RESPONSE TO ILLINOIS POWER AGENCY REQUEST FOR COMMENTS ON BEHALF OF THE SOLAR ENERGY INDUSTRIES ASSOCIATION, THE COALITION FOR COMMUNITY SOLAR ACCESS, AND THE ILLINOIS SOLAR ENERGY ASSOCIATION

December 17, 2021

The Solar Energy Industries Association, the Coalition for Community Solar Access, and the Illinois Solar Energy Association (collectively the Joint Solar Parties) appreciate the opportunity to respond to the Illinois Power Agency's most recent solicitation for comments related to the draft bidding procedures and key contract terms for indexed renewable energy credit procurements for utility-scale resources ("indexed RECs").

Potential bidders in the Indexed REC procurements may have more specific comments about specific bidding rule provisions or draft key contract terms. The Joint Solar Parties, however, primarily focus on one collection of essential contract provisions found primarily on pages 20-21 of the draft document related to the "annual payment cap." The Joint Solar Parties strongly oppose this cap and believe it will render REC Contracts unfinanceable. The Joint Solar Parties raise a few additional matters for the IPA's consideration.

I. The IPA Should Remove The Annual Payment Cap

A. Statutory Language Does Not Support The Annual Payment Cap

The Request for Comments document dated December 6, 2021 specifically asked about alternative interpretations of Section 1-75(c)(1)(G)(v)(3) with regard to the use of the forward power curve. In response to the IPA's specific invitation on this matter, the Joint Solar Parties have reviewed the statutory language and believe it does not support the imposition of an annual payment cap and instead is intended to limit IPA procurements in a given year based on the best available information (i.e. the annually updated forward curve) to correctly size the procurement on the front end.

As an initial matter, the Joint Solar Parties suspect that the primary statutory source of the annual payment cap provision relied upon by the IPA is found in Section 1-75(c)(1)(G)(v)(3), which provides in part that:

> For procurement planning purposes, the impact on the annual budget for the cost of indexed renewable energy credits for each delivery year shall be determined as the expected annual contract expenditure for that year, equaling the difference between (i) the sum across all relevant contracts of the applicable strike price multiplied by contract quantity and (ii) the sum across all relevant contracts of the forward price curve for the applicable load zone for that year multiplied by contract quantity. The contracting utility shall not assume an obligation in excess of the estimated annual cost of the contracts for indexed renewable energy credits. Forward curves shall be revised on an annual basis as updated forward price curves are released and filed with the Commission in the proceeding approving the Agency's most recent long-term renewable resources procurement plan.

Respectfully, the Joint Solar Parties believe that this language—both these two sentences themselves and in the context of 1-75(c)(1)(G)(v) as a whole—are mechanisms to help the IPA size procurements and neither invite nor authorize a cap on annual payments.

First, the best reading of the plain language is that this passage supports a front-end budgeting approach rather than an ongoing payment cap. The Joint Solar Parties note the phrase "[f]or procurement planning purposes" precedes the discussion about impact on the budget. Even the phrase "[t]he contracting utility shall not assume an obligation. . ." is different from places where the IPA Act or Public Utilities Act have placed a cap on payments, such as 1-75(c)(1)(L)(viii) or 16-111.5.

Second, when read in the context of the entirety of Section 1-75(c)(1)(G)(v), the plain language supports the reading that the forward power curve is for advance budgeting purposes only. The sentence immediately prior to the sentence above provides in full that: "Each forward price curve shall contain a specific value of the forecasted market price of electricity **for each annual delivery year of the contract**." (Emphasis added.) The fact that these forward price curves must be filed in the most recent LTRRPP approval docket and not incorporated into the REC Contract itself (in contrast with, for instance, Sections 1-75(c)(1)(G)(iv)(E), 1-75(c)(1)(L)(vii) and (viii)) also shows that this is a budget estimating approach.

Third, Section 1-75(c)(1)(G)(v)(4) provides the mechanism that the IPA has available to restrain actual utility spending: collars. The General Assembly decided to not simply allow a cap but provide for both a ceiling and a floor. The Joint Solar Parties note that the pathway for the IPA to impose a collar appears to be exclusively through the LTRRPP: "Any price collars applicable to indexed REC procurements shall be proposed by the Agency through its long-term renewable resources procurement plan."

B. The Payment Cap Is Expected To Have A Detrimental Effect On Procurements

While the Joint Solar Parties do not have knowledge of individual potential bidders' strategies, based on member feedback and understanding of the procurement process the Joint Solar Parties are concerned that the annual price cap may lead to procurements where there are no qualifying bids, *i.e.* fully complete bids that are below the benchmark.

The reason the Joint Solar Parties believe that failed procurements are a real possibility is that the Joint Solar Parties expect a financing discount based on annual revenue uncertainty. Revenue from returned RECs is going to be difficult to quantify, and while there is limited upside (no floor on payments) there is downside for low energy price years. The amount cannot be predicted at the time of financing, so an additional discount for the risk of the unknown over a 20 year contract may be substantial.

The primary revenues for utility-scale solar that is not paired with storage other than tax equity are, of course, energy and RECs (capacity is unlikely to be a realistic option under current RTO bidding rules). Energy prices are subject to the same risks and risk management with or without the annual cap proposed term. The only way to make up for lost revenue on the tax equity financing side would be to increase the bid—which, potentially, would be caught by the

benchmark that the Joint Solar Parties suspect does not account for the expected tax equity discount.

The benchmark, of course, is confidential by statute and the Joint Solar Parties do not expect that to change. A better way to address the issue than changing the benchmark would be to remove the annual cap entirely.

To put it another way: fixed-price REC Contracts set a fixed price per REC but introduce two primary risks for the system owner: wholesale energy prices (which are subject to market forces) and REC delivery. An indexed REC without an annual payment cap or collar removes the wholesale energy price risk but maintains REC delivery risk. Under the IPA's proposed approach, wholesale energy price risk remains because REC revenue is the lesser of: (1) actual RECs delivered multiplied by strike price, and (2) a fixed amount calculated by annual price cap multiplied by REC quantity.

It would be one thing if the forward power curve was fixed for the 20-year term—actually beyond that time, because delivery is likely to begin some time after execution of the REC Contract to account for time to get to commercial operation—so the system owner and their financing parties could know the minimum REC revenue per year (because financing tends to be against "worst case scenarios" to derisk the financing parties). However, if the price changes annually in ways that cannot be predicted at signing, there is additional risk that the annual amount will drop that financing parties are expected to price in as well. Thus, the expected financing revenue could be limited to energy and have a minimum (if any) value for RECs given the lack of clarity around what a minimum annual cap might be going forward.

C. In The Alternative, The IPA Should Modify The Annual Cap

If the IPA believes despite the above that statutory language supports a cap and that the annual cap should be imposed, the Joint Solar Parties in the alternative recommend that the annual cap not be set at the forward price curve but the forward price curve plus a fixed value—for instance, the forward price curve plus $10/MWh. The Joint Solar Parties also recommend a floor at a fixed amount—for instance, $25/MWh. While this approach is still is expected to have a negative impact on financing revenue (and thus may put upward pressure on bids), it at least provides a known "worst case" scenario for REC revenue in addition to impairing the best case.

In the context of the statutory language, the Joint Solar Parties note that in developing the forward power curve nothing restricts the IPA from developing instead of a single curve a high price case, a base case, and a low price case. The low-price case and the high-price case could be designed consistent with the above, and the price cap could be based on the low-price case (where the REC revenue would be the highest). Of course, the Joint Solar Parties note that calculation of these cases will largely determine financeability and note that if they are annually reconciled in unknowable ways it does not eliminate the revenue risk in later years.

II. Additional Comments

A. The IPA Should Remove The Maximum Capacity Factor

The Joint Solar Parties wish to raise a few additional items with regard to the bidding procedures. First, the Joint Solar Parties appreciate that the IPA for planning purposes may find it desirable to set a maximum capacity factor and for solar only (the Joint Solar Parties offer no opinion on wind) 26.5% as proposed is not unreasonable in an academic sense. However, the Joint Solar Parties note that this capacity factor does not reflect the best technology available (or that may be available once systems procured in Spring 2022 EPC). In addition, solar+storage (a particular focus of the solar industry at the national level) is hindered by a low maximum capacity factor.

Allowing for increased capacity factors particularly for solar+storage projects should not have a negative impact on the IPA's execution of procurements. The Joint Solar Parties note that the IPA expresses goals in the LTRRPP in terms of MW (AC) for ease of comparison but the statutory goals (and ultimately the utility-scale procurement goals) are expressed in annual RECs. Thus, allowing solar+storage projects to have a higher capacity factor would not modify total RECs procured, only the short-hand of total MW (AC) procured.

Given that the bids must include minimum delivery quantities and there are severe penalties for consistently underdelivering in past REC Contracts that the Joint Solar Parties expect to be present in Indexed REC contracts, the IPA should remove the maximum AC capacity factor for utility-scale solar.

B. The IPA Should Allow Bid Assurance Collateral To Be Posted As A Bond

The Joint Solar Parties do not challenge the longstanding practice of requiring bidders to post bid assurance collateral. However, the Joint Solar Parties do recommend that surety bonds—which are frequently more cost-effective than cash or letters of credit, especially given the required non-negotiable forms of letter of credit—as an alternative that puts the utilities on the same footing but is more cost-effective for bidders.

C. The IPA Should Consider Requiring Land Use/Zoning Permits at the Part II Application

The Joint Solar Parties generally support the project maturity requirements in the draft bidding procedures. However, the Joint Solar Parties also note that in Illinois in particular, obtaining a special or conditional use permit or its equivalent can be a challenge in certain areas that have stringent ordinances. While requiring such permits (or evidence that none is necessary) increases the pre-bid development costs, the Joint Solar Parties do not categorically reject requirements that increase pre-bidding costs because those costs balance against the interest of ratepayers, the IPA, and the industry in having reasonably mature projects take part in procurements. In this case, the Joint Solar Parties believe that a land use permit is a reasonable requirement at the time of the Part II application (i.e. immediately pre-bid).