Numerous public comments detailed the importance of and recommendations for CCR fill regulation similar to Part 845. The initial comment period for the sub-docket closed in 2021 and rulemaking is pending before the IPCB.

The IPCB sub-docket may materially adversely affect the owner's ability to perform its obligations under Coal to Solar contracts. For example, should the IPCB find that a specific participant site's coal ash fill is causing pollution and thus needs to be removed, but solar technology is placed atop or near the fill, the participant may be required to remove the technology to comply with IPCB rules. Like the activities discussed in [Commenter 3]'s Comment One above, removal of fill can include actions that require disruption of the surface and the use of trucks or other large machinery. It may not be possible, and certainly would not be easy, to complete the required actions if the owner of the site must navigate between expensive and fragile equipment like solar panels. Should such a scenario arise, the participant would be unable to perform its Coal to Solar obligations without extensive costs or prolonged disruption. Thus, without a fill identification requirement within proposal, owners would not be able to comply with Section 8.1(l) [23] of the proposed contract as a pending administrative action may materially adversely affect the owner's ability to perform its obligations.

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[21] The IPCB solicited comments on: (1) information on historic, unconsolidated coal ash fills in the state, including their location, the number of such sites, and environmental impacts of the fill; (2) the use of temporary storage piles of coal ash, including appropriate time and volume limits of such piles; (3) fugitive dust monitoring plans for areas surrounding coal ash surface impoundments, including logistical information such as appropriate technology and cost of monitoring; and (4) the use of environmental justice screening tools.

[22] *In the Matter of: Standards for the Disposal of Coal Combustion Residuals in Surface Impoundments: Proposed new 35 Ill. Adm. Code 845 (Sub Docket A)*, available at: https://pcb.illinois.gov/Cases/GetCaseDetailsById?caseId=16975

[23] "To its knowledge there is no pending or threatened litigation, arbitration or administrative proceeding before any Governmental Authority or any arbitrator that is likely to materially adversely affect the ability of either Party to perform its obligations hereunder'"

Even without the IPCB sub-docket, CCR fill should be contemplated in the implementation of Coal to Solar and accounted for in proposal requirements and contracts.[24] CCR fill is known to cause significant environmental and public health impacts.[25] Rainwater seeps through CCR fill, collecting toxins as it percolates down to the ground and into the water table. There is extensive evidence showing that historic CCR fill is a source of groundwater pollution and that CCR fill is present in coal-fired power plants in Illinois. In *Sierra Club, et al., v. Midwest Generation,* LLC, the IPCB found historic coal ash fill caused years' worth of groundwater pollution at four coal fired power plants[26] across Illinois, many of which may be considering participation in the Coal to Solar program.[27] Further, during promulgation of the federal CCR rule, USEPA compiled a compendium of damages cases where CCR negatively impacted the environment, many of which involved Illinois sites with extensive CCR fill.[28]

Allowing for technology to be installed on CCR fill areas would make it impossible to address ash fill in the future without extensive costs related to removal of solar technology and prolonged energy disruption. Essentially, without IPA placing the proper safeguards, it is possible that CCR fill located under solar technology would perpetually pollute the area to the detriment of surrounding residents and the environment unless great expense were taken to remove it.

Due to the pending administrative proceeding, uncertainty regarding regulation, and the potential significant impacts of CCR fill, [Commenter 3] respectfully request IPA require identification of any known CCR fill accumulations within Coal to Solar proposals or contracts and discourage against placement of solar technology on such areas.

### 3. The Highest Level of Transparency Available is Crucial to Implementation of Coal to Solar

At its core, CEJA seeks to bolster transparency and foster informed public participation in all aspects of energy generation and distribution.[29] Rightly so, as increased public participation has been shown to produce more equitable, sustainable, and accountable systems.[30] However, [Commenter 3] are concerned that, given the lack of public participation opportunities and

[24] Many coal-fired power plant owners are aware of areas of unconsolidated CCR fill on their sites.
[25] *In Illinois, the risk of coal ash contamination rises with floodwaters,* Lydersen, K., Energy News Network, (April 12, 2019, (available at https://energynews.us/2019/04/12/in-illinois-the-risk-of-coal-ash-contamination-rises-with-floodwaters/)
[26] Joliet 29 Generating Station in Joliet, Illinois; Powerton Generating Station in Pekin, Illinois; Will County Generation Station in Romeoville, Illinois; and Waukegan Generating Station in Waukegan, Illinois.
[27] *Sierra Club, et al., v. Midwest Generation, LLC,* PCB No. 13-15, Interim Order (June 20, 2019).
[28] Hennepin Power Station in Hennepin, Illinois; Ameren Coffeen/White and Brewer Trucking in Coffeen, Illinois; and Southern Illinois Power Cooperative Marion Plant in Marion, Illinois.
[29] *Gov. Pritzker Signs Transformative Legislation Enabling Illinois as a National Leader on Climate Action,* State of Illinois (Sept. 15, 2021) available at: https://www.illinois.gov/news/press-release.23893.html
[30] *Making Space: How Public Participation Shapers Environmental Decision-making,* Berr, L., et al., Stokholm Environment Institute, (Jan. 2019), available at: https://www.sei.org/wp-content/uploads/2019/01/making-space-how-public-participation-shapes-environmental-decision-making.pdf

confidentiality language in the draft contract, the requisite level of transparency will not be afforded to the public under Coal to Solar.

CEJA repeatedly speaks directly to the need for transparency to promote ethical public utility behavior. For example, CEJA amended the Illinois Power Agency Act to include a provision addressing public utility ethics, "it is the policy of this State that, . . . public utilities must adhere to the highest standards of ethical conduct."[31] In order to ensure such standards, "[i]t is also necessary to provide increased transparency to ensure ethical public utility conduct."[32] In fact, CEJA found that some of the current public utility public participation processes are deficient and seeks to correct that, "Illinois utilities' current processes for planning their distribution system should be made more accessible and transparent to individuals and communities, and that more inclusive and accessible distribution system planning processes would be in the interest of all Illinois residents."[33] CEJA even expresses concerns of issues that may, or already do, arise without appropriate transparency. "The General Assembly is concerned that, in the absence of a transparent, meaningful distribution system planning process, utility investments may not always serve customers' best interests, appropriately promote the expansion of clean distributed energy resources, and advance equity and environmental justice."[34] Clearly, CEJA intends to hold public utilities to a high standard of transparency and Coal to Solar should offer no exception to that standard.

One of CEJA's fundamental goals promoting a "just transition" for communities located near fossil fuel sites during Illinois's shift to renewable energy reliance. "[A]s part of putting Illinois on a path to 100% renewable energy, the State of Illinois should ensure a just transition to that goal."[35] Ensuring a just transition under CEJA includes "providing support for the transition of Illinois communities and workers impacted by closures or reduced use of fossil fuel power plants . . . by allocating new economic development resources for business tax incentives, workforce training, site clean-up and reuse, and local tax revenue replacement."[36] [Commenter 3] believe none of these ideals are realized without public participation and transparency. Transparency and public participation foster a just transition by keeping communities apprised of energy-specific economic and environmental developments. A well-informed and engaged public is more likely to trust and take advantage of the many economic benefits under CEJA, including Coal to Solar employment opportunities.[37] It also allows the public to share input on the economic and environmental direction their community is moving. Communities near coal fired-power plants have long felt the environmental burden of coal energy generation including increased water and air pollution and share great interest in the safe and efficient transition to renewable energy. As such, without

[31] 220 ILCS 5/4 - 604.
[32] *Id.*
[33] 220 ILCS 5/6-105.17.
[34] *Id.*
[35] P.A. 102-0662 Section 10-5
[36] *Id.*
[37] *Making Space: How Public Participation Shapers Environmental Decision-making*, Berr, L., et al., Stokholm Environment Institute, (Jan. 2019), available at: https://www.sei.org/wp-content/uploads/2019/01/making-space-how-public-participation-shapes-environmental-decision-making.pdf

promotion of public participation and the highest level of transparency available in all CEJA programs, there is no just transition as required under CEJA.

Even before CEJA, the IPA exhibited commitments to transparency safeguards to provide protection and accountability during government energy procurement. IPA should remain unwavering on this commitment under Coal to Solar. The Illinois Power Agency Act as restated in CEJA states "[t]he General Assembly enacted Public Act 96-0795 to reform the State's purchasing processes, recognizing that government procurement is susceptible to abuse if structural and procedural safeguards are not in place to ensure independence, insulation, oversight, and transparency."[38] The IPA should ensure the proper structural and procedural safeguards in Coal to Solar as they would in any other governmental procurement by providing the public with as much information as possible during procurement, proposal acceptance, installation or construction, and maintenance.

Given the above information, particularly the hazards posed by CCR pollution and CEJA's emphasis on transparency and public involvement, [Commenter 3] respectfully request that IPA afford the public the highest level of transparency possible through the implementation of Coal to Solar, including during procurement events, project approval, construction, and maintenance of the solar technology. [Commenter 3] look forward to reviewing the progress of Coal to Solar and participating in robust public engagement opportunities.

[Commenter 3] offer the following recommendations to the Draft Proposal Requirements to place sufficient safeguards against CCR related issues and promote transparency:

***Coal Facility information:***

- ***Provide name and address of coal electric generating facility ("Coal Facility")***

***A Coal Facility presented as part of a Proposal in the first procurement event must be located in the state of Illinois and south of federal interstate Highway 80. A Coal Facility presented as part of a Proposal in the second procurement event may be located anywhere in the state of Illinois***

- ***State whether the Coal Facility is retired or is currently operating***
- ***If Coal Facility is retired:***
    - ***Provide date of retirement***
    - ***Provide documentation that electric generating facility burned coal as its primary fuel source as of January 1, 2016***
    - ***State generating capacity of Coal Facility prior to retirement***
    - ***Identify any areas of known accumulations of Coal Combustion Residual fill or unconsolidated Coal Combustion Residuals***

[38] 20 ILCS 3855/1-5.

- ***Identify any CCR Surface Impoundments subject to Ill Adm. Code 845 or that are the subject of any adjusted standard proceeding that are located on or adjacent to the Coal Facility***
- ***Provide any documentation regarding approved closure plans or closure plans that are pending approval for any active or inactive CCR Surface Impoundments subject to Ill. Adm. Code 845.***

- ***If Coal Facility is operating:***
  - ***Provide documentation that electric generating facility burned coal as its primary fuel source as of January 1, 2016***
  - ***State generating capacity of Coal Facility in MW***
  - ***Identify any areas of known accumulations of Coal Combustion Residual fill or unconsolidated Coal Combustion Residuals***
  - ***Identify any CCR Surface Impoundments subject to Ill Adm. Code 845 or that are the subject of any adjusted standard proceeding that are located on or adjacent to the Coal Facility***
  - ***Provide any documentation regarding approved closure plans or closure plans pending approval for active or inactive CCR Surface Impoundments subject to Ill. Adm. Code 845.***

***Site Information***

- ***The "Site" consists of the largest parcel of continuous land owned by the Owner and where the Coal Facility is located. Provide a map and a description of the Site***
- ***Each map shall include at a minimum***
  - ***Clear identification of any active or inactive CCR surface impoundment subject to Part 845;***
  - ***Clear identification of any Coal Combustion Residuals landfill or pond;***
  - ***Clear identification of any known areas of unconsolidated Coal Combustion Residuals or Coal Combustion Residuals fill; and***
  - ***Clear identification of any "buffer zone" needed to complete closure of any CCR surface impoundment or for post-closure equipment and maintenance.***

- ***Provide documentation that Owner controls the Site. For example, records that Owner pays property taxes for the Site may be provided.***

***Certifications by Owner***

- ***Owner shall provide certification approved by Illinois EPA that all information regarding the Coal Facility is accurate and in compliance***

***with all applicable environmental rules and standards regarding CCR Surface Impoundments.***

***B – Project-Specific Information***

***Public Participation***

- ***Seller, Owner, and all relevant Governmental Agencies shall work in concert to ensure transparency throughout the procurement, construction, and operation processes of Coal to Solar sites; and***
- ***There shall be at least one opportunity for public participation and review of proposal materials prior to Site acceptance to the Coal to Solar program.***

Thank you for your attention to these comments. [Commenter 3] look forward to working with IPA in developing appropriate CCR protections for the Coal to Solar program under CEJA.

Sincerely,

*[Commenter 3]'s representatives' contact information*

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312-500-2198