

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Power Agency :
 :
Petition for Approval of the IPA’s 2022 : **22-0231**
Long-Term Renewable Resources :
Procurement Plan pursuant to Section :
16-111.5(b)(5)(ii) of the Public Utilities Act. :

ORDER ON REOPENING

By the Commission:

I. PROCEDURAL HISTORY

On March 21, 2022, the Illinois Power Agency (“IPA” or “Agency”) filed with the Illinois Commerce Commission (“Commission”) a verified Petition for Approval of its 2022 Long-Term Renewable Resources Procurement Plan (“LTRRPP,” “Plan,” or “2022 Plan”) pursuant to Section 16-111.5(b)(5)(ii) of the Public Utilities Act (“PUA”). The 2022 Plan is the IPA’s proposal for the procurement of renewable energy credits (“RECs”) for Ameren Illinois Company d/b/a Ameren Illinois (“Ameren”), Commonwealth Edison Company (“ComEd”), and MidAmerican Energy Company (“MidAmerican”) under Sections 1-56(b) and 1-75(c) of the Illinois Power Agency Act (20 ILCS 3855/1-56(b) and 1-75(c)) (“IPA Act”) and Section 16-111.5(b)(5) of the PUA. 220 ILCS 5/16-111.5(b)(5).

The IPA’s Petition states that the 2022 Plan was developed pursuant to Section 1-75(c)(1)(A) of the IPA Act as modified by Public Act 102-0662 (“P.A. 102-0662”), which required that “no later than 120 days after” the September 15, 2021 effective date of P.A. 102-0662, “the [IPA] shall release for comment a revision to the long-term renewable resources procurement plan, updating elements of the most recently approved plan as needed to comply” with P.A. 102-0662’s new requirements. In accordance with Section 16-111.5(b)(5)(ii)(C) of the PUA, the Commission entered its Order “confirming or modifying” the Plan within 120 days after the Petition was filed on July 14, 2022.

The Administrative Law Judge (“ALJ”) granted the following Petitions to Intervene: Solar Energy Industries Association, the Coalition for Solar Access, and the Illinois Solar Energy Association (together the “Joint Solar Parties” or “JSPs”); Clean Grid Alliance (“CGA”); Ameren; NRG Companies (“NRG”); Environmental Law & Policy Center and Vote Solar (together the “Joint Non-Governmental Organizations,” “Joint NGOs,” or “JNGOs”); City of Chicago (the “City”); Little Village Environmental Justice Organization (“LVEJO”); Natural Resources Defense Council (“NRDC”); Summit Ridge Energy, LLC (“Summit Ridge”); SolAmerica Energy, LLC (“SolAmerica”); TPE Development LLC d/b/a TurningPoint Energy; Arcadia Power, Inc. (“Arcadia”); United States Solar Corporation

("US Solar"); ComEd; Equity Solar Illinois, LLC ("ESI"); and the Retail Energy Supply Association ("RESA").

On December 2, 2022, the IPA filed a Petition to Reopen this docket to consider modifications to the LTRRPP in light of the oversubscription of the Equity Eligible Contractor ("EEC") category. No party filed an objection to reopening this docket.

Objections to the IPA's proposed modifications to the LTRRPP were filed on February 2, 2023, by ESI and JSPs. Responses to Objections were filed on February 16, 2023, by ESI, JSPs, and the IPA. Replies to Responses were filed on March 2, 2023, by ESI, JSPs, Staff of the Commission ("Staff"), and the IPA.

The ALJ issued a Proposed Order on Reopening on March 29, 2023. Briefs on Exceptions were filed by the IPA on April 7, 2023 and by the JSPs on April 10, 2023. Reply Briefs on Exceptions were filed on April 14, 2023 by the JSPs and ESI.

II. IPA'S PETITION

P.A. 102-0662 introduced a myriad of new requirements for the Renewable Portfolio Standard ("RPS"). Many of the new RPS-related requirements include equity components, such as the prioritization of projects developed and built by equity eligible persons and/or in environmental justice communities, the collection of demographic and geographic information from program applicants, and the establishment of minimum equity standards, under which equity eligible persons or contractors must make up 10% of the project workforce for each entity participating in the IPA's programs beginning in 2023-2024, rising to 30% by 2030.

The Adjustable Block Program ("ABP" or "Program"), which provides incentives for the installation of new photovoltaic distributed generation ("DG") and community solar projects throughout the state, previously featured three categories of projects (Small DG, Large DG, and community solar). Changes to Section 1-75(c)(1)(K) under P.A. 102-0662 added the EEC category under which projects must be submitted by EECs as the Approved Vendor (i.e., direct applicant and REC delivery contract party). The EEC category is a central and instrumental pillar of the Equity Accountability System, which is established in Section 1-75(c-10) of the IPA Act. The Equity Accountability System creates "priority access to the clean energy economy for businesses and workers from communities that have been excluded from economic opportunities in the energy sector, have been subject to disproportionate levels of pollution, and have disproportionately experienced negative public health outcomes." The IPA Act requires the IPA to reserve "at least" 10% of the program capacity for projects from applicants that qualify as EECs. That portion must increase to 40% of the overall program capacity by 2030, though the IPA has discretion to determine the rate and timing of that increase "based on factors, including, but not limited to, the number of [EECs] and capacity used... in previous delivery years." 20 ILCS 3855/1-75(c)(1)(K)(vi). The IPA Act also authorizes the IPA to create subcategories for different project types and sizes within the larger umbrella of the EEC category.

The requirements of the EEC category are outlined in Section 7.4.6 of the 2022 Plan. As approved by the Commission in this proceeding, the IPA set the capacity for the category at 10% of the overall Program capacity, the required minimum under Section 1-

75(c)(1)(K)(vi) of the IPA Act. The IPA selected this level due to the low participation in the category after the initial opening in December of 2021. To allow for growth of the EEC market, the 2022 Plan did not create specific subcategories within the EEC block to avoid premature limitations on project applications for either DG or community solar projects.

The litigation in the underlying proceeding with respect to the EEC category focused on barriers to participation by EECs and ensuring that the EEC category capacity benefitted the intended applicants. Intervenors and the IPA recognized that the barriers to participation in the solar market that equity eligible persons and contractors face might slow participation in the category, and no party objected to the initial capacity level of 10% as being too conservative. The IPA specifically noted that it would solicit feedback from EECs and other stakeholders to identify barriers to participation in the ABP and reduce or eliminate them where possible. To ensure that the capacity reserved for the EEC category directly benefits the intended disadvantaged businesses, the IPA Act states the category must be made up of projects “from applicants that are [EECs],” and the IPA proposed that only projects developed by EEC Approved Vendors, as the entity which applies for incentives in the ABP, be eligible to submit projects within the category. 20 ILCS 3855/1-75(c)(1)(K)(vi) (emphasis added). The IPA also proposed that EEC Approved Vendors should not be permitted to assign projects submitted within the category to non-EEC participants for six years following Part II approval (i.e., confirmation of system energization) of an application. The Commission approved the IPA’s interpretation and approach to capacity level and assignments in its Final Order.

Pursuant to 1-75(c)(1)(G)(iv)(6) of the IPA Act, the IPA opened the new EEC category on December 14, 2021, with a capacity of 75 megawatt (“MW”) for projects submitted by qualifying applicants prior to the publication of the draft Long-Term Plan in accordance with 1-75(c)(1)(A). The category accepted only DG applications initially. No projects were submitted to the category prior to the temporary close of the Program on June 30, 2022. On September 1, 2022, the current program year opened with a total capacity across the EEC category of 144.63 MW, with 43.59 MW allocated to Group A (Ameren) and 101.04 MW allocated to Group B (ComEd). Only DG applications were accepted during the first two months of the program year; once again, no projects were submitted to the EEC category. Overall, during the more than seven months that the EEC category blocks were open for DG applications, not one application was submitted into the newly-created EEC category.

On November 1, 2022, the Program portal opened for community solar applications in the Traditional Community Solar, Public Schools, and EEC categories. Participation in the EEC block on Day 1 far exceeded the IPA’s expectations. Despite the rollover of significant amounts of uncontracted capacity, Group A community solar applications totaled 112.5 MW, constituting 258% of available capacity. Similarly, Group B saw a significant number of community solar applications, totaling 70.9 MW through the first month of applications.

The low levels of participation in the EEC category in the nascent days of the block’s opening, during the development of the Long-Term Plan in the winter of 2021-2022, and across the litigation in the underlying proceeding through the spring of 2022 gave no indication – to the IPA, the Program Administrator, or other stakeholders – that there was reason to expect capacity in the EEC category to be exhausted in the 2022-

2023 program year, let alone on Day 1, such that the IPA would need first day tiebreaking project selection criteria.

Neither the IPA Act, the 2022 Plan, nor the Program Guidebook outline a project selection process for the EEC category should applications received on the first day exceed capacity. While the Plan does discuss in Section 7.4.3 the need to develop a methodology for prioritization of projects submitted to the Program at the same time (i.e., on the same day), those methodologies were created specifically for the Traditional Community Solar category. The requirements surrounding the EEC category, as set forth in Section 7.4.3 and described above, do not discuss a preference for a particular project type or developer caps, as seen in the Traditional Community Solar category.

The IPA seeks to reopen the underlying proceeding in order to introduce into the 2022 Plan a path forward for the category, both addressing the needs in the current program year and also developing a mechanism to avoid a similar situation in the 2023-2024 program year. Reopening of this docket for consideration of the IPA's proposed strategy to address the unexpected oversubscription of Group A of the EEC category not only allows for the Commission's review and approval, but also provides all parties the opportunity to comment on the approach and ensures that the Commission has an opportunity to review and approve what would have otherwise been a contested issue before it.

III. GROUP A 2022-2023 PROGRAM YEAR

The IPA proposes to expand the 2022-2023 program year EEC category Group A block to accept all valid project applications. The IPA explains that expanding the EEC category to take all valid project applications will require approximately 68.9 MW of additional capacity constituting an 8.6% increase of overall ABP capacity for the 2022-2023 program year. Given a corresponding proposal in the Plan to "net out" this category expansion through unallocated Program capacity from the 2022-2023 program year—as well as reduced budget impacts from attrition of utility-scale projects—the IPA believes any resultant RPS budget impact is very manageable. Expanding EEC category Group A helps facilitate additional project development in Central and Southern Illinois, where MISO Zone 4 recently cleared at the Cost of New Entry and stakeholders have voiced resource adequacy concerns necessitating additional generating capacity.

Both ESI and the JSPs specifically support the IPA's proposal to expand the 2022-2023 program year Equity Category Group A block to accept all valid Day 1 project applications. The JSPs state that the IPA's rationale for accepting all projects submitted on the first day within Group A of the Equity Category is well-reasoned, and JSPs find the impact on other allocations and reallocations to be reasonable, while protecting opportunities to submit DG systems in the 2022-2023 program year. ESI states that the IPA's preferred approach best addresses the issue of Day 1 Group A Equity Category oversubscription.

Based upon the unanimous support for this approach, the Commission approves the expansion of the Group A Equity Category capacity for the 2022-2023 program year as set forth in the IPA's Proposed Modifications to the 2022 Plan.

IV. GROUP B APPLICATIONS

The IPA notes that both the JSPs and ESI support the IPA (and its Program Administrator) processing Group B applications in the Equity category while the matter of Group A applications is before the Commission. The IPA originally directed the Program Administrator to pause the review of all Equity Category applications while this matter was before the Commission, due to uncertainty as to whether Group B capacity could be affected by the outcome of the proceeding. However, no party has objected to the IPA's proposed approach to award capacity to all Group A projects applied on Day 1, and no proposal has been put forward that would impact the available capacity for Group B. Therefore, the IPA will instruct the Program Administrator to begin processing of Group B Equity Category applications for submission to the Commission prior to the resolution of this proceeding. Because Group B capacity is not at issue in this proceeding, and matter of Group B capacity was not raised by any party, the IPA does not believe that the Commission must address this item in its Order on Reopening.

The Commission agrees with the IPA that Group B is not at issue in this proceeding.

V. SECTION 7.4.6 AND 7.4.6.2 STAKEHOLDER FEEDBACK

The IPA has proposed convening a stakeholder feedback process to gain insight into common company ownership structures and methods for ensuring that entities seeking EEC contractor certification are truly and permanently controlled by and benefit equity eligible persons and added the underlined language to page 176 of the LTRRPP:

The IPA will work to reduce and eliminate barriers to participation in all of its programs to the fullest extent possible. The Agency will regularly solicit feedback from stakeholders and EEC program participants on the subject of eliminating or reducing barriers to participation in IPA programs, beginning with a stakeholder feedback process to solicit input on how to increase participation by EECs in the Program. Specifically, the Agency will convene a stakeholder feedback process to gain insight into common company ownership structures and methods for ensuring that entities seeking EEC certification are truly and permanently controlled by and benefit [equity eligible persons]. In approving this Plan, the Commission noted with approval the IPA's "commitment to continue to monitor this ABP category and to work with stakeholders to identify barriers and streamline the process."

A. IPA's Position

The IPA states that it has the authority to convene stakeholder feedback processes on topics of its choice without requiring the consent of the Commission. While the Commission has the authority to approve certain Plans developed by the IPA, as a sister IPA of the State, the Commission cannot limit the IPA's authority to solicit stakeholder feedback on the topics of the IPA's choice. While the IPA committed to conducting some specific stakeholder feedback sessions in its last Commission-approved Plan, it is not

seeking permission from the Commission to conduct additional sessions in the present filing, and the scope may extend beyond what the IPA originally contemplated in the development of its Proposed Modifications to the Plan. In the last year alone, the IPA has solicited feedback from stakeholders on the topics of utility-scale solar development, the launch of the Energy Workforce Equity Portal, Minimum Equity Standard compliance and waiver requests, updates to disclosure forms for both the ABP and Illinois Solar for All (“ILSFA”), adjustments to the ABP and ILSFA consumer protection requirements, the size of the Self-Direct Program, and the Self-Direct Program Bill credit rate. While many of these stakeholder engagement processes were outlined in the Final Plan as approved by the Commission in the underlying proceeding, it is not true for each of them. While the Commission is tasked with approving the IPA’s Proposed Modifications to its Long-Term Plan, the IPA urges the Commission to reject the notion that the IPA may only engage stakeholders to solicit feedback on topics that may be narrowly outlined in the Plan or pre-approved by the Commission.

The JSPs note that the stakeholder process should “suggest potential changes to the terms of the ABP to maximize [EEC] participation.” JSPs Objections at 3. The IPA agrees with the JSPs that the goal of all stakeholder feedback processes is to identify potential modifications that would improve the outcomes of its programs and procurements. Maximizing the participation of equity eligible persons and EECs is one of the IPA’s many goals for the ABP generally and the EEC category specifically; however, the IPA also is wary of maximizing EEC participation at the risk of increasing gaming or creating shallow, short-term benefits that do not address systemic barriers.

The IPA is planning additional stakeholder feedback sessions for spring 2023, which will cover multiple topics, including, as outlined in the Modified Plan text, the structure of EEC ownership. An EEC, under state law, must be majority-owned by eligible persons, who are by definition those “who would most benefit from equitable investments by the State designed to combat discrimination.” 20 ILCS 3855/1-10. The IPA is concerned with the possibility of sophisticated solar developers, including those already operating within the IPA’s programs, partnering with people who qualify as equity eligible persons but are not involved in any way with the solar developer and simply enable that developer to access additional capacity within the EEC category. The IPA is likewise concerned about the potential for individuals to qualify their businesses as equity-eligible, when they do not face economic barriers as envisioned by the law. The IPA plans to solicit feedback from stakeholders as to whether the spirit of the equity provisions introduced by P.A. 102-0662 are currently being fulfilled by the literal statutory-enumerated criteria for equity eligible persons and qualifications of EECs. The IPA will seek input on what methods or safeguards it could put in place to ensure that equity eligible persons are receiving the benefits intended under the law. The IPA plans to propose any refinement of the certification of EECs and qualifications of equity eligible persons no later than in its next Plan, which will be published in accordance with Section 16-111.5 of the PUA for public comment on August 15, 2023. The IPA is optimistic that this stakeholder feedback process will result in maximizing participation by equity eligible persons in its programs and procurements while also increasing the flow of benefits from State programs to those most likely to face discrimination, as required by the IPA Act.

The IPA does not believe that Commission approval is required for this planned stakeholder feedback to move forward; as such, the IPA urges the Commission to reject the JSPs' suggested modifications to the proposed Plan modifications.

B. JSPs' Position

The Joint Solar Parties note that the IPA seeks to convene a stakeholder process to better understand common company ownership structures and methods for ensuring that entities seeking EEC certification are truly and permanently controlled by and benefit equity eligible persons. The Joint Solar Parties have no objection to the IPA convening a stakeholder process on the topics of its choice. However, the Joint Solar Parties note this stakeholder process should not only seek to better understand structures, but to suggest potential changes to the terms of the ABP to maximize EEC participation. For example, having an EEC submit a system to the ABP and hold the REC contract for at least the sixth anniversary of energization requires substantial financial and managerial wherewithal, even if a third party develops the system, secures debt and tax equity financing, and/or owns and operates the asset long-term.

The Joint Solar Parties do not doubt that some EECs—whether established or emerging—currently possess those capabilities. However, more EECs may not have those capabilities and may gravitate to relationships with established market participants that can temporarily provide some of those resources. Relationships that draw on financial, managerial, and technical resources of established market participants will substantially reduce the risk and exposure of equity providers and may maximize participation opportunities.

In addition, the Joint Solar Parties note it is not uncommon for Approved Vendors to be formed around “special purpose entities” or “project companies”—industry jargon for a limited liability company that owns just one or very few solar assets. Other times, market participants create a separate entity to serve as administrator to the REC contract. Under these structures, ownership of the entity follows ownership of the asset and the intention is for the entity to change hands. Such a structure may benefit equity providers where equity providers obtain value from something other than long-term ownership of the Approved Vendor. The Joint Solar Parties note that the ability to exit projects with revenue allows the equity providers to later redeploy their capital into more systems, including using the knowledge or connections gained by their first experience to take on more of the development, financing, or ownership functions.

Again, the Joint Solar Parties do not object to the IPA convening the stakeholder processes of its choosing on the topics of its choosing. However, the Joint Solar Parties urge a reframing of the question away from assuming long-term equity provider ownership of entities to structures to considering all opportunities to provide a pathway to enriching equity providers financially and in terms of experience and expertise while also accounting for the value of limiting equity providers' risk and providing equity providers an entry point into a complex and resource-intensive industry.

C. ESI's Position

ESI believes the higher-than-expected volume of EEC applications in Group A (Ameren) last year should be seen as a positive sign for the potential for EECs to

contribute to Illinois' successful clean-energy transition, and should not lead to new, unwarranted restrictions being placed on EEC applicants. As to the IPA's proposal to convene stakeholder feedback sessions in spring 2023 regarding potential ownership structures for entities seeking EEC certification, ESI strongly encourages such a process and looks forward to participating. ESI would also encourage other EECs to participate as well.

D. Staff's Position

Staff notes that the IPA takes issue with the substantive language changes proposed by the Joint Solar Parties and makes substantive arguments to support its modifications to the 2022 Plan. The IPA further argues it "does not believe that Commission approval is required for this planned stakeholder feedback to move forward." IPA Response at 7. The IPA provides no statutory authority or case law to support its belief that no Commission approval is required. Staff asserts that the Commission should reject the IPA's argument.

Staff opines that the IPA's argument is contrary to the PUA. Under the PUA, the IPA must obtain Commission approval of its 2022 Plan. See 220 ILCS 5/16-111.5(b)(5)(ii). As is evident on its face from the IPA's proposed modifications to the 2022 Plan, the IPA has made "EEC stakeholder feedback process" a part of its 2022 Plan. Given that the EEC stakeholder feedback is part of the 2022 Plan, it is clearly within the Commission's authority under the PUA to address that issue within this reopened proceeding.

Staff notes that whether the Commission should approve the EEC stakeholder feedback process the IPA proposed or adopt the Joint Solar Parties proposal, is a related but different issue. Staff did not object to the IPA's EEC stakeholder feedback process, accordingly, Staff has no issue with the EEC stakeholder feedback process proposed by the IPA in its proposed modification to the 2022 Plan. However, as discussed above, it is clearly within the Commission's authority to address the issue in this proceeding. Also, it was within the Joint Solar Parties' right to object to the 2022 Plan modifications sought by the IPA concerning EEC stakeholder feedback process.

E. Commission Analysis and Conclusion

Subsection (ii)(D) of Section 16-111.5(b)(5) of the PUA provides the standard by which the Commission must assess any proposed changes to the 2022 Plan. The statute provides that:

"[t]he Commission shall approve the initial long-term renewable resources procurement plan and any subsequent revisions, including expressly the forecast used in the plan and taking into account that funding will be limited to the amount of revenues actually collected by the utilities, if the Commission determines that the plan will reasonably and prudently accomplish the requirements of Section 1-56 and subsection (c) of Section 1-75 of the [IPA] Act.

220 ILCS 5/16-111.5(b)(5)(ii)(D). By including the stakeholder process in its modified 2022 Plan, the IPA submitted it to the Commission for approval and opened it up for

comment. This does not mean, however, that the IPA's ability to hold discussions or convene stakeholder processes is in any way limited to those included in the Long-Term Plan.

The Commission approves the stakeholder feedback process proposed by the IPA. The Commission agrees that it is important that the IPA ensure that equity eligible persons are the true beneficiaries of the EEC category. Also, the IPA should continue to seek stakeholder feedback regarding methods to remove barriers to participation in the EEC category. The stakeholder feedback will help the IPA in its crafting of the next LTRRPP. The IPA's modifications to the LTRRPP regarding stakeholder feedback are approved.

VI. SECTION 7.4.6.3.6 EEC SUBCATEGORIES

The IPA proposes the new Section 7.4.6.3.6, which among other things, states the following:

Thus, for the 2023-24 program year, the IPA proposes to create two subcategories within each Group of the EEC category: one for distributed generation [("DG")] and one for community solar. Each Group capacity will be split evenly between the two subcategories, with half reserved for DG projects and half reserved for community solar projects.

A. IPA's Position

In Section 7.4.6.3.6 of the proposed Plan modifications, the IPA outlines a process by which it would create subcategories within the EEC category for the 2023-2024 program year. Specifically, the IPA proposes to create separate categories for DG and community solar, splitting the capacity for the two subcategories evenly across the capacity for each Group and reserving half for DG projects, which have a longer project development process, for nine months, with unused capacity becoming available to projects of any type after nine months. Both the JSPs and ESI object to this language; however, the two positions differ significantly. The IPA believes that the arguments on both sides of this proposal demonstrate that the IPA's original proposal strikes an appropriate balance between the conflicting needs of community solar developers and DG developers.

The JSPs object to the IPA's proposal to hold open DG capacity for only nine months, and instead suggest that an eleven-month period is more appropriate. The IPA agrees with all of the JSPs' arguments on this point and would not object to the Commission's adoption of this proposal. However, the IPA notes that the tension between the positions of the JSPs and ESI indicates that the IPA's original proposal is likely the most appropriate.

Conversely, ESI argues that it is "nonsensical to set aside half of future [EEC] capacity for project types that nobody is currently proposing." ESI Objections at 3. The IPA disagrees with ESI. As explained in its proposed Plan modifications, the IPA understands that small and emerging solar developers often enter the solar market through the development of DG projects. While DG projects have a longer sales cycle, they can be more manageable and less complex in terms of project financing, siting,

permitting, size, and interconnection than community solar projects. Because the entire purpose of the EEC category is to develop opportunities for equity eligible persons, ostensibly people that would otherwise face barriers to participating in the Program, it is perplexing that any party would argue against preserving opportunities for development of DG projects within the Equity Category.

ESI argues that creating subcategories for DG and community solar projects “would only result in unutilized [EEC] capacity.” ESI Objection at 3. The IPA explains, however, that the proposal would not result in unutilized EEC category capacity, as the unused DG capacity would be opened to community solar projects after nine months. Seeing as the entire category Group A capacity was exhausted within one day of accepting community solar projects, the IPA opines that it is absurd to argue that any EEC category capacity would remain unused after three months of accepting community solar projects.

ESI also argues that the set-aside of capacity for behind-the-meter projects in the EEC category is unnecessary, as those projects can be developed through the Small and Large DG categories of the Program. The IPA notes that the same could be said for the community solar projects that ESI claims will lose out on capacity due to the creation of a separate DG subcategory – EEC Approved Vendors may submit community solar projects in multiple Program categories, including Traditional Community Solar, Community-Driven Community Solar, and Public Schools. Regardless, the IPA points out that this argument ignores the fact that it is only within the Equity category that EECs may receive an advance of capital to assist with project development. While the IPA has proposed in this proceeding that behind-the-meter systems may be eligible to apply in the Small and Large DG categories and seek a capital advancement in the 2022-2023 program year to account for the unanticipated oversubscription of the Equity Category on November 1, 2022, the IPA does not believe that it is reasonable nor necessary to extend this exception beyond the current program year. Thus, ESI’s claim that an equivalent opportunity for EECs to submit DG projects exists in other categories is incorrect.

While JSPs and ESI agree that behind-the-meter systems have different development needs and longer sales cycles, ESI argues that if DG projects require more time to mature, those projects should be submitted in subsequent program years. While this option is available to EECs, the IPA believes that the continued likelihood of early oversubscription of the Equity Category is yet another reason to support the creation of subcategories within the block for the 2023-2024 program year in this proceeding. A subcategory for DG projects that holds capacity available for three-fourths of the program year ensures opportunity for the development of behind-the-meter systems in the Equity Category, allows EECs the ability to seek a capital advancement, and does not unduly burden community solar developers, who would have access to unused capacity at the end of the nine-month period.

The IPA notes that ESI suggests that there could be multiple solutions to preserve opportunities for behind-the-meter systems to be developed within the Equity Category. However, ESI does not identify any specific alternative method to address the IPA’s concerns, and furthermore urges the Commission to only consider such alternatives in the next update to the IPA’s Long-Term Plan, which will take place after the launch of the 2023-2024 program year. These unknown solutions, therefore, do not address the need

to resolve the question for the upcoming program year. As the IPA's proposed creation of a DG subcategory in the Equity Category is the only solution put forward for consideration in this proceeding, it should be adopted.

ESI argues that the creation of EEC subcategories should be done only through the approval of the IPA's next Long-Term Plan, as the subject needs to be scrutinized and be subject to an evidentiary hearing. The IPA states that scrutiny of the IPA's proposal is, in fact, the purpose of this reopening. The IPA has brought the issue of the development of subcategories in the Equity Category before the Commission for its review and approval, or approval with modification. This proceeding is the place for ESI's desired scrutiny to be conducted, and it provides ESI the exact same procedural structure and intervention opportunities as the statutorily-mandated, biannual approval process for the full Long-Term Plan. Waiting for the development of the next Long-Term Plan would not afford ESI any different recourse than it has in the current proceeding. The IPA avers that ESI has not provided any compelling argument against the creation of subcategories upon reopening, and its objections should be rejected.

B. JSPs' Position

The Joint Solar Parties recommend modifying the subcategories of the EEC block to protect the behind-the-meter (DG) set-aside until one month (rather than three months as proposed) before the end of the annual block. This extended window will protect opportunities for systems that are more challenging for new entrants to develop but that are equally worthy of program resources.

The IPA provided a thorough accounting of the overapplication to Group A of the EEC block, but the Joint Solar Parties wish to emphasize one particular aspect of the history. Specifically, prior to the November 1, 2022 community solar application window, to the knowledge of the Joint Solar Parties not a single behind-the-meter system was applied by an EEC-Approved Vendor since the EEC block initially opened on December 14, 2021. While stark, this result is not entirely surprising: behind-the-meter systems tend to have long sales cycles and—unlike community solar under the current LTRRPP—require a signed interconnection agreement in order to submit a Part I application for systems over 25 kilowatts. Community solar systems have their own challenges, but interconnection and customer interaction may both commence after the Part I application in the development cycle.

As the Joint Solar Parties have consistently raised in LTRRPP proceedings, predictability and transparency are important to development. The longer the window during which capacity is protected for behind-the-meter systems, the more runway EECs will have to identify and acquire customers, design systems, and seek and obtain interconnection agreements so that a Part I application may be submitted. The Joint Solar Parties note that if the community solar subcategory is oversubscribed, while the extra two months would not be a positive it would be unlikely to have a major impact on timing—at least as long as the IPA publishes a waitlist as soon as the community solar subcategory fills.

The JSPs assert that ESI appears to misunderstand the IPA's proposal to protect behind-the-meter opportunities for nine months—the Joint Solar Parties suggested eleven months—by speculating that capacity would “remain unused” with a time-limited

protection. See ESI Objections at 3-4. Even if community solar remains popular and behind-the-meter systems are not applied in substantial volume, remaining capacity would go to the waiting systems—in this hypothetical community solar—within the same delivery year. The JSPs state that there is no indication—and ESI provides no evidence to the contrary—that a nine (or eleven) month delay on some of the capacity will negatively impact community solar in the EEC block to the extent that behind-the-meter applications are insufficient to fill the initial allocation within the EEC block to behind-the-meter systems.

C. ESI's Position

ESI states that the IPA's proposal to create separate EEC subcategories would have the reverse effect of what the IPA intends and actually cause the available EEC capacity to remain unused by limiting the amount that may be allocated to community solar projects. As the IPA itself admits, there were no applications for EEC DG projects this year, even though the EEC capacity block opened for behind-the-meter DG applications on September 1, 2023, a full two months prior to when it opened for community solar applications. This fact alone shows there is much less market demand for behind-the-meter DG projects. As such, ESI argues that it would be nonsensical to set aside half of future EEC capacity for project types that nobody is currently proposing. Likewise, ESI objects to JSPs' suggestion to extend the IPA's proposed EEC capacity set-aside for behind-the-meter DG projects to eleven months.

ESI asserts that artificially creating a new lower cap on EEC community solar projects in favor of non-existent EEC behind-the-meter DG projects would only result in unutilized EEC capacity. This type of proposed change needs to be scrutinized and be subject to an evidentiary hearing. The current Petition is not the correct forum for these types of changes, which should only be considered as part of the next regular LTRRPP update process.

ESI states that it is important to note that there are four other ABP capacity blocks already dedicated entirely to behind-the-meter projects (i.e., the Small DG and Large DG capacity blocks in both Group A and B), and that three of those four categories are currently under-subscribed for the 2022-2023 program year. Therefore, even if there are EEC applicants that still desire to submit behind-the-meter projects in this program year, nothing is preventing them from doing so under these other capacity blocks. Until there is evidence that EEC applicants are actually (or even imminently) being blocked from entering the behind-the-meter DG market, there simply is no justification for an additional capacity "set aside" for behind-the-meter projects.

According to ESI, there is no evidence supporting an EEC's applicant's need for additional time to submit a behind-the-meter application. While JSPs may be correct that behind-the-meter systems tend to have longer sales cycles, ESI points out that by the opening day of the 2023-2024 program year (expected to be June 1, 2023), any EEC developer wishing to submit such projects will have had an additional eight months to develop those projects since the close of the initial two-month exclusivity period on November 1, 2022. If behind-the-meter projects require even more time than that to mature, ESI argues it would only be logical to submit such projects in subsequent program

years, rather than artificially making other EEC application types that are ready to submit in the next program year wait an additional nine to eleven months to do so.

Moreover, to the extent that differential requirements for the application are to blame for the lower demonstrated demand for behind-the-meter DG applications as opposed to community solar projects (as JSPs argue in part), ESI suggests that there could be multiple solutions to address that concern that do not effectively place new restrictions on the type of solar projects that EEC applicants may choose to pursue. For example, the Commission could simply make the submission requirements for each type of project more consistent—a potential form of relief that is not limited to the EEC capacity block and should only be considered as part of the next regularly scheduled update to the LTRRPP.

IPA argues that its proposed DG set-aside is necessary at this time because the IPA understands that small and emerging solar developers often enter the solar market through the development of DG projects. But ESI contests that understanding, which is not supported by any evidence presented by IPA (even though they bear the burden of proof to demonstrate the need for a material program change). ESI maintains that the IPA's asserted understanding runs directly counter to the public evidence from the current program year. As seen in the current program year, when given the chance, EEC applicants prefer to focus on grid-supply Community Solar projects as opposed to behind-the-meter DG. And that same dynamic is especially true for new and/or small EEC applicants, who generally cannot afford the higher upfront costs, development risk, and longer timelines associated with developing behind-the-meter DG projects. Importantly, the Community Solar business model was originally developed specifically to overcome many of the development challenges associated with behind-the-meter DG (as well as to serve many more customers, including the majority of customers for which behind-the-meter DG is not feasible). Therefore, it should not be a surprise that the market is opting to develop grid-supply community solar when given the chance.

ESI notes that JSPs also argue that there is no indication that a nine (or eleven) month delay on some of the capacity will negatively impact community solar in the EEC block. ESI counters that a nine to eleven month project waitlist would delay community EEC solar project development and construction, delay the public and community benefits associated with community solar, and increase project cost in the form of lease payments and other carrying costs. Given the typical community solar development timeline of around 24 months from application, a nine to eleven month waitlist delay would increase many Community Solar project timelines by up to 45 percent – a significant and material change affecting EEC applicants of all sizes, but especially impacting small and emerging EEC applicants. These are actual harms that cannot be waived away by JSP's assertion that there won't be any negative impact on community solar in the EEC block.

To the extent the Commission does wish to explore a set-aside for behind-the-meter DG projects for EEC applicants, ESI strongly encourages the Commission to establish a separate hearing to evaluate the same as part of the next regular update to the LTRRPP. Simply put, there is no compelling evidence to support establishing the proposed new capacity set-aside (and thereby restrict the project types that EEC applicants may pursue), and there is nothing in the record suggesting that EEC applicants would utilize such a set-aside. And if any portion of the proposed set-aside is not utilized,

it will only result in project delays and less capacity being available for EEC applicants that are willing and able to enter the community solar market. Only through a more fulsome process will the Commission be able to obtain the information it needs to make an informed decision on the need for a set-aside. This proceeding should not, however, delay the Commission's decision as to the other matters raised in the IPA's current proposal.

D. Commission Analysis and Conclusion

ESI appears to misunderstand the IPA's proposal and incorrectly claims that the creation of a DG subcategory within the Equity Category would result in unused capacity. The IPA's Proposed Modifications to the Long-Term Plan provide that a DG subcategory would set aside capacity for behind-the-meter systems for the first nine months of the program year. After that time, unused capacity would then open to all project types within the category for development.

The choice of an equal split between DG and community solar, however, does not appear to be based on any specific reason. The Commission finds that as no EEC DG project has been submitted to date, retaining merely 25% of the EEC category for DG should be sufficient. Also, the Commission does not see any great difference between keeping the DG subcategory open for nine months versus eleven months. Given the harms to community solar raised by ESI, the Commission adopts the IPA's proposed nine-month period. This proposal appropriately allows time for development of DG in the EEC category and will not result in unused capacity. It is adopted.

ESI did not object to the reopening request filed by the IPA. In that reopening request, the IPA proposed a comment process for consideration of its modifications to the 2022 LTRRPP. Having not objected to the process proposed by the IPA, it is unfair to raise it now. Also, the PUA does not require that an evidentiary hearing be held when the Commission considers the IPA's LTRRPP. See 220 ILCS 5/16-111.5(b)(5)(ii)(C). The Commission notes that there is nothing stopping ESI from raising this issue in the next LTRRPP.

VII. SECTION 7.4.6.3.7 2023-2024 DEVELOPER CAP

The IPA proposes the new Section 7.4.6.3.7, which among other things, states the following:

At the same time, the Agency is keenly aware that the [creation of subcategories] would not prevent the capacity in either the DG or the community solar subcategories from being filled entirely by a single, well-established EEC. In fact, the currently oversubscribed Group A capacity features projects submitted by only 5 EECs. Keeping a core policy objective of the EEC category in mind (growing the number of EECs), the Agency proposes to layer a developer cap on top of the subcategories, such that no single EEC (or any of its affiliates—which includes any common ownership across privately-owned entities) may receive more than 20% of an EEC category's Group capacity in a given program year. The

developer cap will be applied beginning in the 2023-2024 program year. Waitlisted projects that receive capacity in that program year will be subject to this developer cap.

A. IPA's Position

In its Proposed Modifications to the 2022 Long-Term Plan, the IPA included application of a 20% developer cap in the Equity Category for the 2023-2024 program year, which begins on June 1, 2023. The IPA modeled this proposed element off of the developer cap that currently applies in the Traditional Community Solar category of the ABP, as another guard against oversubscription and as a buffer to ensure the capacity in the Equity Category supports as many EECs as possible.

The IPA notes that the Joint Solar Parties support the proposed 20% developer cap and recommend that the Commission adopt that aspect of the proposed revised Long-Term Plan. ESI disagrees with the proposed developer cap and instead asks the Commission to reject any developer cap or “limit the proposed 20% cap so it only takes effect if a given Group block is oversubscribed on day one.” ESI Objection at 4.

The IPA does not agree that the proffered compromise position of applying a developer cap only if the category is oversubscribed on Day 1 would solve the issue. As stated in its Petition for Reopening, the IPA did not face a challenge solely because projects that totaled more than the available capacity applied on day one of the category accepting community solar applications. Rather, the challenge comes from early exhaustion of capacity through applications received on the same day. The IPA generally relies on application date for determining which projects are applied “first” for purposes of accepting applications in categories which are slower to reach capacity. The IPA notes that the 2022 Plan does discuss the need to develop a methodology for prioritization of projects submitted to the Program at the same time (i.e., on the same day), but those methodologies were created specifically for the traditional community solar category. If the Commission were to adopt ESI’s alternative approach, nothing would stop a large EEC with multiple community solar projects ready, or even several such companies, from simply waiting until the second or third day of the application period to submit all of their projects. The IPA would be in the exact same position, simply reaching oversubscription on Day 2 instead of Day 1. Since it would not solve the root cause of the current oversubscription with no method of project selection for the next Program Year, ESI’s alternative proposal should be rejected.

ESI also argues that, even if the 20% developer cap is limited to the scenario where a Group within the Equity Category is oversubscribed on day one, “if applying the 20% cap would cause the available capacity to become undersubscribed, the remaining capacity should be allocated to day-one applicants above the 20% cap on a pro rata basis.” ESI Objection at 4. The IPA cannot support this approach, even if the Commission decides to limit the developer cap to Day 1 oversubscription. The IPA maintains that a 20% developer cap is the best option for not only avoiding unmanageable oversubscription but also for ensuring that the Equity Category is available to as many EECs as possible. ESI claims that allocating available capacity after day one above the 20% cap would “honor the goal of increasing [EEC] participation.” *Id.* It would do no such thing – it would simply increase the incentives awarded to the EECs already participating

in the category. The IPA argues that increasing EEC participation requires preventing a small number of larger firms from monopolizing the category capacity, regardless of when in the Program Year that might occur. For example, ESI submitted 24 of the 76 project applications that accounted for 36% of the over 250 MW of the projects submitted to Group A and B of the Equity Category. It is this dynamic that the IPA seeks to mitigate through the 20% cap, so that more and smaller EECs might enjoy the same benefits.

The Equity Category by definition reserves capacity for companies that may need additional resources and time to submit project applications. Ensuring that the category has capacity available for at least several months of the program year is not keeping the category “artificially undersubscribed.” ESI Objection at 4. The Equity Category was designed to attract and support new companies facing barriers to entering the energy sector, with a specific focus on reducing barriers to access to capital. Allowing a small number of established, well-financed companies to dominate the EEC category would be antithetical to the explicit statutory purpose of the category.

B. JSPs’ Position

With regard to the developer cap, the Joint Solar Parties note the healthy community solar interest in both Group A and Group B within the EEC block on November 1, 2022, and beyond. Based on historic over-submission of community solar not only in the EEC block but in other blocks, there is no indication that imposing a developer cap will make the IPA any less able to achieve procurement targets. Even if that developer cap continues until well after the first day, JSPs state that ESI presented no evidence that community solar is not a competitive field with more willing applicants than space available.

C. ESI’s Position

ESI notes that the IPA proposes to implement a 20% EEC Approved Vendor cap that would apply to the EEC community solar category regardless of whether (i) the next program year’s available capacity is oversubscribed on day one, or (ii) the cap would cause the available capacity to become artificially undersubscribed. ESI asks that the Commission reject this proposal, or at least limit the proposed 20% cap so it only takes effect if a given Group block is oversubscribed on day one, as happened this year. In addition, if applying the 20% cap would cause the available capacity to become undersubscribed, the remaining capacity should be allocated to day-one applicants above the 20% cap on a pro rata basis. This would honor the goal of increasing EEC participation under the program, while still addressing the first day oversubscription scenario motivating the Proposal.

To be clear, if available capacity is not fully subscribed on day one, there should not be a 20% developer cap. As the IPA suggests, achieving oversubscription on the very first day (as happened this year) poses unique hardships on the ABP that are not present if full capacity is reached later in the application window. In the latter case, the application date becomes the de facto tiebreaker (as established by current LTRRPP approved on July 14, 2022), avoiding the first-day oversubscription concerns motivating this Proposal. ESI asks that this element of the Proposal be rejected, or to at least tailored so it only applies in the scenario where the relevant EEC capacity is actually oversubscribed on day one.

ESI urges caution against making more changes to the LTRRPP as part of this exception process than are necessary to maximize awards for the 2022-2023 program year. ESI cautions against any changes that could have unintended consequences as part of a larger process. For example, if the proposed 20% developer cap had been in place for the EEC Group B (ComEd) block for the current 2022-2023 program year (setting aside any DG set-aside) – even though that block was not oversubscribed on the first day – it could have led to approximately 30% of the Group B block capacity still being unsubscribed today. In addition, if the proposed 50% set aside for DG applications had been in place for the current 2022-2023 program year, the most likely result that half of the qualified EEC community solar projects would have had to sit on a waitlist for nine-eleven months before being allowed to move forward thereby directly increasing the risks and costs of those projects and arbitrarily reducing the pace of EEC solar deployment – which seems like the opposite of what should be done from a policy perspective.

Regarding ESI's suggestion that IPA's proposed 20% developer cap only apply if Group A or B become fully subscribed on the first day they become open for community solar applications, IPA argues against that approach by suggesting that "nothing would stop a large [EEC] with multiple community solar projects ready, or even several such companies, from simply waiting until the second or third day of the application period to submit all of their projects." IPA Response to Objections at 11. But that is not a realistic scenario. In fact, history has shown that there is a significant risk that 100% of capacity could be allocated on the first day applications are accepted. Thus, if an EEC applicant with a complete application elected not to submit that application on the first day of the community solar application period, it would risk getting boxed out from securing capacity for any application they voluntarily held back. For that reason, ESI does not view the IPA's theoretical gaming concern as realistic and does not believe this theoretical risk should be dispositive on this point.

D. Commission Analysis and Conclusion

The Commission is concerned about the impact on developers from adopting changes midway through a plan cycle. At the same time, it is important to the Commission to incent as many EECs as possible. Weighing these two concerns, the Commission agrees with ESI that its alternate proposal addresses both concerns. A 20% cap is appropriate if the EEC community solar subcategory is oversubscribed on the first day, which allows for a greater number of EECs to apply on day one but still allows any remaining capacity to be allocated on day two or later. The 20% cap will be measured against the total capacity made available to the EEC category for the program year. The Commission does not find the IPA's argument regarding gaming to be compelling and agrees with ESI that the IPA's concerns are unrealistic.

Given the adoption above of the nine-month window for DG in the EEC category, the Commission directs that the developer cap cumulatively applies on the first day that the remaining DG capacity (if any) is made available to EEC community solar.

VIII. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) Commonwealth Edison Company, Ameren Illinois Company d/b/a Ameren Illinois, and MidAmerican Energy Company are corporations engaged in the retail sale and delivery of electricity to the public in Illinois, and each is a "public utility" as defined in Section 3-105 of the Public Utilities Act and an "electric utility" as defined in Section 16-102 of the Public Utilities Act;
- (2) the Commission has jurisdiction over the parties hereto and the subject matter hereof;
- (3) the recitals of fact and conclusions of law in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and conclusions of law;
- (4) the 2022 Revised Long-Term Renewable Resources Procurement Plan, as modified herein, will reasonably and prudently accomplish the requirements of Section 1-56 and subsection (c) of Section 1-75 of the Illinois Power Agency Act;
- (5) the 2022 Revised Long-Term Renewable Resources Procurement Plan, as modified herein, should be approved by the Commission; and
- (6) the Illinois Power Agency should file a compliance filing within 5 days of this Order consistent with the findings herein.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the 2022 Revised Long-Term Renewable Resources Procurement Plan is modified as discussed herein.

IT IS FURTHER ORDERED that the Illinois Power Agency is directed to file with the Illinois Commerce Commission a compliance filing within 5 days of this Order consistent with the findings herein.

IT IS FURTHER ORDERED that all motions, petitions, objections, and other matters in this proceeding which remain unresolved are disposed of consistent with the conclusions herein.

IT IS FURTHER ORDERED that pursuant to Section 10-113(a) of the Public Utilities Act and 83 Ill. Adm. Code 200.880, any application for rehearing shall be filed within 30 days after service of the Order on the party.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

By Order of the Commission this 4th day of May, 2023.

(SIGNED) CARRIE ZALEWSKI

Chairman