STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Power Agency	**:**	
	:	
Petition for Approval of the IPA's	**:**	
Long-Term Renewable Resources	**:**	**17-0838**
Procurement Plan pursuant to	**:**	
Section 16-111.5(b)(5)(ii) of the	**:**	
Public Utilities Act.	**:**	

ORDER

April 3, 2018

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ORDER

By the Commission:

I. PROCEDURAL HISTORY

On December 4, 2017, the Illinois Power Agency ("IPA" or "Agency") filed with the Illinois Commerce Commission ("Commission" or "ICC") a Petition ("Petition" or "Pet.") requesting approval of the IPA's Long-Term Renewable Resources Procurement Plan ("Plan" or "LTRRP"), pursuant to Section 16-111.5(b)(5)(ii) of the Public Utilities Act ("PUA") (220 ILCS 5/16-111.5(b)(5)(ii)).

Section 16-111.5(b)(5) of the PUA, adopted as part of Public Act 99-0906 ("PA 99-0906"), sets forth various provisions relating to the procurement of long-term renewable resources. 220 ILCS 5/16-111.5(b)(5). Subsection (ii)(C) of Section 16-111.5(b)(5) sets forth the process and procedure for the review and approval of IPA long-term renewables procurement plans. The statute states, among other things, that: (1) within 14 days after the filing of the initial long-term renewable resources procurement plan or any subsequent revisions, any person objecting to the plan may file an objection with the Commission; (2) within 21 days after the filing of the plan, the Commission shall determine whether a hearing is necessary; and (3) the Commission must enter its order confirming or modifying the initial long-term renewables resources procurement plan or any subsequent revisions within 120 days after the filing of the plan by the IPA. *See* 220 ILCS 5/16-111.5(b)(5)(ii)(C). Pursuant to these statutory guidelines, a final Commission order must be entered on or before April 3, 2018.

Subsection (ii)(D) of Section 16-111.5(b)(5) of the PUA further provides the standard by which the Commission must assess a 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 Illinois Power Agency Act." 220 ILCS 5/16-111.5(b)(5)(ii)(D).

The following Petitions to Intervene were granted by the Administrative Law Judge ("ALJ"): Carbon Solutions Group ("CSG"); Commonwealth Edison Company ("ComEd"); Little Village Environmental Justice Organization ("LVEJO"); Environmental Defense Fund ("EDF"); Environmental Law & Policy Center ("ELPC"); Renewables Suppliers ("Renewables Suppliers" or "RS"); Ameren Illinois Company d/b/a Ameren Illinois ("Ameren" or "AIC"); Elevate Energy ("Elevate"); Coalition for Community Solar Access ("CCSA"); Association of Illinois Electric Cooperatives; Wind on the Wires ("WOW"); Citizens Utility Board ("CUB"); Northstar PV LLC d/b/a Summit Ridge Energy ("Summit Ridge" or "Summit"); Solar Energy Industries Association ("SEIA"); Natural Resources Defense Council ("NRDC"); Illinois Municipal Electric Agency; GRID Alternatives, Inc. ("GRID"); Illinois Solar Energy Association ("ISEA"); Bosch Building Grid Technologies ("Bosch"); Wabash Valley Power Association, Inc.; EnSync, Inc.; Illinois Chamber of Commerce ("Chamber"); Blue Delta Energy, LLC; Solar Business Coalition; and Solar Development Associates, LLC. The Illinois Attorney General ("AG") and Staff of the Commission ("Staff") also participated in this proceeding.

Objections ("Obj.") were filed by: Bosch; ComEd; Ameren; ELPC; Elevate and Grid jointly ("Elevate/GRID"); NRDC; WOW; SEIA, CCSA, and ISEA jointly (collectively "Joint Solar Parties" or "JSP"); CSG; CCSA; Staff; Renewables Suppliers; EDF; and LVEJO. Responses to Objections ("Resp.") were filed by: the Chamber; ELPC; the IPA; ComEd; CSG; WOW; NRDC; Renewables Suppliers; Ameren; the Joint Solar Parties; the AG; Elevate/GRID; and LVEJO. Replies to Responses ("Rep.") were filed by: ComEd; NRDC; ELPC; CSG; EDF; the IPA; WOW; CUB; the Joint Solar Parties; Ameren; Summit Ridge; the AG; CCSA; Renewables Suppliers; Bosch; and Elevate/GRID.

The ALJ issued a Proposed Order on February 26, 2018. Briefs on Exceptions ("BOE") were filed on March 7, 2018 by the following parties: Elevate/GRID; Chamber; LVEJO; IPA; Joint Solar Parties; Staff; CUB; WOW; CCSA; EDF; Bosch; ELPC; IPA; the Solar Business Coalition ("SBC"); CSG; ComEd; the AG; NRDC; the Solar Development Associates ("SDA"); and Blue Delta Energy, LLC ("Blue Delta"). Staff filed a revised BOE on March 12, 2018. Reply Briefs on Exceptions ("RBOE") were filed on March 14, 2018 by the following parties: LVEJO; Staff; the Joint Solar Parties; EDF; Renewables Suppliers; CCS; WOW; CSG; ComEd; Bosch; IPA; Summit Ridge; and ELPC.

II. BACKGROUND

This is the first LTTRP developed by the IPA pursuant to the provisions of Sections 1-56(b) and 1-75(c) of the Illinois Power Agency Act ("IPA Act"), and Section 16-111.5 of the PUA. This Plan is the result of PA 99-0906, enacted December 7, 2016, which substantially revised the Illinois Renewable Portfolio Standard ("RPS"). PA 99-0906 took effect on June 1, 2017 and provided for the IPA to develop a Draft Plan within 120 days of that date. The release of the Draft Plan on September 29, 2017 fulfilled that requirement. Interested parties had 45 days to comment on the Draft Plan, and the IPA then had 21 days to revise the Plan to prepare it for filing with the Commission. The filing of the Plan with the Commission on December 4, 2017 fulfilled that requirement. Under

Section 16-111.5(b)(5)(ii)(C) of the PUA, the Commission now has 120 days to review this Plan and enter its Order confirming or modifying this Plan.

This Plan addresses how the IPA will undertake a variety of programs and procurements for Ameren, ComEd, and MidAmerican Energy Company ("MidAmerican") to meet their annual obligations to purchase Renewable Energy Credits ("RECs") to meet the goals of the Illinois RPS. It also describes how the IPA will develop and implement the Illinois Solar for All Program, which utilizes a combination of funds held by the IPA in the Renewable Energy Resources Fund ("RERF") and funds supplied by the utilities from ratepayer collections, to develop a program to support the development of photovoltaic ("PV") resources that will benefit low-income households and communities.

Prior to the development of this Plan, the planning for the procurement of renewable energy resources by the IPA was contained in the IPA's annual procurement plan. With the enactment of PA 99-0906, the IPA is tasked to develop this separate Plan for the procurement of RECs for the utilities, while the annual procurement plan now focuses on the procurement of electricity and other "standard wholesale products" for the utilities (in addition, the IPA has developed a separate Zero Emission Standard Procurement Plan for the procurement of zero emission credits pursuant to the new Section 1-75(d-5) of the IPA Act).

The Plan covers the IPA's proposals for procurements and programs to be conducted during calendar years 2018 and 2019. The IPA expects that as part of its procurement planning process conducted in calendar year 2019 for implementation starting in calendar year 2020, the IPA will update this Plan and propose procurements and programs (or refinements to existing programs) for subsequent years. These proposals are specifically designed to meet the Illinois RPS goals for the delivery years 2017-2018 through 2019-2020 as well as to begin to put into place contracts for REC deliveries for future delivery years that will help to meet those future years' RPS goals.

III. CHAPTER 2 LEGISLATIVE/REGULATORY REQUIREMENTS OF THE PLAN

A. Section 2.4

1. Staff

Staff notes a typographical error in this Section on page 26 of the Plan and recommends a correction. Staff Obj. at 3.

2. IPA

The IPA supports this correction. IPA Resp. at 9.

3. Commission Analysis and Conclusion

The Commission adopts this correction.

IV. CHAPTER 3 RPS GOALS, TARGETS, AND BUDGETS

A. Section 3.19 Alternative Compliance Payment Funds Held by the Utilities

1. ComEd

ComEd notes that the Plan explains that prior to PA 99-0906, the RPS compliance and planning requirements depended on how a customer's supply requirements were met, with three separate compliance mechanisms for 1) load served by default utility supply service, 2) hourly-pricing customers, and 3) load served by retail electric suppliers ("RESs"). *See* Plan at 9. For the utility hourly customers and RES customers, utilities and RESs met all or a portion of their compliance obligations through alternative compliance payments ("ACPs"), and these funds were then used to purchase additional renewable energy resources. *See* 20 ILCS 3855/1-75(c)(5); 220 ILCS 5/16-115D(d)(4). While utilities held their ACPs until required for payment of RECs, RESs deposited their ACPs in the IPA's RERF. *Id.*; ComEd Obj. at 3.

ComEd explains that pursuant to PA 99-0906, the IPA takes over the RPS procurement obligations for virtually all retail customers by the 2019 delivery year. Until that time, however, RESs will continue to have RPS obligations for a portion of their retail customers – 50% during the 2017 delivery year and 25% during the 2018 delivery year. 20 ILCS 3855/1-75(c)(1)(B). In lieu of remitting the ACPs to the RERF, "all [ACPs] by [RESs] shall be remitted to the applicable electric utility … The [] Agency shall use such payments to increase the amount of renewable energy resources otherwise to be procured under subsection (c) of Section 1-75 of the Illinois Power Agency Act." 220 ILCS 5/16-115D(d)(4.5); ComEd Obj. at 4.

Although PA 99-0906 now fully empowers the IPA to use ACP funding without delay, ComEd criticizes the Plan's proposal to hold ACP funding in reserve until some later, undetermined date in the event of a budget shortfall. Plan at 58. ComEd opines that this approach is not consistent with PA 99-0906's provisions or policy. First, Section 16-115D(d)(4.5) of the PUA requires that the IPA "use such payments to increase the amount of renewable energy resources otherwise to be procured" under the RPS. 220 ILCS 5/16-115(D)(d)(4.5); *see also* 20 ILCS 3855/1-75(c)(5) ("[T]he Agency shall increase its spending on the purchase of renewable energy resources to be procured by the electric utility for the next plan year by an amount equal to the amounts collected by the utility under the alternative compliance payment rate or rates in the prior year ending May 31."). Second, an approach that strands use of the ACPs until some unknown date in the future appears to undermine one of PA 99-0906's key RPS refinements – removing obstacles to maximize RPS funding and ensure it is deployed without delay. Third, no PA 99-0906 provision supports creating, tracking, and separately maintaining multiple RPS budgets. As the Plan notes, PA 99-0906 is meant to "streamline" RPS planning and procurement, and PA 99-0906 itself urges the IPA to "minimize administrative costs," which is critical to ensure that the maximum amount of funding is available for REC purchases. Plan at 9; *see, e.g.*, 20 ILCS 3855/1-56(b)(2); 20 ILCS 3855/1-75(c)(1)(M); ComEd Obj. at 4-5.

Although ComEd's proposal would infuse the RPS Budget with nearly $100 million in funding, the Responses of ELPC, IPA, Joint Solar Parties, NRDC, and WOW generally

opposed ComEd's recommendation, which ComEd suggests is unusual given the funding constraints identified by many of these same parties. ELPC Resp. at 7-9; IPA Resp. at 10-13; JSP Resp. at 17-18; NRDC Resp. at 4; WOW Resp. at 5-7. Thus, it is unclear to ComEd why these parties would decline readily available funding that is not earmarked by statute for another purpose. Indeed, only the Renewables Suppliers appear to grasp the potential opportunities that might lie with the ACP funding - that these funds could be used to help fund additional long-term forward procurements from new utility-scale wind and solar projects. RS Resp. at 5; ComEd Rep. at 5-6.

To the extent WOW and other parties are concerned that the addition of the ACP funds could ultimately create a surplus that would require funding collected under applicable riders to be returned to customers in the first reconciliation, ComEd is not aware of any obstacle that would prevent the Plan from prioritizing the use of funds from various sources to ensure that the maximum available funding through riders and ACPs is utilized. ComEd Rep. at 6.

ComEd thus recommends that the Available Gross RPS Budget be revised to reflect the available ACP funds, and that the Plan address how this funding can begin to be deployed in the short term.

2. ELPC

ELPC argues that ComEd's recommendation to force the IPA to commingle its ACP and general RPS funds in a single budget will complicate and potentially undermine the IPA's budgeting process, particularly over the first four years of the Plan, potentially leading to a lower overall budget available to meet the IPA's long-term goals. The legislature recognized that the utilities' collection and disbursement of RPS funds would not be a perfect match, especially in the first few years of the new RPS programs. In order to smooth out these collections and payments, the legislature authorized utilities to collect and retain RPS funds over the first four years of the Plan and to use those funds to "purchase renewable energy resources under an approved long-term renewable resources procurement plan … regardless of the delivery year in which the funds were collected." 220 ILCS 5/16-108(k). This ability to retain funds over a four-year period is sometimes referred to as the IPA's "rollover" budget. After the four-year period ending in May 2021, the IPA will conduct a "single review, reconciliation, and true-up associated with renewable energy resources' collections and costs" over that four-year period. *Id*. If ACP funds are used instead of general RPS funds, there is a chance that these RPS funds will be lost through the reconciliation process and will not be used for their intended purpose to procure renewable energy resources to meet the PUA's long-term statutory goals. ELPC Resp. at 8-9.

ELPC believes that it would be helpful for the IPA to provide more detail in its Plan about how, specifically, it intends to use the nearly $100 million of uncommitted ACP funds to maximize and expedite the development of new renewable energy resources in Illinois. ELPC recommends that the IPA consider using some of the ACP funds for additional forward procurements of RECs from new wind and solar facilities, allowing the IPA to increase the quantity of forward procurement begun in the early years of the Plan as an alternative to the IPA's current Spot Procurement proposal. ELPC Obj. at 12; ELPC Resp. at 9.

3. Renewables Suppliers

The Renewables Suppliers initially agreed with ComEd's position and proposed that ACP funds be used to help fund additional long-term forward procurements from new utility-scale wind and solar projects. RS Resp. at 5. In their Reply, however, the Renewables Suppliers state that they agree with the IPA that these funds should be held for use when needed, such as to overcome budget constraints, as proposed by the IPA. IPA Resp. at 10-13. The Renewables Suppliers continue to recommend, however, that the IPA consider using ACP monies to help fund additional long-term forward procurements from new utility-scale wind and solar projects, to the extent that such additional procurements may present RPS Budget constraints. RS Obj. at 10; RS Resp. at 5; RS Rep. at 4.

4. WOW

WOW disagrees with ComEd's argument that Section 16-115(D)(d)(4.5) read in concert with Section 1-75(c)(5) requires the IPA to use the ACP money collected after June 1, 2017 in the next planning year. ComEd is incorrect in its reliance upon Section 1-75(c)(5). That section addresses ACP funds collected from Delivery Year 2010, ends with funds collected on May 31, 2017, and has no bearing on the use of ACP funds remitted after May 31, 2017. *See* 20 ILCS 3855/1-75(c)(5); WOW Resp. at 5-6.

ComEd alleges that the IPA's proposed approach strands the ACP money remitted after May 31, 2017 until some unknown date in the future. WOW argues that the statute is silent on how the ACP funds remitted after May 31, 2017 are to be used other than stating they are to be used to procure additional renewable energy resources. *See* 220 ILCS 5/16-115D(d)(4.5). WOW opines that there is likely to be a shortfall in the RPS Budget and, therefore, it is not prudent to spend the ACP funds remitted after May 31, 2017 to procure additional renewable resources if there is a likelihood the RPS Budget will be exceeded and the RPS program brought to a premature closure. Thus, that money should be included in the RPS Budget as proposed by the IPA. WOW Resp. at 6.

WOW explains that the ACP funds were not collected through the charges administered in Section 16-108(k), thus the funds should not be subject to the refund mechanism defined in Section 16-108(k). ACPs are paid pursuant to Sections 16-115D(d)(4) and (4.5). No provision of 16-115D states that the ACP money deposited into the RERF or remitted to the utilities are to be refunded if not used. Thus, it is entirely reasonable for the ACP funds to be part of the RPS Budget and used in a prudent manner at a later date as proposed by the IPA. WOW Resp. at 6-7.

5. NRDC

NRDC opines that ComEd incorrectly argues that PA 99-0906 requires the IPA to use the ACP funds collected in 2017 to 2019 immediately. ComEd Obj. at 4-5. There is no language in the statute that requires the IPA to act hastily and potentially ineffectively by using this money immediately. NRDC notes that the IPA intends to use these funds to increase the amount of RECs at a later date in the event of a shortfall of the available RPS budget and/or potentially the Illinois Solar for All Program. Plan at 58. NRDC maintains that the IPA is within its authority to hold onto these funds to help manage the transition to the new RPS structure. NRDC Resp. at 4.

6. IPA

The IPA states that it is notable that the statutory authority cited by ComEd does not implicitly or explicitly require that the Plan prioritize the use of utility-held ACPs over the use of funds from the Renewable Resources Budget, or that those ACPs be used to meet any specific contractual obligations. Had the General Assembly sought to have ACPs spent more quickly or dedicated to a specific purpose, it surely would have included language to do so. The IPA argues that ComEd's cited language simply authorizes the use of ACPs for the procurement of renewable energy resources of any type at any time so long as such procurement results in an "increase" in the amount "otherwise to be procured," and it can be inferred that the General Assembly sought to afford the IPA the authority to propose the best and most effective use of those funds as part of its long-term renewable resources procurement plan. IPA Resp. at 10-11.

The IPA argues that separate legal requirements apply to funds collected under Section 16-115D and therefore separate treatment is a necessary consequence regardless of the alleged administrative burden, which the IPA does not believe to be significant. Instead, these funds may be held until actually spent for the procurement of renewable energy resources. This differential treatment results in a paradigm in which renewable resource budget funds collected through May 2021, but not spent during that period, may no longer be available for the procurement of RECs after that period; essentially, those funds carry a statutory expiration date. ACPs, alternatively, do not "expire," and would be available for use in 2021 and beyond. IPA Resp. at 11-12.

As a consequence of this differential statutory treatment, the IPA strongly believes that the best and most effective use of utility-held ACP funds is, at present, holding those funds in reserve. This approach prioritizes spending funds whose collection could, if not spent, ultimately expire within approximately three years after the commencement of programs, resulting in a refund with no incremental procurement of RECs. To the extent that Renewable Resource Budget constraints begin to emerge—an unlikely scenario, but one which could theoretically emerge through significantly oversubscribed programs or higher-than-anticipated prices resulting from competitive procurement events—the IPA could address the use of ACP funds to meet those challenges through its plan update process. 220 ILCS 5/16-111.5(b)(5)(ii)(B); IPA Resp. at 12.

The IPA explains that if ACPs are spent on RECs while funds collected pursuant to Section 16-108(k) are unspent in the first four delivery years and refunded, no increase in the amount of renewable energy resources to be procured will occur: the same amount of RECs will be procured in the first four delivery years as if the IPA held those ACP funds in reserve, while the reduction in ACP funds will reduce the RECs "otherwise to be procured" in future years. Only the IPA's approach ensures an increase in the amount of renewable energy resources procured attributable to the use of ACP funds, as it ensures that the impact of both ACPs and the Renewable Resources Budget are maximized. As ComEd's proposal could result in ACPs being spent while Renewable Resource Budget funds are refunded, it fails to ensure that ACP funds in fact "increase" the amount of RECs "otherwise to be procured" and must be rejected. IPA Resp. at 12-13.

The IPA disagrees with ELPC's recommendation that more detail should be provided in the Plan. The IPA opines that providing additional direction through this Plan

would be premature and notes that it will be revising the Plan in the Summer of 2019 after completion of the Initial Forward Procurements, additional Forward Procurements, and approximately one year of operation of its programs. At that time, the IPA can make an informed assessment of targets and budgets and understand the relative value of spending ACPs (and on what to spend them) versus continuing to hold those funds in reserve. The IPA suggests that EPLC's proposal to use these funds for an additional forward procurement runs counter to its logic that using these funds more quickly could result in Renewable Resource Budget funds being refunded while ACP funds are drawn down. IPA Rep. at 6.

7. Commission Analysis and Conclusion

The Commission notes that ComEd cites Section 1-75(c)(5), which states:

> *Beginning with the 2010 delivery year and ending June 1, 2017,* an electric utility subject to this subsection (c) shall apply the lesser of the maximum alternative compliance payment rate or the most recent estimated alternative compliance payment rate for its service territory for the corresponding compliance period, established pursuant to subsection (d) of Section 16-115D of the Public Utilities Act to its retail customers that take service pursuant to the electric utility's hourly pricing tariff or tariffs. The electric utility shall retain all amounts collected as a result of the application of the alternative compliance payment rate or rates to such customers, and, beginning in 2011, the utility shall include in the information provided under item (1) of subsection (d) of Section 16-111.5 of the Public Utilities Act the amounts collected under the alternative compliance payment rate or rates for the prior year ending May 31. Notwithstanding any limitation on the procurement of renewable energy resources imposed by item (2) of this subsection (c), *the Agency shall increase its spending on the purchase of renewable energy resources to be procured by the electric utility for the next plan year by an amount equal to the amounts collected by the utility under the alternative compliance payment rate or rates in the prior year ending May 31.*

20 ILCS 3855/1-75(c)(5) (emphasis added). The funds that the IPA intends to keep in reserve are controlled by this passage from the IPA Act as well as by Section 16-115(D)(d)(4.5) of the PUA, which states:

> *Beginning with the delivery year commencing June 1, 2017*, all alternative compliance payments by alternative retail electric suppliers shall be remitted to the applicable electric utility. To facilitate this remittance, each electric utility shall file a tariff with the Commission no later than 30 days following the effective date of this amendatory Act of the 99th General Assembly, which the Commission shall approve, after notice

> and hearing, no later than 45 days after its filing. *The Illinois Power Agency shall use such payments to increase the amount of renewable energy resources otherwise to be procured* under subsection (c) of Section 1-75 of the Illinois Power Agency Act.

220 ILCS 5/16-115(D)(d)(4.5) (emphasis added). Thus, the question here is how best to satisfy the requirement in this quoted language that the IPA use the ACPs to increase spending on the purchase of renewable energy resources or increase the amount of renewable energy resources procured. The Commission finds that there is no statutory requirement that these ACP funds be spent sooner rather than later.

The Commission agrees with the IPA that spending ACP funds on RECs in the first four delivery years, while funds collected pursuant to Section 16-108(k) are unspent and refunded, would be contrary to the statutory intent of increasing the amount of renewable energy resources procured. The Commission finds that ACP funds should not be used for Spot Procurements to meet the annual requirements.

The IPA argues that this same logic applies to the suggestion by ELPC and the Renewables Suppliers that the ACP funds should be used for an additional forward procurement. The Commission disagrees. There is no apparent statutory reason why the IPA's use of funding cannot be prioritized such that any funds collected pursuant to Section 16-108(k) should be used prior to ACP funds.

In addition, and as discussed further below regarding Spot Procurements in Section VI.A. of this Order, the Commission is not convinced that the ACP funds should not be used to fund additional forward procurements. With the emphasis on new wind and solar contained in the IPA Act, the Commission finds that the best use of these funds is to provide funding for new wind and new solar. The expiration of the federal production tax credit and the investment tax credit lend urgency to this decision.

The Commission finds ComEd's concern regarding separate tracking of these ACP funds to be unsupported. The statute applies separate legal requirements, so separate treatment is clearly necessary to comply. Moreover, the Commission finds persuasive the IPA's statement that it would not create an undue administrative burden.

V. CHAPTER 4 RENEWABLE ENERGY CREDIT ELIGIBILITY

A. Section 4.1 Adjacent State Requirement

1. CSG

In Section 4.1 of the Plan, the IPA addresses the new requirement in Section 1-75(c)(1)(I) of the IPA Act, which establishes that the IPA shall procure RECs from generation facilities in Illinois as well as from generation facilities in states adjacent to Illinois if the facilities can meet a set of public interest criteria. The public interest criteria set forth by statute include:

1. minimizing sulfur dioxide, nitrogen oxide, particulate matter and other pollution that adversely affects public health in Illinois;
2. increasing fuel and resource diversity in Illinois;
3. enhancing the reliability and resiliency of the electricity distribution system in Illinois;
4. meeting goals to limit carbon dioxide emissions under federal or Illinois law; and
5. contributing to a cleaner and healthier environment for the citizens of Illinois.

To address these criteria, the IPA proposes the use of a point system, under which the IPA would assign a maximum of 20 points to each of the five public interest criteria for a total of 100 possible points. For RECs from any particular generation facility in an adjacent state to be considered eligible for the Illinois market, the facility must receive a score of at least 60 points from the IPA. CSG Obj. at 2.

CSG does not oppose this methodology, but is concerned that the particular proposal in the Plan unintentionally and unnecessarily favors facilities in the PJM Interconnection, LLC ("PJM") market area. Specifically, with the current scoring threshold of 60 points and the data inputs for two of the five criteria, approximately 87% of the eligible adjacent state RECs are generated from facilities in the PJM footprint (explicitly, the northeastern region of Indiana). The explanation for the PJM centric result of the proposed point system is that in applying the second and third of the five statutory criteria, the IPA relies on a single geographic point within Illinois as a proxy for the distance of a generation facility in an adjacent state from any part of Illinois. The Plan identifies Morris, Illinois as this single point, reasoning that it is an acceptable proxy because it is the municipality closest to the population weighted geographic center of Illinois. While population density and energy demand often go hand in hand, the fact that Illinois hosts two regional transmission organizations ("RTOs") and one of those two RTOs (PJM) consists largely of the most densely populated area of Illinois skews the population weighted center of Illinois in a way that favors PJM. The downside of this result is that the vast majority of Illinois, which is within Midcontinent Independent System Operator, Inc. ("MISO"), does not benefit as much from the resiliency, reliability, and fuel diversity associated with REC generation facilities. The higher market price of the available eligible RECs from within PJM compared to MISO also creates economic inefficiencies, which is to the detriment of all regulated electric utility ratepayers in Illinois. CSG Obj. at 2-3.

By lowering the IPA's proposed qualifying threshold score, CSG believes that the resulting procurement of RECs from adjacent states will be more in line with the RTO load breakdown in Illinois, of which approximately 45% exists in the PJM footprint while 55% exists in the MISO footprint. CSG suggests that it is unknown why the IPA proposed 60 points as the threshold score as opposed to any other amount of points, but opines that at 60 points the MISO portion of Illinois experiences artificial limits on how much it can benefit from renewable generation. Setting the threshold score at 55 points will spread the benefits associated with renewable generation to downstate areas. Lowering the

eligibility score threshold will not result in a PJM/MISO REC availability that matches the load breakdown between the PJM and MISO footprints in Illinois, but it will bring the areas closer to parity. Importantly, the General Assembly was clear in its intent that all of Illinois share in the benefits of PA 99-0906 (*see*, for example, Sections 1-5(H) and 1-56(b)(2) of the IPA Act). CSG Obj. at 4.

CSG opines that reducing the threshold to 55 points is also more cost effective. At 60 points, the vast majority of eligible RECs will come from PJM, where the RECs cost four times more than eligible RECs from MISO. If more RECs from MISO become eligible using a 55-point score threshold, more RECs can be acquired at a lower cost, which is more cost-effective and consistent with the goal of PA 99-0906 to promote renewable development. CSG Obj. at 4-5.

Furthermore, CSG explains that because the PJM market does not specify the state in which the REC is sited, most buyers would not learn the characteristics of the REC they purchased (e.g., one that qualifies in Illinois under the Plan) until they take delivery. Standard delivery for the current reporting year 2017-2018 is July 15, 2018, which is too late to be bid into the Spot Procurement. From this, CSG observes that the RECs from PJM that would make up the majority of the intended supply do in fact exist, but standard market functionality will very likely prevent the vast majority from reaching the Illinois procurement. Lowering the scoring threshold to 55 points will make MISO RECs available that are still in the hands of generators, are much less expensive ($1.30/megawatt ("MW") hour ("MWh") in MISO vs $5.50/MWh in PJM), and will contribute to resiliency and reliability outside of the Chicago area. CSG Obj. at 5.

CSG notes the table Staff prepared reflecting maximum possible points for a hypothetical facility at each adjacent state's border with Illinois indicates that REC generation facilities in Kentucky would be entirely precluded from participating in the Illinois market. *Id*. at 5. CSG considers this table helpful and given the legislative intent that no adjacent state be precluded, CSG wishes to take this opportunity to recommend a slightly lower threshold than what it had in its own objections as a compromise between the thresholds suggested by CSG and Staff. Specifically, CSG proposes that the Commission consider lowering the eligibility threshold to 52 points (roughly half way between CSG's 55 points and Staff's 50 points) so that facilities in Kentucky have at least a minimal chance of participating in the Illinois market. Utilizing a 52-point threshold on this basis also has the benefit of having some rationale for its selection as the threshold, whereas the alternatives of 60, 55, and 50 points could arguably be considered arbitrary in their adoption. CSG Resp. at 2-3.

For the foregoing reasons, CSG urges the Commission to revise the point threshold for a more objective, practical, and equitable result by adopting CSG's 52-point compromise proposal. CSG Rep. at 5.

2. Renewables Suppliers

Renewables Suppliers assert that the Plan's proposed process for determining if an adjacent-state renewable facility is qualified to supply RECs for the Illinois RPS should be revised. Renewables Suppliers note that PA 99-0906 states that the Plan shall describe how each public interest factor shall be considered and weighted for adjacent-

state facilities. Thus, the statute gives the IPA full discretion to determine how the five public interest criteria should be applied. RS Obj. at 10.

The Renewables Suppliers' overriding concern relating to the geographic eligibility provisions in Section 1-75(c)(1)(I) is that they not be applied in a manner to exclude adjacent-state renewable generating facilities located outside of Illinois that, other than their geographic location, have comparable (or superior) characteristics and capabilities as in-state facilities. As prospective suppliers of RECs to meet this State's RPS goals, including through new utility-scale wind and PV projects, the Renewables Suppliers are interested in developing and operating cost-effective renewable generation projects that can be price-competitive in the energy and REC markets. In developing such projects, the Renewables Suppliers (and, they believe, other developers in the industry) seek to site their new projects based on factors that will benefit their competitiveness, cost-effectiveness, and ability to obtain financing, including average wind speeds, land availability and costs, construction costs, permitting requirements, and access to and cost of transmission service – regardless of political boundaries. Application of the geographic eligibility provisions in a manner that excludes RECs from out-of-state renewable generators having comparable (or better) characteristics, capabilities, and cost-effectiveness to in-state generators would be contrary to the best interests – using the statutory term, to the "welfare" – of Illinois electricity consumers and Illinois citizens in general. RS Obj. at 10-11.

Further, REC procurement events conducted pursuant to the Plan will be competitive procurements based on price, with the objective of procuring cost-effective RECs to meet the RPS requirements. Allowing a larger pool of existing and prospective renewable generating facilities to participate in the competitive procurement events (particularly if those generators are located in excellent wind or solar resource areas in adjacent states) will likely produce lower bid prices and, ultimately, lower RPS compliance costs for Illinois electricity consumers, and will enhance the public welfare. Indeed, limiting the pool of eligible REC suppliers, by excluding prospective suppliers located in good wind or solar resource areas in adjacent states, could result in higher bid prices for RECs, causing the statutory price caps of Section 1-75(c)(1)(E) of the IPA Act to be exceeded, and thereby resulting in the procurement of fewer RECs than called for by the statutory RPS. Such an outcome would be harmful to the "health" and "safety" of Illinois residents as well as to their welfare. RS Obj. at 11-12.

The IPA argues that "cost-effectiveness" is not the purpose of the adjacent-state criteria. IPA Resp.at 17. This assertion is surprisingly short-sighted, Renewables Suppliers argue. A "qualification" process for adjacent-state facilities that systematically excludes potential new renewable generators in the best wind and solar resource areas of adjacent states may mean that these facilities are never built, as they would be barred from bidding on and being chosen for long-term contracts to supply RECs to Illinois, which may be essential to financing their development and construction. This means that Illinois residents would never receive the benefits of these facilities that could supply clean, low-cost electricity. This outcome would not maximize the health, safety and welfare of the residents of Illinois. Renewables Rep. at 7-8.

Renewables Suppliers aver that the IPA Act does not compel equal weighting of the five factors. Rather, the IPA has authority and discretion to assign different weightings

to the five factors. The Renewables Suppliers believe that Criterion 1 (minimizing SO2, NOx, particulate matter and other pollutants that adversely affect public health in Illinois), Criterion 2 (increasing fuel and resource diversity in Illinois), and Criterion 4 (meeting goals to limit carbon dioxide ("CO2") emissions under federal or State law) should be weighted more heavily than Criterion 3 (enhancing the reliability and resiliency of the electric distribution system in Illinois) and Criterion 5 (contributing to a cleaner and healthier environment for the citizens of Illinois). Criteria 1, 2 and 4 are the critical criteria addressing the overall clean energy and clean environment objectives of PA 99-0906. Criterion 3 does not relate specifically to clean energy and a cleaner environment and, in fact, cannot be applied as written, as the Plan acknowledges (Plan at 66), an assessment the Renewables Suppliers agree with. Criterion 5 is a catch-all factor that is redundant of the more specific Criteria 1, 2 and 4. Also, for Criterion 2 and Criterion 3, the Renewables Suppliers maintain that an adjacent state facility must be connected to either PJM or MISO. RS Obj. at 12-13.

With respect to the relative weightings of the five criteria, the IPA essentially argues that by setting forth five criteria, the General Assembly intended that they be given equal weight. IPA Resp.at 16-17. However, the amended IPA Act states that the IPA Plan "shall describe in detail how each public interest factor shall be considered *and weighted* for facilities located in states adjacent to Illinois." 20 ILCS 3855/1-75(c)(1)(I) (emphasis added). If the General Assembly intended for all five criteria to be equally weighted, it would not have given this direction to the IPA. Therefore, both the IPA, and ultimately the Commission in its review of the IPA Plan, should establish a process for applying the criteria that considers their relative importance, rather than simply assuming that the five criteria should all receive the same weighting. RS Obj. at 12-13. RS Rep. at 5.

According to the Renewables Suppliers, with respect to the wind duration/ direction adjustment factors in the IPA's evaluation process for Criterion 1, given the manner in which the regional energy markets operate based on principles of economic dispatch (i.e., selecting lower-marginal cost units to operate to meet load), a renewable generation facility located anywhere in an adjacent state to Illinois, and that is connected to one of the regional transmission organization transmission grids serving Illinois (either PJM or MISO), will displace generation (and emissions) from a fossil-fueled generator. This is due to the low (or zero) marginal costs of wind and solar generation facilities, which enables them to bid into regional energy markets at lower prices than a fossil-fueled generator typically can. The emissions-reduction benefit to Illinois will actually be dependent on the location of the displaced fossil-fueled generation, which may be located in Illinois or in the adjacent state, not the location of the renewable generator. In either case, there will be benefits, in terms of emissions reduction, to the Illinois environment and citizens from the operation of the adjacent-state renewable generator. The Plan reports that the wind duration/direction factor is positive (non-zero) from every adjacent state. RS Obj. at 13-14.

The Renewables Suppliers believe that the fact that an adjacent-state generator will reduce emissions of sulfur dioxide, nitrogen oxide, particulate matter and other pollutants in Illinois – which will be the case regardless of which adjacent state the renewable facility is located in – should be sufficient for purposes of applying Criterion 1. Application of the IPA's wind duration/direction factor actually turns the Criterion 1

evaluation into a competition among adjacent-state renewable generators based on which states they are located in, rather than an evaluation of the emissions reduction benefits that each adjacent-state renewable generator provides to Illinois. RS Obj. at 14. Thus, for Criterion 1, using the Renewables Suppliers' proposed approach with the wind duration/direction factor eliminated, an adjacent-state facility's score will be based on the difference between its sulfur dioxide and nitrogen oxide emission rates and those of a new gas-fueled generator. For a wind or solar generator, or another type of renewable generator that has zero sulfur dioxide and nitrogen oxide emissions, the result of this calculation will be 1.0, and the facility will receive 25 points (using the Renewables Suppliers' proposed weighting). A renewable generator that emits some sulfur dioxide or nitrogen oxide will score fewer than 25 points. RS Obj. at 14.

Renewables Suppliers note that the IPA disagrees with their proposed elimination of the wind duration/direction adjustment factor. IPA Resp.at 17-18. But the IPA's wind duration/direction factor is based on the assumption that the generation from an adjacent-state renewable generator will displace generation from a new natural gas-fueled generator that would have been located at the same site as the renewable generator. The IPA states that this is the "best known, available proxy" (*Id*.), but it is in fact an unreasonable and unrealistic assumption, which the IPA has failed to justify. It is much more likely that a new renewable generator in an adjacent state will be displacing generation from an existing coal-fueled generator, and that the existing coal-fueled generator is located in Illinois. RS Obj. at 13-14. The use of the wind duration/direction adjustment factor fails to reflect this reality. RS Rep. at 6.

With respect Criterion 5 (contributing to a cleaner and healthier environment for the citizens of this State), the IPA disagrees with including a facility's score for Criteria 2 and 3 in calculating the score under Criterion 5 because, according to the IPA, "increasing fuel and resource diversity in this State" (Criterion 2) and "enhancing the reliability and resiliency of the electricity distribution system in this State" (Criterion 4) are not directly relevant to "contributing to a cleaner and healthier environment" for Illinois residents (Criterion 5). IPA Resp. at 18. Renewables Suppliers opine that the IPA's reasoning is flawed. With respect to Criterion 2, given that the desired increase in fuel and resource diversity will be to increase the portion of generation provided by renewable resources, the statutory objective of increasing fuel and resource diversity is directly related to creating "a cleaner and healthier environment for the citizens" of Illinois. With respect to Criterion 3, an electricity delivery system that is not reliable and resilient will experience more frequent and longer outages, which is inimical to promoting the health of the citizens of this State. Therefore, as proposed by the Renewables Suppliers, an adjacent-state facility's score for Criterion 5 should be based on the average of its scores for the other four criteria. RS Rep. at 6-7.

The Renewables Suppliers agree with CSG and Staff that under the Plan's proposed procedure for qualifying adjacent-state facilities to be eligible to supply RECs for Illinois RPS purposes, the total points required for the facility to qualify should be reduced from 60 points out of 100 (as proposed by the IPA Plan) to 55 points (CSG) or even 50 points (Staff). CSG Obj. at 2-5; Staff Obj. at 4-7. The Renewables Suppliers agree with CSG's assessment that setting the qualification threshold at 60 points will greatly limit the number of adjacent-state renewable generating facilities located in the

MISO footprint that are able to qualify. This exclusion would in turn prevent low-cost wind generators located in western Iowa and western Missouri from qualifying, which is an outcome that should be avoided. RS Resp. at 5-6.

The IPA asserts that the Renewables Suppliers' approach "would appear to result" in any non-rate based wind, solar or hydro facilities located in the MISO or PJM portions of an adjacent state qualifying for eligibility, which would render the public interest criteria "essentially meaningless." IPA Response at 16. In response, the Renewables Suppliers' state that their approach does not render the public interest criteria meaningless, because (1) adjacent-state renewable facilities not connected to PJM or MISO (e.g., located in the Southwest Power Pool Regional Transmission Organization, which includes substantial portions of Missouri) may not be able to qualify, and (2) other types of renewable generating facilities, which have non-zero emissions, may not be able to qualify. RS Rep. at 7.

3. Staff

Staff notes that while it may not be unreasonable to propose a single threshold that determines whether a facility is eligible to bid RECs at an Illinois procurement event, Staff asserts that the proposal to implement a cutoff of 60 points has several practical problems associated with it. First, there is no empirical basis for the IPA's proposed value of 60 points as the qualifying threshold. The IPA's rationale for a 60-point threshold is that 60 points is "a better than average score" and that it is "not too onerous to prohibit any adjacent state participation." Plan at 61. Staff appreciates the efforts by the IPA to develop a scoring methodology but, given the IPA's proposed distance factor, Staff believes requiring a 60-point threshold to participate in an Illinois procurement would preclude most of the renewable resources in adjacent states from participating. Based on a preliminary analysis performed by Staff, the maximum achievable scores from adjacent state facilities are well short of 100 points. The highest possible scores per state laid out in the following table assumes that the hypothetical facility is right on the state's border and that it receives the maximum points for being free of carbon-dioxide emissions and other pollutants:

State	Minimum Distance to State Border in miles	Maximum Possible Score
Michigan	88	65
Wisconsin	79	66
Kentucky	240	52
Indiana	47	74
Iowa	98	70
Missouri	175	68

Staff Obj. at 4-5.

Staff recommends that the Commission reduce the required threshold from 60 to 50 points because it seems reasonable to assume that facilities with scores of 50 or higher "will help promote the State's interest in the health, safety, and welfare of its residents

based on the public interest criteria" described in the law. 20 ILCS 3855/1-75(c)(1)(I). Therefore, Staff believes that such a score would still demonstrate benefits to the "health, safety and welfare of Illinois residents" but is also "not too onerous to prohibit any adjacent state participation." Plan at 61. Staff believes that such an approach balances the need for complying with the letter and spirit of the new law with the need for a robust pool of eligible RECs to meet the new and increasing Spot Procurement requirements in the next two years. While it is difficult to estimate the exact impact of wider procurement participation by adjacent state facilities, it is not unreasonable to assume that wider participation will have downward effects on average REC prices, thereby allowing for a greater purchase of RECs under the given budgets and giving the IPA a greater chance of meeting the increasing Spot Procurement requirements. Staff Obj. at 5-6.

Staff also appreciates the IPA's commitment "to review and analyze not only this scoring threshold, but also its proposed methodology for the consideration of adjacent state facilities, for its 2019 update of this Plan." Plan at 61, 62; Staff Obj. at 6.

Finally, Staff takes issue with the formula in Figure 4-1: Pollution Score Calculation. On page 64 the IPA states: "On the other hand, if the emissions are equal to or greater on a pounds/MWh basis than from a new natural gas-fired facility, then the calculation *would result in the facility receiving zero points for this criterion*." Plan at 64. However, the formula shown in that section allows the ratio of renewable resource emissions to gas resource emissions to be more than one. The result is that a renewable resource's score for that criterion could be negative (negative points). In order for the formula to match the text, the ratio of renewable resource emissions to gas resource emissions would need to be capped at one (so that one minus that ratio could not be negative). Staff Obj. at 7-8.

4. WOW

WOW submits that the methodology the IPA has proposed for evaluating the public benefit of renewable energy projects in adjacent states needs to be modified. WOW Resp. at 7. The point system that the IPA has proposed is too strict and excludes renewable energy resources in Kentucky and precludes most of the available land in the adjacent states from being used by a renewable resource – including those with the lowest pollution levels. A change is needed to the public interest criteria methodology and WOW agrees with and supports the changes proposed by the Renewable Suppliers to the public interest criteria. The changes proposed by the Renewable Suppliers will allow a greater number of new renewable resources in adjacent states to participate in the IPA's REC procurements. This is prudent and beneficial for Illinois because more the bidders in a procurement event is likely to produce the lowest possible price for Illinois ratepayers. The RPS Budget is capped at approximately $200 million per year. Structuring the Plan to procure the lowest possible priced products prudently conserves the RPS Budget so the greatest amount of investment can be made into long term products that foster development of new renewable resources. WOW Resp. at 8.

In the event the changes to the public interest criteria proposed by the Renewable Suppliers are not adopted, WOW finds the proposals of Staff and CSG to be reasonable changes to the public interest criteria test. Staff and CSG do not alter the public interest criteria methodologies, instead, they propose lowering the minimum point total a

renewable energy generating facility in an adjacent state needs to demonstrate to be eligible for the Illinois RPS. WOW Resp. at 9.

5. ELPC

ELPC notes that while the objections of Staff, CSG, and Renewables Suppliers vary in detail, the net effect of each one of the objections would be to expand the geographical radius used by the IPA to determine whether RECs from an adjacent state are eligible to participate in the Illinois RPS programs. ELPC Resp. at 9-10.

ELPC acknowledges that the legislature gave the IPA a difficult assignment when it directed the IPA to develop a formula for balancing and weighting the various statutory public interest factors that go into the REC eligibility formula. It will likely always be possible to quibble with certain aspects of this formula. However, the Commission's job is to determine whether the IPA's plan "reasonably and prudently accomplish the requirements of [the Act]," not to decide whether the plan is perfect or whether it follows the preferred approach of the Staff or any other party. 220 ILCS 5/16-111.5(b)(5)(ii)(D). ELPC does not believe that the objections have identified any legal deficiency in the Plan's balancing of public interest factors, nor have they proposed alternatives that are objectively more reasonable than the IPA's approach. The statute delegates to the IPA the difficult task of quantifying and balancing the statutory public interest factors. The Commission should provide the IPA with appropriate discretion and flexibility to devise a solution that reasonably implements the intent of the law. ELPC Resp. at 10-11.

6. NRDC

NRDC notes that the IPA Act gives the IPA guidelines, and the IPA has selected a methodology which is reasonable and prudent to meet the requirements. Thus, NRDC opines that the IPA's methodology should be approved. NRDC Rep. at 4.

7. IPA

The Renewables Suppliers object to the methodology used to determine eligibility of RECs from adjacent state facilities and propose two changes. The IPA notes, however, obscured in the specific proposals of the Renewables Suppliers is that, in totality, this scoring approach would appear to result in any non-rate based wind, solar, or hydro facilities located in the PJM or MISO portions of the adjacent states qualifying for eligibility to sell RECs into Illinois' RPS procurements. This very generous application of the adjacent state public interest criteria renders those criteria effectively meaningless, as adjacent state facilities would simply be allowed de facto by virtue of featuring certain generating technologies. The IPA's proposed approach recognizes that, and gives consideration to the meaning of each of those public interest criteria in a way that the Renewables Suppliers' proposal does not. IPA Resp. at 16.

Renewables Suppliers assert the IPA's approach of assigning equal weighting to each of the public interest criteria is arbitrary and does not reflect the relative importance of the five criteria, which PA 99-0906 gives the IPA authority and discretion to do. RS Obj. at 12. While the Renewables Suppliers assert that criteria 1, 2, and 4 are more important than Criterion 3, the concepts of "reliability and resiliency" are critical concepts that the General Assembly explicitly chose to include as public interest criteria. Without express direction in the law to do so, lowering the weighting of Criterion 3 would

undermine the General Assembly's express intent. Indeed, the IPA's decision to provide equal weighting to criteria used to evaluate out-of-state generating facilities mirrors a similar determination affirmed by the Commission for weighing public interest criteria equally in the Zero Emission Standard Procurement Plan. IPA Resp. at 16-17.

The Renewables Suppliers also make several arguments related to the geographic location of adjacent state renewable resource facilities and alleged cost effectiveness. RS Obj. at 10-11. But "cost-effectiveness" is not the purpose of the adjacent state public interest criteria contained in Section 1-75(c)(1)(I). Had ensuring that generating facilities featuring the lowest cost structure be allowed to participate in the Illinois RPS, the General Assembly would have chosen public interest criteria which expressly accommodated that concern—and it certainly would not have enacted a prohibition against facilities featuring costs recovered through state-regulated rates as contained in Section 1-75(c)(1)(J), as those facilities will almost certainly produce the most "cost-effective" RECs. Ultimately, the relative cost-effectiveness of facilities will be determined through the IPA's competitive procurement processes featuring bids are selected on the basis of price—but only those facilities which provide sufficient other public interest benefits to Illinois residents may first qualify. IPA Resp. at 17.

The Renewables Suppliers next argue against the use of the wind duration/direction adjustment factor used by the IPA in Criterion 1 because, they assert, the emissions reductions will depend more on the location of the displaced fossil fuel generation than the location of the renewables facility. RS Obj. at 13. Certainly, knowing the location of replacement generation is difficult, if not impossible, to fully model and predict—but actual facility location may provide the best known, available proxy. The pollutants under consideration (sulfur dioxide, nitrogen oxide, and particulate matter) spread from the stacks of power plants, and their dispersal is impacted by the wind. It is logical that emissions from a plant located in Michigan would have less impact on Illinois than a plant located in Missouri because of the frequency of the prevailing west-to-east wind patterns. Capturing this concept is what the IPA's proposed approach methodology seeks to achieve. The Renewables Suppliers' proposed modification fails to account for that and would leave the Criterion in a place that does not account for the physical reality of how pollution actually spreads. IPA Resp. at 17-18.

The Renewable Suppliers also propose averaging the first four criteria to determine the score for Criterion 5 rather than just averaging the scores for criteria 1 and 4. Criterion 5 is "contributing to a cleaner and healthier environment for the citizens of this State." The IPA does not believe that "increasing fuel and resource diversity in this State" and "enhancing the reliability and resiliency of the electricity distribution system in this State" are directly relevant to that criteria; thus, the IPA does not support adding those scores to this calculation. IPA Resp. at 18.

Lastly, the Renewables Suppliers also propose to add to Criterion 2 the same provision contained in Criterion 3 that the facility must be located in PJM or MISO to score any points. The IPA does not disagree with this suggestion. IPA Resp. at 18.

CSG and Staff both propose changing the threshold score for eligibility from a minimum of 60 points to 55 (CSG) or 50 (Staff). CSG bases its argument largely on how the threshold would impact the availability of RECs, noting how the Plan's approach would

allegedly disfavor facilities located in the MISO portions of adjacent states, and that lowering the value from 60 to 55 would add 201 MW of MISO wind capacity to the 3,150 MW of PJM wind capacity under a 60 point threshold. CSG Obj. at 2-5. The IPA asserts that seeking parity between PJM and MISO facilities is not an express statutory consideration relevant to whether a facility indeed offers sufficient public interest benefits to Illinois residents. The General Assembly could have created criteria focused on a facility's location within an RTO, just as it did for RES compliance, but did not do so. As, consistent with the governing law, the Plan's scoring of the public interest criteria is based upon realizing positive impacts on Illinois citizens, and not the interests of sellers of RECs, CSG's arguments should be rejected. IPA Resp. at 18-19.

Thus, that the IPA's proposed scoring may exclude facilities from an adjacent state whose nearest point is still hundreds of miles from most of Illinois' population (i.e., Kentucky)—or treats a neighboring state's facilities located near its border with Illinois differently than those hundreds of miles from that border—is not problematic. Instead, those examples validate the merits of the IPA's proposal, as they prove that thoughtful differentiation is being made among neighboring state facilities according to the likelihood that those facilities "demonstrate" the promotion of actual "health, safety, and welfare" benefits to Illinois residents. Facilities located closer to the center of Illinois' population are more likely to be serving Illinois load or offsetting fossil fuel emissions adversely impacting the health of its residents. That a renewable generating facility in Gary, Indiana or Kenosha, Wisconsin may be deemed to promote those benefits, but one in Louisville, Kentucky would not, is not a problem requiring adjustment to the Plan's approach; a problem would exist if no differentiation is being made in accordance with the public interest criteria enumerated above. IPA Rep. at 8.

Staff proposes lowering the threshold score to 50 based upon an observation that "requiring a 60-point threshold to participate in an Illinois procurement would preclude most of the renewable resources in adjacent states from participating." Staff Obj. at 5. The IPA maintains that the law requires that an adjacent state facility demonstrate its ability to promote benefits to Illinois residents; it does not presume that it already does so and ask that the IPA exclude only those facilities on the margins. IPA Resp. at 19-20.

Finally, Staff points out that the formula contained in Figure 4-1 of the Plan could allow for the ratio of a renewable resource facility's emissions to the emissions from a natural gas-fired facility to be greater than one, which would result in a negative score for Criterion 1. Staff Obj. at 7-8. The IPA agrees with Staff that the formula should be corrected to have the minimum value be zero. IPA Resp. at 20.

The IPA notes CSG's proposal, to average CSG's proposal with Staff's proposal, and then rounding that average down to 52 points and argues that CSG provides no explanation for why the IPA's proposal was not included in its averaging, why rounding the average of 55+50 down to 52 was appropriate, or how averaging numbers together makes the resulting number any less arbitrary. Instead, CSG simply offers this should be done "so that facilities in Kentucky have at least a minimal chance of participating in the Illinois market." CSG Resp. at 3; IPA Rep. at 9-10.

Again, the law does not ask the IPA to provide for parity among all adjacent states, or parity across all locations within those states. It asks the IPA to develop criteria

ensuring that qualifying facilities demonstrate the promotion of specified benefits to Illinois residents. Done correctly, the exclusion of facilities is a necessary consequence of that effort. The consequence that facilities located in Kentucky—a state with its nearest point being hundreds of miles from the majority of Illinois residents, operating in an RTO which serves significantly less of Illinois load—are generally scored as not demonstrating sufficient benefits to Illinois residents is not a problem to be solved; it is a data point validating that a thoughtful attempt to satisfy Section 1-75(c)(1)(I)'s requirements is being made. IPA Rep. at 10.

8. Commission Analysis and Conclusion

Section 1-75(c)(1)(I) of the IPA Act establishes that the IPA shall procure RECs from generation facilities in Illinois as well as from generation facilities in states adjacent to Illinois if the facilities in adjacent states can meet a set of public interest criteria. The public interest criteria set forth by the statute include:

1. minimizing sulfur dioxide, nitrogen oxide, particulate matter and other pollution that adversely affects public health in Illinois;
2. increasing fuel and resource diversity in Illinois;
3. enhancing the reliability and resiliency of the electricity distribution system in Illinois;
4. meeting goals to limit carbon dioxide emissions under federal or Illinois law; and
5. contributing to a cleaner and healthier environment for the citizens of Illinois.

The Commission understands that the proposal put forth by the Renewables Suppliers would effectively allow all non-rate regulated wind, solar, or hydro facilities located in the PJM or MISO portions of adjacent states to qualify for eligibility to sell RECs into Illinois' RPS procurements. The Commission finds this to be counter to the requirement in PA 99-0906 that the IPA consider the five public interest criteria. It is not adopted.

To address the statutory criteria, the IPA proposes the use of a point system, under which the IPA would assign a maximum of 20 points to each of the five public interest criteria for a total of 100 possible points. For RECs from any particular generation facility in an adjacent state to be considered eligible for the Illinois market, the Plan states that the facility must receive a score of at least 60 points from the IPA. The Commission agrees that the IPA's general methodology is a reasonable implementation of PA 99-0906.

One aspect of the Renewables Suppliers' proposal, which the IPA has accepted, is important. The Commission adopts the Renewables Suppliers' proposal that an adjacent-state facility that is not connected to either PJM or MISO should score no points under Criteria 2 or 3. The Commission agrees that this is appropriate and finds that if a facility is not connected to PJM or MISO, it should not be allowed to participate in Illinois' RPS procurement. In its BOE, CSG recommends that this finding be clarified to allow

adjacent state generation facilities, within a transmission control area that have a transmission usage agreement with PJM or MISO, to also be allowed to earn points under Criteria 2 or 3. The Commission finds this to be reasonable and notes that no party objected to this suggestion. It is adopted. CSG BOE at 5-6.

Based on Staff's review of the 60 point threshold, no facility in Kentucky would qualify to participate in Illinois' RPS procurement. The Commission, although not entirely satisfied with this outcome, agrees with the IPA that application of the criteria should be "capable of excluding some adjacent state renewable generating facilities while not creating an outright bar against any adjacent state participation." IPA Resp. at 15. In its revised BOE, Staff has recalculated the maximum possible score for facilities in Kentucky to be 55.6. In other words, Kentucky is not excluded with a 55 point threshold.

Turning to the individual criteria, Criterion 5 (contributing to a cleaner and healthier environment for the citizens of Illinois), is harder to quantify and the IPA merely considers it a combination of Criterion 1 (minimizing sulfur dioxide, nitrogen oxide, particulate matter and other pollution that adversely affects public health in Illinois) and Criterion 4 (meeting goals to limit carbon dioxide emissions under federal or Illinois law). The Commission, however, sees the procurement of RECs in general to contribute to a cleaner and healthier environment for the citizens of Illinois. Although the Commission will not alter the IPA's proposal for how to calculate a facility's score, the Commission does find that a more meaningful interpretation of Criterion 5 results in a lower point threshold. A lower threshold will allow the IPA to purchase more RECs, which leads to a cleaner and healthier environment for the citizens of Illinois. Because any choice of a threshold is subjective, the Commission will average the three proposals, for a threshold of 55.

In its BOE, CSG suggests that, for purposes of measuring the distance to an adjacent state facility, the closest official municipal boundary of the City of Morris should be utilized for the measurement. CSG BOE at 4. The Commission agrees with the IPA, however, that for ease of implementation the center point of the City of Morris should be used for these calculations. IPA RBOE at 9.

The Commission notes that Staff points out that the formula contained in Figure 4-1 of the Plan could allow for the ratio of a renewable resource facility's emissions to the emissions from a natural gas-fired facility to be greater than one, which would result in a negative score for Criterion 1. Staff Obj. at 7-8. The IPA agrees with Staff that the formula should be corrected to have the minimum value be zero. IPA Resp. at 20. The Commission adopts this correction.

In its BOE, the IPA requests that the parenthetical phrase "(and any RECs it generates after the determination is made)" be stricken from the Plan. IPA BOE at 20. The Commission agrees with the IPA that striking this phrase is appropriate.

VI. CHAPTER 5 COMPETITIVE PROCUREMENT SCHEDULE

A. Section 5.7 Procurements for RECs from New Projects vs. RECs to Meet Annual Goals

1. ELPC

ELPC explains that Section 5 of the Plan describes two different types of competitive procurements that the IPA has proposed to meet RPS goals. A Forward Procurement is a long-term (15-year) procurement of RECs from specific, identified facilities that deliver RECs every single year pursuant to a long-term contract. The IPA plans to conduct seven Forward Procurements over the next two delivery years. Plan at 79, Table 5-1. ELPC states that these Forward Procurements will result in the construction of many hundreds of megawatts of new renewable energy projects in Illinois, consistent with the intent of the statute to "encourage private investment in renewable energy resources, stimulate economic growth, enhance the continued diversification of Illinois' energy resource mix, and protect the Illinois environment." PA 99-0906, § 1(a)(1) ("Findings"); ELPC Obj. at 7-8.

In addition to the seven Forward Procurements, which ELPC strongly supports, the IPA also proposes to conduct three Spot Procurements for approximately 37 million RECs over the next two delivery years to close the REC Gap. Plan at 89. The REC Gas is the difference between the number of RECs required to meet the annual percentage goals and the number of RECs already committed for delivery under existing contracts. A Spot Procurement is a short-term (one-year) procurement of RECs from existing renewable energy facilities that do not need to be identified at the time of bidding. ELPC opines that Spot Procurements are inconsistent with the long-term planning objectives of the new RPS because they do not help Illinois meet long-term RPS goals and they do not promote the environmental and public health intent of the law. ELPC Obj. at 8.

The Plan proposes to conduct Spot Procurements to meet the annual targets for the 2017-2018, 2018-2019, and 2019-2020 delivery years. Plan at 89. According to ELPC, these Spot Procurements will likely cost many millions of dollars. ELPC suggests that it is widely understood that one-year REC contracts are not sufficient for new project financing. Thus, as the IPA acknowledges, the three proposed Spot Procurements are unlikely to result in the construction of any new renewable energy facilities in Illinois or anywhere else. Pet. at 24. Instead, the IPA speculates that its planned Spot Procurements will absorb unretired surplus RECs from existing facilities around the region, such as wind farms in Iowa and hydroelectric facilities in Wisconsin. Plan at 90. In addition, ELPC states that RECs procured in Spot Procurements expire immediately, rendering them valueless for long-term RPS compliance. Thus, the IPA will be faced with the exact same REC Gap in 2020-2021—more than 18,000,000 RECs—despite spending millions of dollars on Spot Procurements over the next two years. Not only will the Spot Procurements fail to promote the substantive legislative goals of the RPS related to new project development and public health, but they also fail to help the state meet its numerical long-term percentage RPS targets. ELPC Obj. at 8-9.

ELPC explains that Illinois' reliance on Spot Procurements in the past has contributed to the significant REC Gap that exists today. Section 5.2 of the Plan lists

seven prior Spot Procurements for more than 10 million short-term (one-year) RECs. These historical Spot Procurements have not brought the state any closer to meeting long-term RPS goals; Illinois would be in the exact same position today with respect to long-term RPS compliance if the historical Spot Procurements had never occurred. According to ELPC, the only difference would be that Illinois ratepayers would have millions of dollars left in their collective pockets to spend on more important priorities—like developing new renewable energy facilities that could help achieve the public health and environmental benefits that the legislature intended. This highlights one of the most fundamental flaws with Spot Procurements—they result in "paper compliance" that actually leaves the state further behind in meeting its long-term renewable energy goals. Rather than filling a REC gap, Spot Procurements actually dig a deeper hole. ELPC Obj. at 9-10.

It is ELPC's understanding that the IPA proposed Spot Procurements because the IPA believes that it is legally "obligated" to try to meet the short-term annual targets in Section 1-75(c)(1)(B) of the RPS, even if that effort comes at the expense of the statute's longer-term goals. Plan 89-90. In response to commenters, the IPA stated that it cannot ignore the annual targets in Section 1-75(c)(1)(B) and that eliminating the Spot Procurements "would effectively write Section 1-75(c)(1)(B)'s targets out of the law." Pet. at 24; ELPC Obj. at 10.

ELPC respectfully disagrees that the law "obligates" the IPA to meet short-term goals at all costs or that the law elevates short-term goals over long-term goals. The new RPS requires meaningful progress towards real renewable energy development that will protect public health and the environment. ELPC opines that the Commission should clarify that the IPA need not abandon this principle in pursuit of short-term Spot RECs that fail to advance any of the legislative goals of the law. Indeed, the law requires the IPA to design its plan in a manner that will maximize the State's interest in eliminating pollution, protecting public health, and diversifying energy resources through the development of new renewable energy projects. *See* 20 ILCS 3855/1-75(c)(1)(I); ELPC Obj. at 10.

ELPC suggests that if the IPA chose to allocate resources towards additional forward procurements for new wind and solar projects, those long-term projects, once procured, would continue to deliver RECs for 15 years, thereby reducing the REC Gap not only in 2020-2021, but for more than a decade thereafter. Moreover, these forward procurements would result in new project development that would promote the legislative intent of the law to enhance public health and well-being of Illinois residents. It is also likely that these RECs would be quite cost-effective. The IPA's August 2017 forward procurement for utility-scale wind and solar projects yielded more than 1,000,000 annual RECs for a blended price of $4.26/REC. While Spot Procurements have historically yielded RECs at about $1/REC, it is not clear whether prices will remain low in the future in light of the narrowed pool of eligible RECs due to the narrowing of the REC eligibility criteria in PA 99-0906. Plan at 90; ELPC Obj. at 11-12.

To the extent that the IPA is concerned about "budgeting flexibility" (Pet. at 25), there are many creative options available that could mitigate any future budget risk associated with long-term commitments. For example, the IPA could consider front-loading contractual payments for a long-term stream of RECs similar to the payments

made to adjustable block program participants. Or, the IPA could consider allocating some of the uncommitted balance of nearly $100 million of Hourly ACP and RES ACP funds towards additional forward procurements to mitigate any possible budget constraints. Plan at 58. The Plan does not evaluate these options, perhaps because the IPA concluded that it was "obligated" to focus on meeting the IPA Act's short-term percentage goals rather than maximizing the impact of the RPS by procuring new resources that could help meet longer-term goals. Plan at 89; ELPC Obj. at 12.

The IPA dismisses the Renewable Suppliers' proposal to double the forward procurements proposed in the Plan because it would not "fully meet the RPS goals." IPA Obj. at 23. That may be true, but at least the Renewable Suppliers proposal will begin to close the gap. Doubling the forward procurements would add two million RECs annually to the State's portfolio of long-term contracts for each of the next 15 years. This would close the REC Gap in 2021 from 18 million RECs to 16 million RECs and would set the State on the path to closing this gap further through future long-term procurements.

ELPC notes that the IPA dismisses the concerns expressed by several parties about the risks of higher RPS costs due to the reduced pool of eligible RECs for future Spot Procurements. IPA Resp. at 37. In light of the fact that parties cannot predict where the IPA will set price benchmarks, it is reasonable for them to be concerned that the reduced supply of eligible RECs could lead to increased prices. ELPC believes that price benchmarks for Spot RECs should be set no higher than the overall national market price for one-year RECs, but there is no guarantee that is where the IPA's Procurement Administrator, in consultation with the Commission Staff, IPA Staff, and the procurement monitor, will set these confidential benchmarks pursuant to Section 1-75(c)(1)(D) of the Act. Bidders will know that the pool of eligible Spot RECs is limited and will likely adjust their bid prices higher as a result. The historical results of Illinois Spot Procurements show that Spot REC prices have varied widely over the years. Prices that approach historical Spot REC prices from the early years of RPS compliance ($4-5/REC in 2010, $16-19/REC in 2009), when bidders are believed to have adjusted prices to achieve higher results, threaten to blow the IPA's budget and create risks for compliance with the IPA's long-term goals if not limited by the IPA's confidential price benchmarks. ELPC Rep. at 8-9.

Given the above, ELPC respectfully requests that the Commission conclude that the inclusion of Spot Procurements in the IPA's long-term plan will not "reasonably and prudently accomplish the requirements" of Section 1-75(c) of the IPA Act. 220 ILCS 5/16-111.5(b)(5)(ii)(D). ELPC recommends that the Commission modify the Plan to strike the proposed Spot Procurements in Section 5.9 of the Plan and clarify that the IPA has the discretion under the statute to craft a long-term plan that best positions the State to achieve its long-term goals. ELPC Rep. at 9-10.

2. Renewables Suppliers

The Renewables Suppliers believe that the principal objective of the RPS sections of PA 99-0906 is to incentivize and promote the development and construction of new utility-scale wind and PV generation projects in Illinois and adjacent states. Indeed, this is one of the reasons that PA 99-0906 was titled the "Future Energy Jobs Act." Amended Section 1-75(c) of the IPA Act mandates specific minimum requirements for the

procurement of RECs from new wind and PV projects. *See* 20 ILCS 3855/1-75(c)(1)(C). These are minimum targets (i.e., the statute specifies "at least"). Further, the amended IPA Act assigns a higher priority to meeting the requirements for procurement of RECs from new utility-scale wind and PV plants than to meeting the overall RPS percentage targets. 20 ILCS 3855/1-75(c)(1)(F); RS Obj. at 5-6.

Thus, the Renewables Suppliers assert that the General Assembly, in enacting the PA 99-0906, recognized the factual reality that in the renewable energy industry, new utility-scale projects are usually developed only on the basis of having long-term contracts in place for a sufficient portion of the proposed facility's output (RECs, energy, or both) to support financing the project. Without the opportunity for long-term contracts, developers of utility-scale renewable energy facilities will not have the incentive (or, more importantly, the financing capability) to dedicate additional capital and management resources to enable Illinois to meet this objective of PA 99-0906. RS Obj. at 6.

The Renewables Suppliers state that they are not opposed to spot REC procurements. However, the Spot Procurements in the Plan are quite large for individual procurements and are massive in the aggregate, particularly considering that they are scheduled to be conducted within an 18-month period. RS Obj. at 6. Compounding the issues presented by the large volume of these Spot Procurements is the reduced size of the potential pool of REC suppliers for the procurements. The reduced supplier pool for the REC Spot Procurements presents significant risks of (i) higher REC prices, and (ii) inability to successfully execute the Spot Procurements to obtain the targeted amounts of RECs. Thus, the massive Spot Procurements that the IPA proposes to conduct in a period of no more than 18 months in 2018-2019, coupled with the restricted pool of eligible potential REC suppliers, exposes utility ratepayers to significant risks of higher RPS costs and inability to meet the RPS percentage targets. RS Obj. at 6-7.

Accordingly, the Renewables Suppliers believe that the Plan should specify even greater use of utility-scale wind and solar forward procurements than the IPA has proposed. Specifically, the Plan should be revised to include an additional long-term utility-scale wind forward procurement for 1 million RECs per year and an additional long-term utility-scale PV forward procurement for 1 million RECs per year in 2018 or 2019. Alternatively, the targeted annual REC minimums for the long-term utility-scale PV forward procurement in Spring 2019 (Plan at Section 5.8.1) and either the long-term utility-scale wind "first subsequent forward" procurement in Summer 2018 (*Id*. at Section 5.7.1) or the "second subsequent forward" (*Id*. at Section 5.8.2) should each be increased to at least 2 million RECs per year. These additional long-term wind and solar procurements will result in the Plan providing sufficient procurements of RECs from new utility-scale wind and solar projects, under long-term contracts, to meet the minimum requirements for the 2030-2031 delivery year of 4 million RECs per year from new wind projects and 4 million RECs per year from new solar projects. RS Obj. at 8.

These additional long-term procurements will provide the basis for the financing and construction of additional new utility-scale wind and PV generation projects that would be initiated in the 2018-2019 period, with the attendant employment and economic activity benefits. The proposed additional long-term procurements should be for RECs from new projects, which presumably will not be operational and delivering RECs until 2021-22 or 2022-23 delivery year at the earliest. Further, contracting for RECs from these

additional new projects in the 2018-2019 time period will provide a hedge against new wind and PV projects, and consequently the RECs they produce, being more expensive in subsequent years due to the scheduled phase-out and elimination of the federal production tax credit and investment tax credit for new projects. RS Obj. at 8-9.

The Renewables Suppliers acknowledge that RPS funding collected from ratepayers in 2017-18 through 2019-2020 and not spent in the year of collection must be spent no later than the 2020-21 planning year and cannot be rolled over or banked beyond that. 220 ILCS 5/16-108(k). However, a new utility-scale wind or solar facility awarded a long-term contract in the first subsequent procurement in 2018 (which the Renewables Suppliers have suggested could be increased in volume) could begin delivering RECs during the 2020-21 delivery year, and the purchase of those RECs could be funded by RPS funds collected in the preceding three years and banked until 2020-21. RS Rep. at 3.

If the IPA believes that these proposed additional long-term procurements will present budget constraint problems beginning in 2020-21 or 2021-22 delivery year, then the Plan should be further modified as follows. First, the volume of spot REC procurements proposed for 2018 and 2019 should be reduced (either by eliminating one or more of the Spot Procurements, or reducing their volume), and the RPS funds collected by the utilities that would have been used for Spot Procurements in 2018-2019 should be held to fund REC purchases under the additional long-term contracts beginning in 2021-22 or 2022-23 delivery year when the new renewable facilities begin to operate and deliver RECs. This roll-over of funds is permitted by Section 16-108(k) of the PUA (220 ILCS 5/16-108(k)) as amended by PA 99-0906. RS Obj. at 9. Second, the IPA should consider eliminating or reducing the size of the "Other Renewables" long-term forward procurement proposed for Fall 2019 (Plan at Section 5.8.3), thereby freeing up funds for the additional long-term utility-scale wind and solar procurements. Third, the IPA should consider using some or all of the approximately $95.6 million in ACPs being held by AIC and ComEd, plus additional ACPs to be received by the utilities from RESS over the two-year phase-out period for the RESs' RPS obligations, to fund the proposed additional long-term procurements of RECs from new utility-scale wind and solar facilities. RS Obj. at 10.

3. Staff

Staff identified a typographical error in Section 5.7 of the Plan on page 78 and recommends a correction.

4. NRDC

NRDC objects to the Plan's Spot Procurements and asks that the Commission clarify that the IPA is not obligated to hold Spot Procurements to meet the annual goals and require the IPA to modify the Plan to enable the State to meet its long-term goals.

NRDC argues that not only is eliminating Spot Procurements consistent with legislative intent, but investing now in new wind and solar is also smart, because it allows the state to take advantage of the federal tax credits, the Production Tax Credit and Investment Tax Credit. These credits expire for wind after 2019. For utility scale solar, the Investment Tax Credit will be scaled back over the next few years ultimately remaining

at 10% by 2022. These federal tax credits make renewable development cheaper and thus more likely. IPA talks about hedging risks by investing in Spot Procurements with short contract periods (Pet. at 25); however, Spot Procurement prices can vary and may increase. For example, the expiration of the federal tax credits will likely create a rush to build now and then a precipitous drop-off of new build following the expiration. And, other uncertainties in the market, such as potential import tariff on solar panels, may increase the cost of renewables and potentially create bottlenecks in the supply chain for renewable projects. *See* Plan at 109. NRDC avers that the Plan should take full advantage of the federal tax credits and stability the renewable market has now. Moreover, more renewable development in Illinois will lead to economic investment in the State, more jobs, and less pollution. NRDC Obj. at 4-5.

NRDC argues that the IPA Act places a new emphasis on the long-term renewable energy goal and new renewable build that the proposed Spot Procurements hinder. Without further investment in new development, new long-term plans will struggle to meet required goals. Moreover, Illinois should capitalize on federal credits that will enable more development in Illinois and surrounding states. For these reasons, NRDC respectfully requests the Commission clarify that IPA is not obligated to hold Spot Procurements to meet the annual goals and that the IPA should modify the Plan to enable the State to meet its long-term goals. NRDC Obj. at 5.

5. EDF

EDF opines that the IPA's interpretation of the statute as requiring Spot Procurements to meet annual percentage goals is incorrect and ignores the superseding requirement that prioritizes long-term compliance and new wind and solar procurement over meeting annual targets. *See* 20 ILCS 3855/1-75(c)(1)(B). The planned Spot Procurements will prevent the IPA from meeting its ultimate goal of procuring at least 25% of energy load from renewable sources by the 2025 delivery year and continuing at no less than 25% for each year thereafter. *Id.*; EDF Obj. at 4-5

According to EDF, by devoting any portion of the limited budget to RECs obtained via Spot Procurement (likely old RECs from adjacent states that were, for unknown reasons, not yet retired (*see* Plan at 90) in the earliest years, the IPA unnecessarily uses budget that would otherwise be rolled over to a year when new, long-term, in-state RECs are available, particularly those that will be paid in up-front blocks through the Adjustable Block Program in years of highest deployment under the IPA Act's goals schedule. Those long-term contracts and Adjustable Block Program investments will be necessary to meet the statute's continuing obligations for 2025 and thereafter. EDF maintains that there is a significant likelihood that there will be limited budget availability in the delivery years ending May 31, 2020 and May 31, 2021, due to the design and expense of the Adjustable Block Program, and its REC targets and goals in those and related delivery years. For as long as the budget may be rolled over - that is, until June 1, 2021 (220 ILCS 5/16-108(k)) – EDF argues that it violates the statute to utilize budget on Spot Procurements and leave budget unavailable for other statutorily-prioritized program goals. A main feature of the legislature's new statutory language was the shift to multi-year planning and budgeting. EDF Obj. at 5.

EDF states that it does not appear that the IPA has modeled the budget impact of their proposal to utilize Spot Procurements. Therefore, the IPA cannot state that utilizing budget on Spot Procurements will not negatively impact its budget in future years and its ability to procure RECs from new wind and solar projects in the State. The IPA should not be obligated to utilize every dollar of available budget in each of the early years when the budget rolls over, even if that means falling short of annual percentage targets in the first years. Instead, the Plan should be designed to ensure that the IPA can meet the ultimate goals of the statute. It would violate both the spirit and the letter of the law to take steps now that prevent the IPA from meeting long term targets. EDF Obj. at 5-6.

EDF admits that attempting to forecast the available budget for any future year is a complicated task that includes innumerous assumptions. The cost of RECs – especially those available via Spot Procurement at any given time - depends on many factors, some of which may be yet unknown. In the past, RECs procured via Spot Procurement have ranged from $0.80 for one-year Wind RECs in 2012 to $33.92 for one-year solar RECs more recently in 2016. Further, market circumstances can change at any time, as evidenced by the recent announcement of the 30% tariff on imported solar panels. In the absence of a crystal ball, and even given the IPA's confidential benchmark, no party can accurately predict the cost of spot RECs for any given future delivery year. EDF Rep. at 4-5.

EDF notes that the IPA states that it "does not foresee" that its planned Spot Procurements will use up so much of the budget in rollover-eligible years that it will be prevented from meeting the new wind and solar goals through the 2020-2021 delivery year (when the rollover ends). IPA Resp. at 38. The IPA argues that neither EDF nor any other party presented analysis which showed a likely failure to meet the statutory targets of 2 million RECs each of new wind and solar for in 2020-2021 as a result of the planned Spot Procurements. *Id*. EDF maintains its position that, as the party responsible for creating and implementing the Plan, it is the IPA's responsibility to ensure that it has sufficient resources to meet the statutory goals, and to provide evidence there will not be a budget constraint prior to making a blanket determination that the prioritization outlined in Section 3855/1-75(c)(1)(F)(1) will not be needed because it simply "does not foresee" an issue. Yet, they produced no evidence of the analysis behind their foresight, despite considerable objections from multiple parties, that the statutory prioritization requirements must be exercised. EDF Rep. at 5.

Given the IPA's response, and lack of contribution of any evidence to further support their claims that there will not be a budget constraint, EDF presented a simplified demonstration of the risk. EDF acknowledges that its analyses are not a perfect prediction of the future budgets, but they do provide a reasonable accounting of scenarios that could occur by using the IPA's own data and Adjustable Block Program pricing. EDF's analyses show that, under multiple scenarios that cover the range of possible roll-outs under the Adjustable Block Program, the IPA's proposed Adjustable Block Program is likely to require more than the available annual budget during the Plan period, creating a budget constraint that would trigger the prioritization clause. These results are not the output of a comprehensive modeling exercise – just simple math. Further, when block sizes are adjusted as outlined by the IPA in their Plan to include the IPA's soft-open and soft-close concepts that are intended to accommodate a possible rush of solar projects,

there is an immediately apparent budget constraint under almost any budget scenario. EDF Rep. at 5-6.

EDF explains that the issue at hand is one of timing. If Spot Procurement and the Adjustable Block Program growth were to incur budget cost synchronously, then the IPA would be able to adjust the Spot Procurements in real-time to avoid a budget constraint. However, these programs will not be coordinated, as a significant percentage of the planned Spot Procurements will occur prior to the opening of the Adjustable Block Program. Further Spot Procurements will occur prior to the close of the first three planned blocks. If the Adjustable Block Program, which holds priority over Spot Procurements, has as-expected or higher-than-expected success, it will be too late to accommodate the Adjustable Block Program as the money will already be gone. EDF Rep. at 6.

This is a major and avoidable flaw in the IPA's Plan. If the IPA were to simply wait to conduct any Spot Procurements until it knew it would have excess budget availability during the rollover period that extends through 2021, they would be able to solve this problem. Holding Spot Procurements first, before understanding the roll-out impact of the Adjustable Block Program, would prejudge the prioritization clause in PA 99-0906. EDF Rep. at 6-7.

At a minimum, EDF argues that its analyses show that there is a real possibility that Spot Procurements in early years could cause a budget constraint in future years that puts achievement of long-term new build procurement goals at risk. While no party – including the IPA – can say with certainty what REC prices procured via Spot Procurements will be, whether systems sizes within blocks will trend larger or smaller, or whether there will in fact be an initial surge of community solar, the possibilities create a significant enough risk of a budget constraint that it is not prudent to plan for Spot Procurements at this time. While EDF continues to recommend elimination of Spot Procurements altogether, at the very least, Spot Procurements should be delayed until some of the above-described variables are known and more accurate budget calculations are possible. EDF Rep. at 11.

In response to the Joint Solar Parties' recommendation "Spot Procurements be delayed 'for timeframes that overlap with the operation of the Adjustable Block Program,'" EDF observes that the IPA concludes that, in the absence of evidence that annual budgetary caps are likely to be exceeded in the 2020-2021 delivery year, such a proposal is better considered when the Plan is revised in 2019. IPA Resp. at 42. EDF maintains that its analyses provide ample justification for at least delaying, if not eliminating, Spot Procurements. EDF Rep. at 12.

6. Joint Solar Parties

The Joint Solar Parties state they are concerned that if the IPA conducts a spot REC procurement for the 2019-2020 delivery year—when Adjustable Block Program facilities may begin to go online depending on the timing of program open—could be problematic for the Adjustable Block budget. The Joint Solar Parties are especially concerned that once spot RECs are purchased, they become "existing contracts" and essentially move up the priority list when spot RECs should be the IPA's bottom priority when procured before a delivery year especially if the Commission allows for greater flexibility in annual REC delivery. JSP Obj. at 40.

The Joint Solar Parties do not discount the value of spot REC procurements, but the Commission should delay any spot REC procurements for timeframes that overlap with the operation of the Adjustable Block Program. Once the program is up and running—and the IPA, the Commission, and stakeholders get a sense of the obligations under utility-scale procurements and the Adjustable Block Program—the IPA will be in a better position to consider Spot Procurements that do not jeopardize new build requirements generally or the Adjustable Block Program specifically. JSP Obj. at 40.

The Joint Solar Parties propose that the Commission direct the IPA to move up the utility-scale solar PV procurement from Spring 2019 to Summer 2018, because the IPA is seeking delivery by 2020-2021 according to Table 5-1. *See* Plan at 79. Delivering RECs as early as June of 2020 is simply unrealistic if the procurement takes place as late as June 2019—less than one year of lead time. The Joint Solar Parties recommend that the IPA instead push that procurement up to Summer 2018, and allow delivery to begin as late as May 2021. That timeline is closer to the 36 months that the Joint Solar Parties believe is a more reasonable expectation for utility-scale development. The Joint Solar Parties believe it would be counterproductive to the IPA's statutory goals to promote new development and ratepayers—in terms of both price paid and RECs generated on their behalf—if only high-risk projects were bid in to the Spring 2019 utility scale PV procurement due to the very short development timeline. JSP Obj. at 41-42.

In response to ComEd, the Joint Solar Parties state that ComEd appears to misconstrue early year budgets as identical to single-year utility renewable portfolio standard budgets in use before PA 99-0906 became effective. As the Plan notes, the first three years of the budgeting process should be considered together because: "[u]nspent funds for delivery years 2017-2018 through 2020-2021 will roll over and be available for the subsequent delivery year, provided that the roll over funds must be applied on or before May 31, 2021." Plan at 56 (also noting potential for use of rollover funds for the Illinois Solar for All Program). Thus, not only should there be no pressure to spend all of the early year budgets immediately, the IPA should be allowed to exercise discretion to hold back funding for long-term and adjustable block procurements that will be paid for at least in part before the end of the 2020-2021 delivery year. This especially applies to one-time funding sources such as ACPs. JSP Resp. at 16-17.

In its argument in favor of Spot Procurements: "ComEd cautions that efforts to create a blanket preference for procurement of only new RECs are not well founded, and are unsupported by [PA 99-0906]." ComEd Obj. at 7. ComEd relies on the argument that the prioritization of REC procurement in PA 99-0906 only applies when the budget "becomes a binding constraint." *Id*. at 7 (quoting Plan at 77). Respectfully, the budget is always a "binding constraint"—otherwise, neither Section 1-75(c)(1)(F) (referred to by ComEd) nor the last sentence in the first paragraph of Section 1-75(c)(1)(B) would have been necessary. *See* 20 ILCS 3855/1-75(c)(1)(F), (c)(1)(B). The better approach is the Joint Solar Parties' approach, which waits until the new build procurements—which the IPA "shall prioritize" over top-line percentage targets—are completed and funded to consider Spot Procurement to fill in shortfalls as appropriate. JSP Resp. at 17.

The Joint Solar Parties do not believe that Spot Procurements completely lack value, but early in the program—while the IPA still has long-term goals to meet and non-recurring funding available such as ACPs—the priority should be on longer-term

procurements that can help meet longer-term goals. Instead, the ACPs and early-year funding should be utilized to meet longer-term goals, and Spot Procurements can fill in once the IPA has sufficient new build under contract to meet its highest priority, longer-term new development targets. JSP Resp. at 18.

While the Joint Solar Parties disagree with the IPA's rejection of evidence presented by WOW and NRDC about budget impacts, the Joint Solar Parties appreciate the IPA revisiting this issue at the latest in the 2019 Plan revision proceeding. JSP Rep. at 28.

7. WOW

WOW opines that the Portfolio of Competitive Procurement Products (Table 5-1) and Adjusted Block Program procurements proposed in the Plan has a potential cost that will likely exceed the RPS Budget as early as delivery year 2022-2023 (even when adding additional revenue from the ACPs the RESs will pay during the phase-out of the RES RPS requirement). The main cause of the RPS Budget issue is the front-loaded payments of the Adjusted Block products. To avoid potential RPS Budget issues the IPA can forego its Spot Procurements and use that money for 15 year REC products defined in 20 ILCS 3855/1-75(c)(1)(C). WOW Obj. at 3.

The IPA addresses potential RPS Budget shortfalls in Section 3.20 of the Plan. The IPA states that at this point in time it forecasts that it will have sufficient funds in the RPS Budget through Delivery Year 2020-2021 and that the IPA has the ability to refine and update its Plan in 2019. Plan at Section 3.20. Unfortunately, the 2019 Plan will be approved in 2020, which is after all of the Forward and Spot Procurements proposed by the IPA will occur (*see* Tables 5-1 and 5-2). Thus, the debt obligation of the Forward and Spot Procurements will be on the books and subject to curtailment if there is a shortage of funds. WOW Obj. at 5-6.

WOW explains that Section 1-75(c)(1)(F) provides guidance in this very situation and it is consistent with the stated interest of the State in Section 1-75(c)(1)(I). Section 1-75(c)(1)(F) of the RPS Standard directs the IPA to structure its long-term REC product portfolio to meet the State's interest in delivery of RECs over a fifteen year period or through 15 year REC products. The Spot Procurements are a lower priority than the 15 year REC products described in Sections 1-75(c)(1)(C)(i) through (iii), thus the IPA can forego Spot Procurements to ensure it has sufficient funds in the RPS Budget to meet the 15 year delivery period of those products it has proposed for its REC portfolio in the Plan. WOW Obj. at 7.

Prioritizing REC products that ensure long term delivery of RECs is the mechanism through which the RPS Standard primarily meets the State's interest in health, safety, and welfare of its residents. 20 ILCS 3855/1-75(c)(1)(I). Long-term products foster the development of more wind, solar and renewable energy facilities. As more of those facilities are built and operate carbon dioxide, sulfur dioxide, nitrogen oxide, particulate matter, and other pollutants from electric generating plants will decrease. The addition of new renewable resources will increase fuel and resource diversity, and contribute to a cleaner environment when they displace electricity generated by resources that are heavy polluters. Spot Procurements do not provide the revenue stream necessary to secure

financial investment in a utility-scale wind or solar resource. Investors require long-term, stable revenue streams – such as the 15 year REC product. WOW Obj. at 7-8.

WOW agrees with the Joint Solar Parties' reasons for and recommendation to move the utility-scale solar procurement proposed by the IPA for Summer 2019 to Summer of 2018. Holding an earlier procurement provides developers time to develop, build and placed-into-service their projects by June 1, 2020. WOW Resp. at 9.

WOW states that its revised model shows that there will be excess funds in the RPS Budget in Delivery Year 2020-2021, when there is a budget true-up/reconciliation for Delivery Years 2018-2019 through 2020-2021, pursuant to Section 16-108(k). To assess the likelihood the RPS Budget would be exceeded in the period from Delivery Years 2018-2019 through 2020-2021 due to high Spot REC Prices, WOW iterated its Spot REC Prices to determine the point at which the RPS Budget approached zero. That average price was a little more than $8.75/REC. WOW Rep. at 4. The IPA's proposed portfolio of REC products (as summarized in the Plan at 79-80 and including the Section 6 Adjusted Block Program) will likely yield a REC spend in excess of the RPS Budget in Delivery Year 2021-2022, the year when annual reconciliations start to occur. WOW Rep. at 5.

It is WOW's position that the RPS Budget constraint that occurs in Delivery Years 2021-2022 to 2024-2025 can be minimized, but not avoided, if Spot REC Prices in those years are low or Spot Procurements are avoided. CSG notes that RECs are currently trading between $0.50 and $1.75/REC. Assuming the Spot REC prices are $.50/REC after Delivery Year 2020-2021 WOW's model finds that the budget would still be exceeded in Delivery Years 2021-2022 through 2023-2024, but that the constraint caused by the IPAs proposed portfolio of REC products could ease in Delivery Year 2024-2025. WOW Rep. at 5-6.

WOW states that the Adjusted Block Program is the bulk of the cost to the RPS Budget. Each block is approximately $90 million per year. The IPA forecasts the existing long term RECs and RECs from the initial forward procurements held in 2017 and to be held in early 2018 are estimated to cost approximately $35 million. The cost of the first two blocks of the Adjusted Block Program plus the cost of existing long term RECs and RECs from the initial forward procurements would be approximately $215 million. The RPS Budget in Delivery Year 2020-2021 will be a little over $200 million – there will be no room for the procurement of other proposed REC products. WOW Rep. at 7.

WOW opines that there are opportunities to avoid the RPS Budget being exceeded between Delivery Years 2021-2022 and 2023-2024. The IPA has announced that it will hold two utility-scale solar procurements in the Spring of 2018. Price data from those procurements will be the most recent market data available to shape and adjust the Adjusted Block prices and timing of the blocks. If this information shows the Adjusted Block Program causes the RPS Budget to be exceeded the IPA can file an amended portfolio of REC products with the Commission for its approval. While WOW generally supports the REC Products the IPA has proposed in Table 5-1 of the Plan, the largest impact on the RPS budget is the Adjusted Block Program and it needs to be closely managed so the RPS statute can be effectively implemented through 2030. WOW Rep. at 7-8.

As market data comes to light in the procurements the IPA holds in the next 6 months, WOW encourages the IPA to closely manage the Adjusted Block Program (controlling the size of the enrollment, its prices, or timing of implementation of the second and third blocks), to maximize the use of low-cost utility-scale wind products, and use the utility-scale solar procurement (that has a proposed procurement event in Spring 2019 and delivery starting in Delivery Year 2021-2022) to ensure the balancing provision for new wind products and new solar products is met. WOW Rep. at 8.

8. ComEd

ComEd cautions that efforts to create a blanket preference for procurement of only new RECs are not well founded, and are unsupported by PA 99-0906. *See* 20 ILCS 3855/1-75(c)(1)(F). While PA 99-0906 clearly requires the procurement of specific quantities of new wind and new solar RECs, the law does not otherwise mandate that all RECs procured under the Plan be new RECs. To the extent that discretionary preferences for the procurement of only new RECs would result in a failure to achieve the State's RPS goals, the achievement of the goals should override optional preferences. *See* Plan, Attach. A at 87-88; ComEd Obj. at 7-8.

ComEd notes that Section 1-75(c)(1)(B) requires that the Plan "include the goals for procurement of renewable energy credits to meet at least the following overall percentages: 13% by the 2017 delivery year; increasing by at least 1.5% each delivery year thereafter to at least 25% by the 2025 delivery year…." 20 ILCS 3855/1-75(c)(1)(B). If a conflict exists between meeting these State goals and achieving the new wind and new solar REC procurement requirements set forth in Section 1-75(c)(1)(C)(i)-(iii), then the latter requirements take precedence. *Id*. Under the Plan, no conflict exists between the State goals and new wind and solar REC procurement requirements, and the Plan accordingly proposes no reduction to the State goals. To achieve these goals, the Plan proposes certain Spot Procurements, which will procure RECs that are now available from existing facilities to achieve the State's immediate RPS goals. Plan at 14, 89-91; ComEd Resp. at 3-4.

Certain stakeholders object to the IPA's proposed use of Spot Procurements because these procurements do not focus on procuring RECs from new wind and new solar facilities. According to several parties' Objections, the IPA's Plan can ignore – and fail to achieve – the statutory RPS goals and instead focus on additional investment in new wind and new solar facilities. *See e.g.*, EDF Obj. at 5-6; ELPC Obj. at 10-13; JSP Obj. at 4; NRDC Obj. at 2-4. As the IPA explained in its Petition, however, a proposal that disregards the statutory RPS goals contravenes the law. *See* Pet. at 24. ComEd urges the Commission to reject the parties' proposals to ignore the statutory RPS goals. ComEd Resp. at 4.

9. CSG

CSG understands the concerns of WOW and ELPC, but suggests that the IPA still has an obligation to try to meet the annual shorter-term REC procurement goals set forth in Section 1-75(c)(1)(C) even if that means utilizing Spot Procurements. The significance of meeting the annual goals is apparent in Section 1-75(c)(1)(B). CSG notes that Section 1-75(c)(1)(B) provides that if there is a conflict between the annual RPS percentage goals contained therein and the new annual REC procurement requirements set forth in Section

1-75(c)(1)(C), the Plan shall prioritize compliance with the annual REC goals in the latter section. Arguably the escalating annual RPS percentage is more closely aligned with meeting the overarching long-term goals than the annual REC procurement. Therefore, this requirement in Section 1-75(c)(1)(B) is indicative of the importance that the legislature placed on the annual REC procurement goals in Section 1-75(c)(1)(C). CSG Resp. at 4-5.

While CSG certainly appreciates the value associated with the kind of long-term projects favored by the Renewable Suppliers, NRDC, and ELPC, CSG submits that Spot Procurements provide numerous other benefits that help ensure an overall efficient marketplace. In addition to the utilization of stranded RECs (as the IPA noted in the Plan at page 90), Spot Procurements enable the purchasing of RECs from a much wider range of systems and business models than are eligible for the Initial Forward Procurements. Types of REC generation facilities that would not otherwise participate in IPA procurement events include biogas assets and smaller scale wind projects (less than 2 MW), as well as currently participating projects that have since added capacity. In some respects, Spot Procurements are the only way for non-wind and non-solar projects to participate in the IPA's procurements, which creates opportunities in and shares the benefits of the renewable market with a broader group of participants. CSG Resp. at 6.

CSG also notes that ELPC asserts that there is no evidence that Spot Procurements have led to a single megawatt of new renewable energy development in Illinois or anywhere else in the nation (ELPC Obj. at 9) and that WOW claims that there is no evidence that the Spot Procurements conducted by the IPA over the past seven years has resulted in any new wind or solar development in the State (WOW Obj. at 7). CSG responds, however, that it is not possible to know what factors are considered in a project developer's mind. Moreover, the likelihood of smaller projects or nontraditional renewable projects being developed may increase if the proposed Spot Procurements are implemented since the procurement events will be known. To the extent that such projects include biogas projects, their inherent operating parameters would increase grid resiliency. CSG Resp. at 6-7.

Whether any parties have suggested that RECs obtained through the proposed Spot Procurements will be more expensive is unclear. To avoid any uncertainty, however, CSG contends that Spot Procurements are especially important for purchasing RECs in a cost-effective manner. Spot procurements will allow the IPA to blend in less expensive RECs with existing and future long-term contracts. This will greatly reduce the average price of RECs procured and allow the State to have the best chance of achieving the statutory percentage based goals. Many RECs that could be eligible for Spot Procurements (particularly if CSG's recommendations on adjacent state requirements are adopted) are currently trading between $0.50 - $1.75/REC. These low REC prices should also help to alleviate other parties' concerns that the Spot Procurements will cause budget constraints for other segments of the RPS. CSG Resp. at 7.

Furthermore, CSG explains that with the federal Production Tax Credit sunsetting, it is extremely advantageous to Illinois to procure RECs from existing facilities that are able to offer RECs at a much lower cost. Using data from the American Wind Energy Association, CSG estimates that the reduced production tax credit and tax reform will degrade large scale wind economics by as much as $16.46/MWh by 2020. The impact

of the production tax credit sunsetting is about $4.60/year. In addition to the production tax credit sunset, the annualized impact of corporate income tax rate dropping from 40% to 20% is worth about $13.33/MWh over 6 years. So, as time goes by under the sunsetting production tax credit, the cost of building new wind will go up by $4.60/MWh per year (plus the impact of accelerated depreciation will drop by an average of $13.33/MWh). The per MWh cash flow value of the accelerated deprecation is $2.66 (= $13.33/MWh x 20%). From this, CSG calculates that the economics of building wind in 2018 alone will worsen by $7.26/MWh (= $4.60 + $2.66). In 2019, it will worsen to $11.86/MWh (= $7.26 + $4.60) and in 2020 it will reach its nadir at $16.46/MWh (= $11.86 +$4.60). CSG Resp. at 7-8.

Overall, CSG maintains that Spot Procurements should play a vital role in any strategy employed to reach the REC procurement targets in Illinois. Recognition of the IPA's ability to use Spot Procurements to meet annual obligations and work toward long-term obligations will provide important clarity for the pending Plan as well as future revisions to the Plan. Non-traditional projects will benefit as well as traditional projects not participating in the procurement process. For all of these reasons, the Commission should clarify that the IPA in fact has an obligation to try to meet annual REC procurement goals as well as ensure the development of a long-term sustainable REC market in Illinois. The Commission should also make clear that the IPA may use Spot Procurements to fulfill its statutory obligations. To the extent that the Commission wishes to provide the IPA some discretion in implementing the Spot Procurements or believes minor deviations in the timing of the Spot Procurements or REC quantity are warranted, CSG does not object. CSG Resp. at 9.

10. IPA

Several parties oppose the IPA's proposal to conduct Spot Procurements for the 2017-2018, 2018-2019, and 2019-2020 delivery years. The IPA states that no objection offers any proposal for how "the long-term renewable resources procurement plan shall include the goals for procurement of renewable energy credits" as outlined by Section 1-75(c)(1)(B) of the IPA Act, apparently assuming that despite this express statutory mandate, such goals can simply be ignored in service of other objectives or disregarded due to theoretical possibility that meeting this mandate may compromise budgets available in future years. The IPA asserts that these arguments should be rejected. IPA Resp. at 30-31.

As the Plan makes clear, a significant differential exists between the number of RECs that will be required to meet the annual percentage goals in each of the four delivery years 2017-2018 through 2020-2021 and the number of RECs already committed for delivery in each of those delivery years under existing contracts. To meet Section 1-75(c)(1)(B)'s requirements, the Plan includes conducting annual "Spot Procurements" for the delivery years 2017-2018 through 2019-2020, with target procurement quantities equal to annual amounts equal to the annual REC Gaps (including any adjustments due to new RECs under contract). Plan at Section 5.9. The IPA further proposes to adjust each Spot Procurement event's targets to meet the requirement in Section 1-75(c)(1)(C) of the IPA Act that 75% of the RECs procured in each delivery year shall come from wind and PV projects. Plan at 90-91; IPA Resp. at 31.

Separately, among other requirements in the law, PA 99-0906 also directs that by the end of the 2020-2021 delivery year, at least 2,000,000 RECs per year shall come from "new wind projects" and at least 2,000,000 RECs per year shall come from "new photovoltaic projects," and then 3,000,000 RECs per year for each of new wind and new solar by the end of 2025-2026, and then 4,000,000 RECs per year for each of new wind and new solar by the end of 2030-2031. *See* 20 ILCS 3855/1-75(c)(1)(C); IPA Resp. at 31.

The Plan includes conducting a First Subsequent Forward Procurement in Summer 2018 with an annual REC procurement target of 1.035 million over 15 years and a Second Subsequent Forward Procurement in fall 2019 with an annual REC procurement target of 1.0 million over 15 years, both for new utility-scale wind projects. Plan at Sections 5.7.1, 5.8.2. Additionally, the IPA has proposed to conduct a Photovoltaic Forward Procurement in Spring 2019 with an annual REC procurement target of 1.0 million over 15 years for utility-scale PV projects. Plan at Section 5.8.1. Assuming the Adjustable Block Program meets its goal of obtaining 1,000,000 PV RECs delivered annually by the end of the 2020-2021 delivery year (Plan at Section 6.3), these RECs, plus delivery of 1,000,000 new PV project RECs from the Initial Forward Procurement, will satisfy the statutory "new photovoltaic" target of 2,000,000 RECs by the 2020-2021 delivery year. The proposed Photovoltaic Forward Procurement, if successful, will satisfy the statutory "new photovoltaic" target of 3,000,000 RECs delivered annually by the 2025-2026 delivery year (although annual deliveries under the Adjustable Block Program will need to be increased to 1,500,000 RECs by then). IPA Resp. at 31-32.

Meanwhile, the IPA states, the Initial Forward Procurement and First Subsequent Forward Procurement, together, will meet the statutory "new wind" target of 2,000,000 RECs delivered annually by the 2020-2021 delivery year. The Second Subsequent Forward Procurement (another 1,000,000 "new wind" RECs delivered annually, beginning in 2021-2022), the State will meet the statutory target of 3,000,000 "new wind" RECs delivered annually by 2025-2026. IPA Resp. at 32-33.

PA 99-0906 contains two provisions regarding how the annual percentage-based REC goals should be prioritized vis-à-vis the annual numerical targets for new wind and new solar RECs, to the extent that the annual budget caps from utility-collected RPS funds under Section 16-108(k) of the PUA and Sections 1-75(c)(1)(E) and (c)(6) of the IPA Act indeed become constraining *See* 20 ILCS 3855/1-75(c)(1)(B) and 20 ILCS 3855/1-75(c)(1)(F). Both passages suggest that, to the extent that annual budget caps become a constraint, procuring RECs to meet the "new wind and new photovoltaic" annual targets in Section 1-75(c)(1)(C) of the IPA Act should take precedence over the annual percentage goals relative to overall utility load. Notably, the IPA argues, this does not prioritize of "new build" generally over meeting annual targets, as many parties conflate; it instead calls for the prioritization of meeting "the new wind and new photovoltaic procurement requirements" (i.e., procuring only at least the necessary quantity of RECs from new wind and solar facilities identified in Section 1-75(c)(1)(C)). IPA Resp. at 33-34.

The IPA provides an additional point of background around budgeting: payments under the renewable resources budget commence with the delivery of RECs for the IPA's forward and Spot Procurements, and upon the energization and interconnection of

systems for the IPA's adjustable block program. As various analyses presented by parties demonstrate, due to the timeline development for new generating facilities, the first few years of operation under the Illinois RPS are likely to feature a lag between expenditures relative to collections. Stated differently, the IPA will almost certainly accumulate funds for later expenditure in the first years of operation under the new RPS. IPA Resp. at 34.

Apparently in recognition of this lag, rather than conducting annual reconciliations of collections and costs (as had been done under the RPS prior to PA 99-0906), Section 16-108(k) provides that the Commission "shall instead conduct a single review, reconciliation, and true-up associated with renewable energy resources' collections and costs for the 4-year period beginning June 1, 2017 and ending May 31, 2021, provided that the review, reconciliation, and true-up shall not be initiated until after August 31, 2021." 220 ILCS 5/16-108(k). The IPA explains that over that four-year period prior to the eventual reconciliation, "the utility shall be permitted to collect and retain funds under this subsection (k) and to purchase renewable energy resources under an approved long-term renewable resources procurement plan using those funds regardless of the delivery year in which the funds were collected during the 4-year period." But after that four-year period, unspent portions of the Renewable Resources Budget collected during the initial four years would be subject to reconciliation, potentially resulting in the refund of unspent funds. IPA Resp. at 34-35.

Turning now to the arguments offered by parties, the IPA notes that several parties oppose the IPA's proposal to conduct Spot Procurements for the 2017-2018, 2018-2019, and 2019-2020 delivery years, expressing various forms of concern that Spot Procurements will unnecessarily place budgetary stress on procurement of RECs from new wind and new solar under long-term contracts. The IPA avers that these arguments must be rejected. To the extent that an annual budget cap is reached, skipping the IPA's Spot Procurements for each of 2017-2018 through 2019-2020 would only free up more available funds for 2017-2018 through 2020-2021, and not for future delivery years. Based on the budgets presented in WOW's analysis, even assuming that Spot Procurement budgets reflect their expectations, the Illinois RPS budget would feature a surplus of nearly $285 million through four delivery years—some portion of which would presumably need to be refunded back to customers via reconciliation. This hardly demonstrates any budget constraint, let alone one sufficient to serve as grounds for setting aside a mandatory statutory requirement. IPA Resp. at 35-36.

The Renewable Suppliers are also concerned that due to the adjacent state criteria in PA 99-0906, there will be a reduced pool of eligible RECs for Spot Procurements that will create "risks of higher RPS costs and inability to meet the RPS percentage targets." As to the risks of higher costs, the Renewable Suppliers make assumptions about the IPA's price benchmark-setting process. *See* 220 ILCS 5/16-111.5(c)(1)(ii), (e)(3). As to the risk of not meeting annual percentage targets, the Renewable Suppliers cannot simultaneously call for Spot Procurements to be eliminated and also worry that annual percentage targets are in danger of not being satisfied. For these reasons, the IPA disagrees with the Renewable Suppliers' recommendations to cancel the proposed Spot Procurements. IPA Resp. at 37.

The IPA notes EDF to argue that "[b]y devoting any portion of the limited budget to RECs obtained via Spot Procurement . . . in the earliest years, the IPA unnecessarily uses budget that would otherwise be rolled over to a year when new, long-term, in-state RECs are available." EDF Obj. at 5. EDF correctly recognizes that utility-collected RPS budget may be rolled over under Section 16-108(k) only until May 31, 2021, but then engages in undue alarm by arguing that during these first four delivery years, "it violates the statute to utilize budget on Spot Procurements and leave budget unavailable for other statutorily-prioritized program goals." EDF Obj. at 5. This would be the case only if a failure to meet the statutory targets of 2,000,000 RECs from each of new wind and new solar in 2020-2021 were likely under the IPA's Plan because of budget limitations. But no party, including EDF, has shown that. The IPA maintains that parties made numerous errors in developing future spending forecasts. EDF does not even attempt to make any numerical forecasts, resorting to faulting the IPA for failing to prove that its Plan with Spot Procurements will not cause budget caps to be breached before satisfying the new wind and solar targets for 2020-2021. IPA Resp. at 37-38.

For reasons relating to the integrity of competitive auctions, the IPA does not publicly forecast or discuss the benchmarks used in bid evaluation, or speculate on possible winning prices of future procurement events. However, at this time the IPA does not foresee that, with its proposed Spot Procurements in each of 2017-2018 through 2019-2020 to satisfy annual REC gaps, it will be unable to meet the new wind and solar goals of Section 1-75(c)(1)(C) in 2020-2021 while also satisfying the percentage-based goals of Section 1-75(c)(1)(B) for that delivery year. There is thus no reason why PA 99-0906's prioritization language is implicated and no reason why the IPA should not try to meet the statutorily-mandated annual percentage-based goals in 2017-2018 through 2019-2020. IPA Resp. at 38.

ELPC argues that the IPA should exercise its "discretion to craft a long-term plan that puts the State in the best position to meet long-term goals." ELPC Obj. at 7. ELPC laments that "[o]nce procured, Spot RECs expire in the same delivery year and are therefore unavailable to help meet future goals." ELPC Obj. at 8. But the IPA is not proposing to do nothing about future quantitative annual targets for new wind and new solar RECs; as discussed above and in the Plan, the IPA is proposing to hold various forward procurements to lock in REC deliveries over 15 years from new renewable generation. ELPC further complains that "the IPA will be faced with the exact same REC gap in 2020-2021—more than 18,000,000 RECs—despite spending millions of dollars on Spot Procurements over the next two years." But the same is true of a REC procured in a given year under a long-term contract; it expires immediately and money must be spent again the following year to procure another REC, even if under the same long-term contract. While ELPC disagrees (ELPC Obj. at 8) that the IPA carries an obligation to meet annual percentage goals under Section 1-75(c)(1)(B) of the IPA Act, it fails to explain why such a clear statutory scheme creating presently applicable annual targets that "shall" be met should be ignored in favor of a much vaguer "goal and spirit" (ELPC Obj. at 2) behind the new law. IPA Resp. at 41.

The IPA notes that the Joint Solar Parties urge that the Commission "direct the IPA to delay Spot Procurements," expressing concern that "excessive Spot Procurements" for the 2019-2020 delivery year "could be problematic for the Adjustable Block [Program]

budget." JSP Obj. at 39-40. The Joint Solar Parties then make the odd claim that "once spot RECs are purchased, they become 'existing contracts' and essentially move up the priority list" – even though Spot Procurements will only procure RECs during or immediately before a delivery year. The Joint Solar Parties recommend that Spot Procurements be delayed "for timeframes that overlap with the operation of the Adjustable Block [P]rogram," although it next suggests that the IPA and Commission could "consider" Spot Procurements "[o]nce the program is up and running." JSP Obj. at 40. Without evidence that annual budgetary caps are likely to be exceeded in the 2020-2021 delivery year, a proposal like this would be better considered when the Plan is revised in 2019; at that time, the IPA's experience with enrollment in the Adjustable Block Program and with winning prices in the various competitive forward procurements could inform a decision of whether to conduct competitive Spot Procurements for future delivery years. IPA Resp. at 41-42.

The IPA notes that CSG illustrates how Spot Procurements can serve important policy ends. CSG Resp.at 6-7. Perhaps notably, without Spot Procurements, the IPA points out that Plan would offer no opportunities for renewable generating technologies other than PV and wind (outside of the Community Renewable Generation Program (Plan at 87-89), which may not lend itself easily to other technologies); the IPA is thus sensitive to CSG's concerns. IPA Rep. at 15-16.

With respect to the timing and volumes of the forward procurements, the IPA states that it appreciates the Joint Solar Parties' desire to change the schedule for the Photovoltaic Forward Procurement to increase the likelihood that projects start delivering RECs in the 2020-2021 delivery year. However, the IPA believes this proposal may be too ambitious. In Summer 2018, the IPA will just be completing the final of three rounds of the Initial Forward Procurement for 1 million new utility-scale and brownfield site PV RECs. That Initial Forward Procurement is expected to result in a nearly ten-fold increase in the amount of PV deployed in Illinois. Conducting another equally large procurement for new PV RECs right on the heels of that procurement could result in the demand for RECs exceeding the supply of RECs from projects that are ready to proceed, potentially encouraging more speculative projects and/or increased REC prices. The Plan already contains a provision that "if it is feasible to hold a procurement earlier than planned (but not more than one calendar quarter), the IPA may accelerate the schedule for certain procurements." Plan at 78. This could mean that the PV Forward Procurement currently scheduled for the Spring of 2019 could be held in early 2019. That being said, the IPA would not object to potentially adjusting the schedule to have the Photovoltaic Forward Procurement occur as early as late 2018 if the IPA believes that bidders are prepared to present reasonably well-developed bids to allow for a robust and competitive procurement event. IPA Resp. at 22.

In addition, the IPA would not seek to hold that procurement any earlier than late 2018 for the simple, pragmatic reason that the implementation of the Plan will require the IPA to expand its operational capacity significantly. The Summer of 2018 is already scheduled to feature the First Subsequent Forward Procurement (wind), the Brownfield Site Forward Procurement, and the ramping up of implementation efforts for the Adjustable Block Program and the Illinois Solar for All Program (as well as development of the IPA's 2019 electricity procurement plan, and preparation for the Fall 2018 energy

and capacity procurement). The IPA is concerned that adding the Photovoltaic Forward Procurement to that mix could put a strain on the IPA. IPA Resp. at 22-23.

The Joint Solar Parties also suggest that for the Photovoltaic Forward Procurement, delivery of RECs be allowed to begin as late as the end of the 2020-2021 delivery year. JSP Obj. at 42. The IPA does not object to this suggestion. IPA Resp. at 23.

The Renewables Suppliers' proposal to add additional Forward Procurements, or increase the scale of the proposed Forward Procurements stems from their assertion that the principal objective of the RPS sections of PA 99-0906 is to incentivize and promote the development and construction of new utility-scale wind and PV generation projects in Illinois and adjacent states. RS Obj. at 5. The IPA does not agree with such a narrow view of the law. While PA 99-0906 does include specific goals for RECs from new renewables projects, it also expressly maintains the annual percentage targets that were previously (and continue to be) the cornerstone of the Illinois RPS. Further, the Renewables Suppliers proposal to increase Forward Procurements does not solve the problem they assert exists. They propose either two additional Forward Procurements, or doubling the volumes of the proposed procurements—adding two million RECs annually to the State's portfolio of long-term contracts. But by the 2020-2021 delivery year, over 18 million RECs will be needed and similar volumes will continue to be required in subsequent years. The scale of Forward Procurements needed to fully meet the RPS goals would be at orders of magnitude greater than what the Renewables Suppliers propose (and, potentially, what budgets allow), and expanding the Forward Procurements only marginally narrows that gap. IPA Resp. at 23-24.

Instead, the Renewables Suppliers suggest that these additional procurements would "meet the minimum requirements for the 2030-2031 delivery year of 4 million RECs per year from new wind projects and 4 million RECs per year from new solar projects." RS Obj. at 8. The IPA suggests that this is putting the cart before the horse. By focusing on meeting the 2030 new renewables requirements contained in PA 99-0906 in the very first Plan developed by the IPA pursuant to that legislation, the Renewables Suppliers' proposal leaves unclear what would be required in subsequent Plan updates through the 2020s—and may unnecessarily tie up Adjustable Bock Program funds. Instead, the Plan's proposed schedule provides a smooth path forward for meeting the 2020 delivery year new renewables goals, the 2025 delivery year new renewables goals, and ultimately the 2030 delivery year new renewables goals, while at the same time leaving the Agency planning and budgeting flexibility for future Plan updates to be reviewed and approved by the Commission. IPA Resp. at 24.

The IPA notes that Staff identifies a word errantly out of order in a sentence on Page 78 of the Plan. Staff Obj. at 4. The IPA supports this correction. IPA Resp. at 21.

For the above reasons, the IPA opposes efforts to remove Spot Procurements from the Plan and urges the Commission to approve this means of meeting annual percentage-based statutory goals in each of the 2017-2018 through 2019-2020 delivery years.

11. Commission Analysis and Conclusion

The Commission notes that PA 99-0906 mandates specific requirements for the procurement of RECs from new wind and PV projects (20 ILCS 3855/1-75(c)(1)(C)):

- by the end of the 2020 delivery year, at least 2 million RECs for each delivery year from new wind projects and at least 2 million RECs for each delivery year from new PV projects;
- by the end of the 2025 delivery year, at least 3 million RECs for each delivery year from new wind projects and at least 3 million RECs for each delivery year from new PV projects;
- by the end of the 2030 delivery year, at least 4 million RECs for each delivery year from new wind projects and at least 4 million RECs for each delivery year from new PV projects.

20 ILCS 3855/1-75(c)(1)(C)(i). The Commission agrees with the IPA that the Plan it has presented will meet these minimum requirements, especially with respect to the requirement to procure by the end of the 2020 delivery year 2 million RECs for each delivery year from new wind projects and at least 2 million RECs for each delivery year from new PV projects. The Commission is cognizant, however, that these are minimum targets, as the statute clearly specifies "at least."

Moreover, Subsection 1-75(c)(1)(B) of the IPA Act contained in the statute's RPS states the following:

> Subject to subparagraph (F) of this paragraph (1), the long-term renewable resources procurement plan shall include the goals for procurement of renewable energy credits to meet at least the following overall percentages: 13% by the 2017 delivery year; increasing by at least 1.5% each delivery year thereafter to at least 25% by the 2025 delivery year; and continuing at no less than 25% for each delivery year thereafter. *In the event of a conflict between these goals and the new wind and new photovoltaic procurement requirements described in items (i) through (iii) of subparagraph (C) of this paragraph (1), the long-term plan shall prioritize compliance with the new wind and new photovoltaic procurement* requirements described in items (i) through (iii) of subparagraph (C) of this paragraph (1) over the annual percentage targets described in this subparagraph (B).

20 ILCS 3855/1-75(c)(1)(B). This Section contains the annual percentage goal for REC procurements, which are met through both forward procurements and Spot Procurements. It is clear that in the event of a conflict between the overall goals (e.g. 13 percent in 2017) versus new wind and solar development, the statute directs that the Plan should prioritize the new wind and solar development. The IPA argues, and the Commission agrees, that there has not been shown to be a conflict between implementing the annual percentage goals and the new wind and solar goals. The Commission is also not convinced that Spot Procurements are as disfavored by PA 99-0906 as parties would

have the Commission find. CSG notes that Spot Procurements enable the purchasing of RECs from a much wider range of systems and business models than are eligible for the forward procurements. Types of REC generation facilities that would not otherwise participate in IPA procurement events include biogas assets and smaller scale wind projects (less than 2 MW), as well as currently participating projects that have since added capacity. CSG states that, in some respects, Spot Procurements are the only way for non-wind and non-solar projects to participate in the IPA's procurements, which creates opportunities in, and shares the benefits of, the renewables market with a broader group of participants. *See* CSG Resp. at 6. Thus, various parties' requests to cancel the Spot Procurements are denied.

Although the Commission agrees with ComEd and the IPA that meeting the annual percentage goals is an important part of the Plan, the Commission is concerned with the timing of the Spot Procurements and the IPA's resistance to additional forward procurements to take advantage of current available incentives.

Through the Adjustable Block Program, which is discussed further below, the IPA intends to procure 1 million RECs by the end of the 2020-2021 delivery year. The Plan states that the Adjustable Block Program will launch at the earliest in late 2018. Plan at 114. The Adjustable Block Program will result in the building of new renewable resources within Illinois and includes the new community solar program that was adopted in PA 99-0906. Moreover, it is clear that the Adjustable Block Program will require a large part of the IPA's Renewable Resources Budget. The Commission notes that not only is the launch date of the program not determined, but the actual budget that will be required is unknown. The Plan states that the three Spot Procurements are scheduled to occur in the Spring of 2018, the Summer of 2018, and the Summer of 2019. Because the third Spot Procurement could occur before the actual budget for the Adjustable Block Program is known, the Commission finds that IPA's proposed schedule for the Spot Procurements should be adjusted. At a minimum, the third Spot Procurement should be delayed to later in the 2019-2020 procurement year (perhaps Spring of 2020) to allow time to understand the cost of the Adjustable Block Program and its impact of the budget.

With respect to requiring additional forward procurements, the Commission observes that PA 99-0906 emphasizes the importance of developing new wind and new solar within Illinois. The statute states that:

> Developing new renewable energy resources in Illinois, including brownfield solar projects and community solar projects, will help to diversify Illinois electricity supply, avoid and reduce pollution, reduce peak demand, and enhance public health and well-being of Illinois residents.

20 ILCS 3855/1-5(6). Parties also highlight that in addition to these enumerated benefits of new renewable energy resources in Illinois, without the opportunity for long-term contracts, developers of utility-scale renewable energy facilities will not have the incentive or financing capability to dedicate additional capital and management resources to enable Illinois to meet these objectives of PA 99-0906. RS Obj. at 6. In particular, the Commission is troubled that the IPA does not seem to want to maximize the potential of existing federal tax credits – the Production Tax Credit and the Investment Tax Credit.

NRDC states that these credits will expire for wind after 2019 and for utility scale solar, the investment tax credit will be scaled back over the next few years ultimately remaining at 10% by 2022. NRDC Obj. at 4-5. The Commission also sees the role of additional forward procurements in reducing the REC Gap to be an important reason for increasing forward procurements, even if it is only a marginal reduction in the REC Gap.

The Commission notes that the Renewables Suppliers recommend that the Plan be revised to include an additional long-term utility-scale wind forward procurement for 1 million RECs per year and an additional long-term utility-scale PV forward procurement for 1 million RECs per year in 2018 or 2019. Alternatively, the Renewables Suppliers suggest that the targeted annual REC minimums for the long-term utility-scale PV forward procurement in Spring 2019 (Plan at Section 5.8.1) and either the long-term utility-scale wind "first subsequent forward" procurement in Summer 2018 (Plan at Section 5.7.1) or the "second subsequent forward" (Plan at Section 5.8.2) should each be increased to at least 2 million RECs per year. RS Obj. at 8. In response to this proposal of the Renewables Suppliers, the IPA does not assert that it is impossible, but rather argues that it is not necessary to meet the statutory goals. The Commission points out that the goals for new wind and solar contained in PA 99-0906 are minimum goals and does not see this to be a convincing reason to not increase procurement of new wind and solar.

Because the IPA has resisted any consideration of additional REC forward procurements, the Commission does not have a full picture of the possible avenues to take advantage of the expiring tax incentives.

The Commission notes that in response to the proposal by the Joint Solar Parties to move up the utility-scale solar procurement from Spring 2019 to Summer 2018, the IPA responds that this proposal may be too ambitious. The IPA explains conducting another equally large procurement for new PV RECs right on the heels of already planned procurements could result in the demand for RECs exceeding the supply of RECs from projects that are ready to proceed. The IPA is also concerned that adding the Photovoltaic Forward Procurement to that mix could put a strain on the IPA. *See* IPA Resp. at 22-23. The IPA is directed to conduct this procurement as soon as possible in order to increase the likelihood that RECs can be delivered for the 2020-2021 delivery years. The Joint Solar Parties similarly suggest that for the Photovoltaic Forward Procurement, delivery of RECs be allowed to begin as late as the end of the 2020-2021 delivery year. JSP Obj. at 42. The IPA does not object to this suggestion. IPA Resp. at 23. The Commission adopts this proposal.

Considering these constraints, however, the Commission is reluctant to direct the IPA to schedule additional forward procurement events. The alternate proposal from the Renewables Suppliers does not require additional events, but rather an increase in the amount of RECs to be procured from the existing planned forward procurements. The Commission finds this to be reasonable and the IPA is directed to increase the size of the targeted annual REC minimums for the long-term utility-scale PV forward procurement in Spring 2019 or as soon as possible (Plan at Section 5.8.1) and the long-term utility-scale wind "first subsequent forward" procurement in Summer 2018 (Plan at Section 5.7.1) to at least 2 million RECs per year.

The parties offer several proposals for funding additional forward procurements. The Commission notes that the IPA has agreed with the recommendations of several parties that the "Other Renewables" forward procurement can be postponed until the first Plan update, scheduled to be submitted in 2019. IPA Resp. at 24-25. The impact of this delay on the available budget is not clear, but the Commission sees no reason why the funds earmarked for this procurement cannot be used for the larger forward procurements ordered herein.

In addition, as mentioned in the discussion above regarding ACP funds, the Commission is not convinced that the IPA has fully considered the use of the ACP funds for additional forward procurements. The Commission finds it to be unreasonable and imprudent to not consider using the ACP funds for forward procurements given the changes in incentives for renewables. The IPA has not said what the ACP funds will be used for, but the Commission is concerned that if the funds are not used for additional forward procurements, then the ACPs that are being held in reserve will be used to meet the annual percentage requirements through Spot Procurements. The IPA is directed to use some or all of the approximately $95.6 million in ACPs being held by AIC and ComEd, plus additional ACPs to be received by the utilities from RESs over the two-year phase-out period for the RESs' RPS obligations, to fund the additional long-term procurements of RECs from new utility-scale wind and solar facilities.

Although the budget at this time is unknown, the Commission agrees with ComEd (ComEd Rep. at 6) that there is no reason that the IPA cannot prioritize its spending such that the renewable resources budget subject to refund under Section 16-108(k) is utilitized prior to ACP funds. The Commission directs that in the event that there are funds subject to refund, those funds should be spent prior to the ACP funds.

The Commission directs the IPA to submit an amended Plan in compliance with these findings.

B. Section 5.7.1 First Subsequent Forward Procurement & Section 2.4.5 Balancing Expected Wind RECs vs. Solar RECs

1. ComEd

ComEd notes that to ensure that the procurement of RECs from new solar projects keeps pace with the procurement of RECs from new wind projects, the IPA Act imposes a balancing requirement. *See* 20 ILCS 3855/1-75(c)(1)(G)(iv). In interpreting this requirement, the IPA states that "the latest date for first delivery of RECs from the initial forward procurements" is June 1, 2021, which results in the balancing requirement applying to its planning process only after this date. Plan at 30; ComEd Obj. at 5-6.

ComEd explains, however, that deliveries of RECs from the Initial Forward Procurement will begin with the 2019 delivery year and therefore recommends that the IPA begin applying the balancing requirement following these deliveries. Given the importance to the General Assembly of balancing the procurement of RECs from these two new project types, ComEd recommends that the IPA adopt an interpretation that implements and applies this requirement at the earliest possible date. ComEd avers that this will ensure that the volumes of RECs from new wind and new solar remain in sync and thus give full effect to the General Assembly's intent. ComEd Obj. at 6.

2. ELPC

ELPC notes that the IPA Act imposes a wind/solar "balancing" requirement that takes effect "after the time set for delivery" of RECs from the initial utility-scale forward procurements in Section 1-75(c)(1)(G) of the Act. *See* 20 ILCS 3855/1-75(c)(1)(G)(iv). The "time set for delivery" under the IPA Act is a two-year period beginning on June 1, 2019 and ending on June 1, 2021. 20 ILCS 3855/1-75(c)(1)(G)(i)-(ii). ELPC argues that ComEd's proposal violates the plain language of the statute and should be rejected. ELPC also disagrees with ComEd that prematurely applying the balancing requirement would "give full effect to the General Assembly's intent." ComEd Obj. at 6. ELPC avers that the General Assembly's intent is clear from the plain language of the statute and the IPA interpreted this requirement correctly. ELPC Resp. at 11.

3. Renewables Suppliers

The Renewables Suppliers state that in light of the relevant facts and circumstances, the IPA's proposed approach – that the "balancing" requirement does not become operative until after June 1, 2021 – is more reasonable than ComEd's, and should be approved by the Commission. The Renewables Suppliers explain that the initial forward procurement for RECs from new utility-scale wind projects was completed in 2017, with 965,000 RECs per year procured. However, the initial forward solar/brownfield procurements have not been completed, with only 200,000 solar RECs having been procured in an initial procurement event. Plan at 29, 50. By June 1, 2018 (one year after the effective date of PA 99-0906), the IPA must conduct additional procurements to procure the additional 800,000 RECs from new utility-scale solar/brownfield projects. Given the time required to develop a new solar project or brownfield PV project after the developer is selected in a procurement event and executes a contract, it is likely that some of the new utility-scale solar/brownfield projects will not be energized and begin delivering RECs until the deadline of June 1, 2021 or shortly before that date. RS Resp. at 3.

Additionally, although ComEd "recommends" that the "balancing" provision be operative beginning June 1, 2019, the Renewables Suppliers note that ComEd has not proposed any revisions to the Plan's proposed schedule of subsequent procurements of RECs from new utility-scale wind and solar projects. The Renewables Suppliers interpret this to mean that ComEd believes that the Plan's proposed schedule of procurements of RECs from new utility-scale wind and solar projects will satisfy the "balancing" provision, whether that provision is deemed to be operative on June 1, 2019 or June 1, 2021. RS Resp. at 3-4.

For these reasons, the Renewables Suppliers recommend that the Commission approve the Plan's proposed application of the new wind-new solar "balancing" requirement of Section1-75(c)(1)(G)(iv).

4. WOW

WOW opposes ComEd's objection to the IPA's proposal to apply the statutory balancing requirement after June 1, 2021. WOW points out that the statute allows an Initial Forward Procurement bid winner to start delivery as early as June 1, 2019 and as late as June 1, 2021. *See* 20 ILCS 3855/1-75(c)(1)(G)(i). Close examination of the

statutory language shows that the balancing requirement was to apply ". . . after the time set for delivery of renewable energy credits pursuant to the initial procurements in items (i) and (ii) of the subparagraph (G) . . .", thus referring to the June 1, 2021 date. If the Illinois General Assembly had intended for the balancing requirement to apply at an earlier date (say June 1, 2019), as recommended by ComEd, the General Assembly would have used different language. WOW Resp. at 3-4.

Additionally, WOW opines that the IPA's proposal to implement the balancing requirement after June 1, 2021 is administratively efficient. The Initial Forward Procurement is to inspire new wind and solar development in or for Illinois. To account for the needed and anticipated development of new wind and solar projects that the statute demands, PA 99-0906 grants new wind and solar developers a broad window of time to start delivering RECs. This broad period of time allows the industries to build up momentum in securing land leases, permits, zoning approvals, and interconnection approvals from PJM and MISO. It would be imprudent to start enforcing the balancing requirement as projects are gaining momentum, when the statute does not require delivery until June 1, 2021. WOW asserts that applying the balancing requirement early makes unnecessary accounting work for the IPA. WOW Resp. at 4.

The IPA's proposal to apply the balancing requirement after June 1, 2021 is what is required under Section 1-75(c)(1)(G)(iv) and is consistent with the intent of the RPS requirement and PA 99-0906 to allow new renewable resources time to develop projects. In WOW's opinion, enforcing the balancing provision prior to June 1, 2021 only impedes development of new wind and solar resources being used to serve Illinois' electric customers. WOW Resp. at 5.

5. NRDC

NRDC opines that ComEd incorrectly recommends that the IPA apply the balancing requirement on June 1, 2019. The IPA has correctly implemented the statute which states the latest delivery date of the initial procurements is June 1, 2021 and determined that the balancing requirement will apply on June 1, 2021. This is an accurate and reasonable reading of the statute, and the IPA's determination is well within its authority. NRDC Resp. at 2.

The IPA Act requires that a balancing requirement (meaning wind RECs cannot exceed solar RECs by more than 200,000) be applied "any time after the time set for delivery of renewable energy credits pursuant to the initial procurements." 20 ILCS 3855/1-75(c)(1)(G)(iv). According to NRDC, reading this subparagraph in its entirety shows that the General Assembly did not intend for the balancing requirement to apply immediately and gives the IPA discretion when to apply this balancing requirement within the delivery range of June 1, 2019 to June 1, 2021. This is evidenced by the delay between the initial wind and solar procurements – the initial wind procurement must happen within 160 days whereas the solar procurement can be within the year – and of course, the range of dates June 1, 2019 to June 1, 2021 for when RECs from the initial procurements can be delivered. Further, the language references multiple procurements and not just a single procurement, such as the initial wind procurement, as triggering this requirement. NRDC Resp. at 3.

6. IPA

The IPA disagrees with ComEd's position. Authority for the Initial Forward Procurements is found in Section 1-75(c)(1)(G) of the IPA Act. This Section requires the procurement of 1,000,000 new wind project RECs and 1,000,000 new utility scale or brownfield site PV project RECs for which first delivery of RECs is required beginning "on June 1, 2019, if available, but not later than June 1, 2021." Specifically, this Section does not state that such deliveries "will begin with the 2019 delivery year," as ComEd alleges in comments. The IPA understands that this allowance in a project's initial delivery timeline was to ensure that new wind and new PV projects were given sufficient time for financing, siting, permitting, and construction—all of which are predicate steps before REC deliveries may be made, and all of which may require multiple years to complete when taken together. IPA Resp. at 25-26.

While the IPA conducted its wind Initial Forward Procurement and its first round of the PV Initial Forward Procurement in August, 2017, the bulk of its PV Initial Forward Procurements have not yet begun—the IPA has scheduled two Spring 2018 procurement events for the remainder of the PV procurement target. Thus, the vast majority of PV projects bidding into the Initial Forward Procurement process will not know whether they were successful in acquiring a REC contract until the Spring of 2018. In addition to not being required by the law, this leaves the likelihood of those projects making REC deliveries beginning with the 2019 delivery year highly unlikely as a practical matter. IPA Resp. at 26-27.

While it is unclear from its Objections whether ComEd is requesting that the wind and solar balancing requirement be interpreted to take effect a) as of the first date of actual delivery from any initial forward procurement project or b) as of the first date on which such deliveries may legally be made (June 1, 2019), either of these options would cause a disconnect between the statutory balancing requirement and relative progress of the various projects whose development was facilitated by the Initial Forward Procurements. Only at the final deadline for REC deliveries – June 1, 2021 – can all projects be viewed on equal footing. Thus, only then will the IPA be equipped to make a fully informed determination as to whether an unexpected gap exists in the balance of RECs between wind and PV projects such that the statutory balancing requirement should be implicated. In its Objections, ComEd "recommends that the IPA adopt an interpretation that implements and applies this requirement at the earliest . . . possible date"; the IPA does not disagree, but believes that June 1, 2021 is indeed the "earliest possible date" that this requirement could be fairly applied. IPA Resp. at 26-27.

7. Commission Analysis and Conclusion

The Commission notes that the IPA Act imposes the following requirement:

> If, at any time after the time set for delivery of [RECs] pursuant to the initial procurements in items (i) and (ii) of this subparagraph (G), the cumulative amount of [RECs] projected to be delivered from all new wind projects in a given delivery year exceeds the cumulative amount of [RECs] projected to be delivered from all new photovoltaic projects in that delivery year by 200,000 or more [RECs], then the Agency shall within

> 60 days adjust the procurement programs in the long-term renewable resources procurement plan to ensure that the projected cumulative amount of [RECs] to be delivered from all new wind projects does not exceed the projected cumulative amount of [RECs] to be delivered from all new photovoltaic projects by 200,000 or more [RECs], provided that nothing in this Section shall preclude the projected cumulative amount of [RECs] to be delivered from all new photovoltaic projects from exceeding the projected cumulative amount of [RECs] to be delivered from all new wind projects in each delivery year and provided further that nothing in this item (iv) shall require the curtailment of an executed contract.

20 ILCS 3855/1-75(c)(1)(G)(iv). This language requires the IPA to ensure that wind RECs do not exceed solar RECs by more than 200,000, referred to by ComEd as the balancing requirement. The Commission finds that ComEd incorrectly recommends that the IPA should apply the balancing requirement on June 1, 2019. The phrase "after the time set for delivery" encompasses the entire time period over which RECs may be delivered and the IPA has accurately interpreted this provision in the Plan.

Notably, the bulk of the IPA's PV Initial Forward Procurements have not yet begun. Indeed, the Plan has two scheduled Spring 2018 procurement events for the remainder of the PV procurement target. The Commission agrees with the IPA that based on this, the vast majority of PV projects bidding into the Initial Forward Procurement process will not know whether they were successful in acquiring a REC contract until the Spring of 2018. As a practical matter, therefore, the likelihood of those projects making REC deliveries beginning with the 2019 delivery year is highly unlikely. The Commission finds further support for this conclusion from the Renewables Suppliers' explanation of the time required to develop a new solar project or brownfield PV project.

Imposing the balancing requirement in the 2019 delivery year is not supported by the statutory language or the practicalities of renewable development. The Commission declines to adopt ComEd's proposed modification to the Plan.

C. Section 5.7.2 Brownfield Site Forward Procurement

1. ELPC

ELPC explains that one of the changes introduced by PA 99-0906 was the addition of a requirement for the procurement of renewable resources from brownfield site PV projects. The statute makes clear that the purpose of this requirement is to "return blighted or contaminated land to productive use" through the development of solar projects. 20 ILCS 3855/1-5(8). The statute goes on to define brownfield site PV projects as PV projects that are interconnected to an Illinois investor owned utility, cooperative, or municipal utility and regulated under any of four brownfield programs. 20 ILCS 3855/1-10. Included in those four programs is the Illinois Environmental Protection Agency's ("IEPA") Illinois Site Remediation Program. ELPC recommends that the Commission clarify that the definition of "brownfield site photovoltaic project" includes only those sites

in the Illinois Site Remediation Program that were contaminated before entering the program or before embarking on remedial activities. ELPC Obj. at 19.

According to ELPC, the Site Remediation Program is set-up to: 1) help applicants investigate whether specific contamination issues exist on their sites; 2) identify an appropriate path to remediating any identified issues; and 3) ultimately, certify that sites do not need to take further remedial actions under Illinois law. This means that sites can be enrolled in the program before the extent of contamination is known and, in some rare cases, may enroll in the program even when there are no contamination issues, either because of an incorrect perception of contamination issues or to legally establish the absence of contamination issues for a lender or other party that requires an no further remediation letter before agreeing to a property transfer. ELPC Obj. at 20.

ELPC asks the Commission to clarify that, for the Site Remediation Program, the statutory definition of "brownfield site photovoltaic project" is limited to sites that are current or remediated brownfields and direct the Agency to rely on this definition for future procurements. ELPC Obj. at 21.

In its Reply, ELPC states that it would be satisfied with the proposal in IPA's Response (IPA Resp. at 28), with one slight alteration: rather than requiring guidelines "ensuring that such projects feature actual blight or contamination," the Commission should require guidelines ensuring that such projects currently feature actual blight or contamination or featured actual blight or contamination prior to remediation. This addition to the IPA's proposal around eligibility criteria is important because some brownfield programs require contaminated land to be fully remediated prior to solar development. Therefore, ELPC urges the Commission to order the brownfield site PV procurements to feature more restrictive participation guidelines, in line with the guidelines discussed above. ELPC Rep. at 25-26.

2. IPA

In response to ELPC, the IPA points out that as the IPA is not the IEPA, it cannot speak authoritatively on the operation of one of the IEPA's programs and whether mere Site Remediation Program participation creates a significant loophole, and thus IPA has no position on the merits of ELPC's concern. As such, the IPA does not object to or support ELPC's proposal. However, the IPA does offer that as of the date of this filing, no brownfield site PV projects have won REC contracts through the Initial Forward Procurements (and thus would be materially disadvantaged by any change in criteria regarding what constitutes a "brownfield site photovoltaic project"). The IPA has yet to conduct two of its scheduled initial forward procurement events for PVs; brownfield site PV projects are eligible for those procurements, although all qualifying proposals received in those procurements (brownfield or utility-scale) will be selected on the basis of price. IPA Resp. at 27-28.

The IPA argues that the most legally sustainable means to address ELPC's concern may be for the Commission to order that for purposes of the IPA's brownfield site PV procurement proposed in the Plan, the IPA must use stricter criteria for brownfield site project eligibility. Just as the IPA develops credit requirements, site maturity and control requirements, and other guidelines for its competitive procurement events that may have the effect (but not the specific intent) of excluding certain projects and bidders, the

Commission could order that the IPA's proposed brownfield site PV procurement event proceed featuring more restrictive participation guidelines than those found in the statutory definition of "brownfield site photovoltaic project"—specifically, with guidelines ensuring that such projects feature actual blight or contamination. IPA Resp. at 28.

3. Commission Analysis and Conclusion

The Commission notes the following statement in the IPA Act:

> Developing brownfield solar projects in Illinois will help return blighted or contaminated land to productive use while enhancing public health and the well-being of Illinois residents.

20 ILCS 3855/1-5(8). The Commission agrees with ELPC that this language, when considered in conjunction with the definition of a brownfield site, supports an interpretation that the General Assembly intended that only sites with actual contamination should be considered eligible by the IPA for purposes of the IPA's brownfield site PV procurement proposed in the Plan.

The IPA Act defines brownfield site PV projects as PV projects that are interconnected to an Illinois investor owned utility, cooperative, or municipal utility and regulated under any of four IEPA brownfield programs. 20 ILCS 3855/1-10. The Commission finds the statutory definition to be clear and agrees with the IPA that an alternate definition should not be adopted. There is no reason, however, that the IPA should not use stricter criteria for brownfield site project eligibility. Indeed, the parties appear to be in agreement in principle and ELPC in its Reply accepts the IPA's proposed solution with a minor modification. ELPC's final recommendation to require guidelines ensuring that such projects currently feature actual blight or contamination or featured actual blight or contamination prior to remediation seems reasonable. The Commission adopts this recommendation because it will ensure that the statutory intent to utilize blighted or contaminated land sites for solar development is reflected in the Plan.

D. Section 5.8.3 Other Renewables 15-Year Forward Procurement

1. ComEd

ComEd notes the Plan's election to "look beyond RECs from new wind and new PV projects to meet the annual RPS goals." Plan at 86. Specifically, it states that the IPA "understands the general goal and spirit of PA 99-0906 to be to prioritize procurements for RECs that result in the development of new renewable energy facilities over procuring RECs from existing facilities. This prioritization leads the [IPA] next to propose procurements focused on developing new renewable energy facilities that are not wind or photovoltaic." *Id*. While the Draft Plan included the IPA's acknowledgment that RECs from these forward procurements could be more expensive, this disclosure was deleted from the filed Plan. Instead, the Plan indicates that the IPA, in consultation with Staff, will later determine whether "there is sufficient interest to make a procurement viable and cost effective." Plan at 87. If so, the IPA will conduct this procurement in the Fall of 2019 for RECs to begin delivery in the 2020-2021 delivery year or later. *Id*.

Consistent with this uncertainty, the Plan also deletes the proposed REC target volume for this Forward Procurement that appeared in the Draft Plan. ComEd Obj. at 6-7.

ComEd is of the view that the procurements for these RECs could be more costly than purchasing existing RECs. The Plan admits, moreover, that the market data is not yet developed to determine cost effectiveness, and thus also removes any proposed target volume. Given this uncertainty and the inability to determine whether this proposal might contribute to a failure to achieve the statutory RPS targets, ComEd recommends that the IPA's consideration of other renewables be delayed until the next Plan update when the relevant market data is available and the IPA has held its discussions with Staff. ComEd Obj. at 7.

Only ELPC opposes ComEd's proposal, based in large part on an argument that "Illinois['] … little market experience for renewables other than wind and solar … is actually a good reason to move forward with the IPA's planned approach, rather than to stop or delay it." ELPC Resp. at 12. To be clear, ComEd's proposal is not to eliminate the contemplated procurement, only to postpone consideration for a year or so until market data under the new Plan is available. ComEd believes that ELPC's proposal to move forward now without any experience or market data is not a prudent, reasonable, or accurate way to grow this particular market and obtain useful pricing information and signals. ComEd Rep. at 9.

2. Renewables Suppliers

Renewables Suppliers recommend that the IPA consider eliminating or reducing the size of the "Other Renewables" long-term forward procurement, thereby freeing up funds for the additional long-term utility-scale wind and solar procurements. The Renewables Suppliers are not opposed to a long-term "other renewables" procurement, but they note that the requirement of Section 1-75(c)(1) of the IPA Act that at least 75% of RECs procured for RPS purposes must come from wind or PV facilities is a minimum requirement. Renewables Suppliers point out that electricity from wind or solar facilities is also almost always less costly than RECs from other renewable technologies and likely produces lower emissions. RS Obj. at 9-10.

3. ELPC

ELPC notes that ComEd is correct that Illinois currently has little market experience for renewables other than wind and solar, but this is actually a good reason to move forward with the IPA's planned approach, rather than to stop or delay it. Illinois-specific market data for other renewables cannot be generated until these renewable developments go forward. Furthermore, the IPA proposes prudent steps to ensure any such procurement is successful, including conducting a Request for Information and making the procurement contingent on the information gathered. Plan at 87. Therefore, ELPC urges the Commission to reject ComEd's suggestion to delay the Other Renewables Procurement. ELPC Resp. at 11-12.

4. Blue Delta

In its BOE, Blue Delta raises several concerns regarding the treatment of generators using non-wind/non-solar or "other" technologies. Blue Delta notes that there is the potential for a competition for funds between the various technologies for

procurements being conducted under the Plan. Blue Delta states that while it is reasonable for the IPA to conduct a Request for Information to gather more information about the potential participation of Other Renewables prior to conducting a long-term procurement, Blue Delta emphasizes that the results of such a process need to be taken into account before any discussion of the reallocation of funds for such a procurement. Blue Delta further recommends that if a deviation from the IPA's Plan is permitted, then the funds that would have otherwise been allocated at a later date to these incremental wind and solar resource procurements should be collected and advanced from later years to ensure that adequate funding is available for the Other Renewables technologies. Absent such an advancement, Blue Delta recommends that the Request for Information be conducted in a manner such that its findings can be applied before the incremental wind and solar long-term procurements are finalized. Blue Delta avers that it is critical that Other Renewables technologies not be neglected and are afforded the same opportunities under the Plan as the wind and solar resources are requesting. Blue Delta BOE at 1-3.

5. IPA

Given that the Plan calls for the Procurement to be held in Fall 2019, the IPA agrees with ComEd that it would be reasonable to postpone consideration of this procurement until the 2019 Plan update for implementation in 2020. The IPA could still conduct the Request for Information prior to that update to learn more about the potential interest from developers in participating in a procurement for new RECs from renewables facilities that are not wind or solar, as well as what the expected prices for such RECs would be. This proposed postponement constitutes only a minor change in timing, and one which should not impact the underlying objective of providing an opportunity for long-term REC contracts to incent the development of new non-wind or non-solar projects. The Request for Information could then inform the IPA if the Other Renewables Forward Procurement should be included in the 2019 Plan update. IPA Resp. at 24-25.

6. Commission Analysis and Conclusion

The Commission notes that parties are in agreement that the IPA has no experience or market data regarding non-wind and non-solar renewables. Thus, it would be unwise to proceed with the Other Renewables Procurement as outlined in the Plan.

It is clear that the process proposed by the IPA in its Response will have minimal impact on the timing of the procurement of other renewables. The IPA explains that it will still conduct the Request for Information prior to the 2019 Plan update which will inform the IPA regarding any proposal that it might make in that update. The Commission agrees that this is reasonable and it is adopted.

The Commission notes that Blue Delta intervened very late in this proceeding. The Commission agrees with the IPA's response to Blue Delta's proposal to collect and advance funds from later years. Blue Delta BOE at 2. Specifically, the IPA opines that Blue Delta is requesting that the Commission prioritize a non-statutory objective over procurements conducted to meet express statutory targets, which is inconsistent with the design of PA 99-0906. Blue Delta's recommendation is not adopted.

E. Section 5.9 2018 and 2019 Spot Procurements

1. Staff

When it comes to the proposed REC Spot Procurements, Staff opines that the Plan correctly notes that due to the narrower geographic eligibility of REC facilities as well as the prohibition on RECs from generating units with costs recovered through regulated rates, "the pool of eligible RECs will be smaller than for many of the previous REC procurements conducted by the IPA." Plan at 90. Staff notes that the Plan proposes to make the pool of eligible RECs even smaller when it proposes to deviate from past REC Spot Procurement RFPs and only procure RECs from the applicable delivery year - in other words, the vintage of the RECs must match the delivery year for which the Spot Procurement is meant to meet the RPS goals. Plan at 89. The IPA states that the reason for this is to fulfill the spirit of the state's RPS. Pet. at 35-36. However, the purpose of the Spot Procurement is to meet that portion of the state's RPS that is unchanged as it pertains to the percentage required to be met. Also, Staff argues that there is no express directive in the law to restrict the eligible facilities to solely new facilities or current vintage RECs. Staff Obj. at 8.

Staff explains that in prior REC Spot Procurements, eligible RECs included those RECs generated during the delivery year as well as the January-May period prior to the delivery year. Thus, Staff recommends that the IPA maintain this larger REC vintage period for all proposed Spot Procurements because it increases the likelihood of meeting the overall RPS requirements and it may reduce costs to ratepayers. Staff Obj. at 8-9.

2. CSG

CSG is concerned that this vintage requirement is uncommon in the marketplace and unnecessarily restricts the amount of available RECs, which will result in higher REC prices for the IPA. To remedy this concern, CSG suggests that the Commission allow an additional five months at the front end of the vintage period. For example, the Spot Procurement for Delivery Year 2018-2019 would include RECs generated from January 1, 2018 through May 31, 2019. Although standard practice in the industry is to allow three years of banking, CSG believes that advancing the vintage period by five months represents a reasonable compromise among the parties in light of the competing concerns. CSG Obj. at 7.

CSG states that its proposal is consistent with the IPA's own treatment of RECs during the Initial Forward Procurement of utility-scale RECs under Section 1-75(c)(1)(G) of the IPA Act, which recognized that RECs generated in one delivery year may be used in another, at least for purposes of the Initial Forward Procurement. One of the problems being solved by "banking" RECs was variable production year over year due to more or less sunny years and more or less windy years. Banking RECs is a solution for intermittency of renewables in general across all markets. So, the same logic that was applied to allow banking in the Initial Forward Procurement should be applied to Spot Procurements. CSG Rep. at 7-8.

In response to the IPA's arguments in support of a 12-month REC vintage, CSG opines that the IPA's speculation that the absence of explicit language "could be

understood" to mean that 12-month vintages are now preferred should not be relied upon for diverging from the past practice of using 17-month REC vintages. CSG Rep. at 7.

CSG states that it is also confused by the IPA's statement that the "consequence of a tighter vintage requirement may well be less money spent on the statutorily-necessary, but not altogether fruitful attempt to meet annual targets through short-term REC contracts." IPA Resp. at 30. This statement made in conjunction with the IPA's reminder that the Spot Procurements will be subject to benchmarks arguably suggests that the Spot Procurements are not expected to succeed. CSG Rep. at 8-9.

CSG states that it does not expect that the Spot Procurements will result in tens of millions of inexpensive RECs being purchased due to a glut of supply and a large budget. CSG states that the scenario that is likely under the Plan would be for less than 10% of the target volumes to be purchased and for them to be purchased at higher prices than most stakeholders anticipate. This is due to three main factors: 1) the proposed 60-point threshold excludes the great majority of the MISO non-rate recovery REC supply, 2) PJM non-rate recovery RECs, while abundant, are expensive and largely spoken for by compliance parties in other states who are not financially motivated to participate in the IPA Spot Procurements, and 3) the benchmark criteria specifications further narrow the supply and exacerbate the situation. CSG Rep. at 9.

CSG submits that if the IPA's proposed adjacent state threshold and narrower REC vintage are adopted in conjunction with a benchmark set to appease budget concerns, the Spot Procurements may indeed fall far short of the statutory procurement goals. Because CSG knows that the IPA recognizes the obligation to meet near-term REC procurement targets, and although CSG understands that the benchmark is confidential and has confidence that the parties involved will properly set the benchmark, CSG anticipates that the IPA would raise the benchmark if the initial Spot Procurement does not produce the necessary results. By utilizing the customary 17-month REC vintage (and the 52-point adjacent state threshold), the odds of successful spot market procurements increase. In conclusion, CSG believes that if its arguments are adopted, the result will be more RECs purchased at a lower total cost, thus reducing the impact of the Spot Procurements on the budget. CSG Rep. at 12-13.

3. Renewables Suppliers

The Renewables Suppliers agree with CSG and Staff that, to the extent Spot Procurements are held, the vintage of eligible RECs to be procured should include the first five months of the calendar year in which the delivery year commences. RS Resp. at 5.

4. WOW

WOW agrees with Staff's and CSG's recommendations to expand the eligibility period for RECs used for Spot Procurements. While WOW recommends that the IPA forego Spot Procurements so the IPA has a sufficient RPS Budget to meet the priority of long term contracts (consistent with the criteria in §1-75(c)(1)(F)), in the event this recommendation is not adopted and the IPA is to conduct Spot Procurements, WOW supports Staff's and CSG's recommendation to expand the period of time for eligible RECs for Spot Procurements. WOW Resp. at 10.

5. NRDC

NRDC asserts that the IPA has the authority to determine the eligibility of RECs procured under the Plan. NRDC notes that the statute itself is silent on vintage year requirements, where in other provisions the PUA expressly allows the RECs to be banked. IPA Resp. at 29. Because the IPA has made a reasonable and prudent decision, NRDC maintains that the Commission should approve this provision. NRDC Rep. at 5-6.

6. IPA

The IPA states that while it does not believe Staff and CSG's suggestion is prohibited by law (and acknowledges that prior procurements conducted by the IPA did feature a five-month allowance), the IPA believes the Plan's stricter vintage approach best balances the competing considerations present in implementing the State's RPS. IPA Resp. at 28-29.

First, while the IPA does not view a prior delivery year's RECs as being expressly prohibited, the IPA believes that matching REC vintage with compliance delivery year is most consistent with the General Assembly's intent. The PUA demonstrates that when the General Assembly intended to create REC vintage allowances beyond the compliance year, it did so expressly. Thus, Section 16-115D(c)(1) of the PUA expressly provides that RECs "not used by an alternative retail electric supplier to comply with a renewable portfolio standard in a compliance year *may be banked and carried forward up to 2 12-month compliance periods after the compliance period in which the credit was generated* for the purpose of complying with a renewable portfolio standard in those 2 subsequent compliance periods." 220 ILCS 5/16-115D(c)(1) (emphasis added). While Section 1-75(c) of the IPA Act is silent on REC vintage, the absence of a statement expressly authorizing "carrying forward" or otherwise utilizing RECs from an earlier year for that delivery year's compliance requirement could be understood as a preference for meeting compliance year targets with compliance year generation. The IPA states that while it does allow "banking" of RECs under its Initial Forward Procurement contracts, as CSG highlights, this contract provision was included to solve a narrow problem associated with the potential disconnect between delivery year contract volumes and delivery year overproduction for a specific facility that had already won a contract through a competitive procurement event. The approach proposed by CSG and Staff is far broader, allowing blanket permission under the long-term plan for any RECs from any qualifying facility produced in five months prior to that delivery year. Spot procurements are not unit-specific so the particular issue addressed in the Initial Forward Procurement is irrelevant to the Spot Procurements. IPA Resp. at 29.

The IPA states that it believes it cannot simply ignore the annual procurement targets found in Section 1-75(c)(1)(B) of the IPA Act—targets which, for early delivery years like 2017-2018 through 2019-2020 at least, must largely be met through existing generation, given the multi-year timelines associated with the development of new generating facilities—and must propose procurement events attempting to meet this firm statutory requirement. But the IPA can propose steps potentially limiting impacts of those procurements on available budgets. One such step is limiting the procurement of RECs through one year contracts to only RECs of a vintage which matches the delivery year's

targets. While reducing supply and leaving demand fixed might normally result in higher prices, all "Spot Procurement" bids will be subject to market-based benchmarks (i.e., REC prices above which no bid may be selected for procurement). The consequence of a tighter vintage requirement may well be less money spent on the statutorily-necessary, but not altogether fruitful attempt to meet annual targets through short-term REC contracts. IPA Resp. at 30.

For the foregoing reasons, objections to the Plan's vintage requirement should be rejected.

7. Commission Analysis and Conclusion

The Commission agrees with the IPA's statutory interpretation argument that while the longer vintage is not expressly prohibited, the PUA demonstrates that when the General Assembly intended to create REC vintage allowances beyond the compliance year, it did so expressly. *See* 220 ILCS 5/16-115D(c)(1). While Section 1-75(c) of the IPA Act is silent on REC vintage, the absence of a statement expressly authorizing "carrying forward" or otherwise utilizing RECs from an earlier year for that delivery year's compliance requirement is understood by the Commission to be a preference for meeting compliance year targets with compliance year generation. Although this will lessen the number of RECs available from Illinois and adjacent states, the Commission finds that matching the REC vintage to the delivery year ensures that the procurement is not simply clearing out old RECs. The recommendation to expand the REC vintage period is not adopted.

VII. CHAPTER 6 ADJUSTABLE BLOCK PROGRAM

A. Section 6.3 Block Structure

1. Joint Solar Parties

As the IPA correctly notes, there are three statutory mandates for block structure, which address 75% of the Adjustable Block Program's capacity. Plan at 95. Noting that the statute was silent about how to use the other 25%, the IPA simply allocated it evenly to the three mandated block categories (within each category, the IPA initially plans to have three blocks). *Id*. In other words, there are equal amounts of capacity available for systems under 10 kilowatt ("kW") as all distributed systems from 10 kW - 2,000 kW and all community solar systems. This system runs into trouble if one of these three categories attracts far more nameplate capacity in proposed projects from Approved Vendors than the category's allocation—while one or both others languish in the first or second block of three. JSP Obj. at 28.

Although the Joint Solar Parties do not necessarily disagree with the IPA that the IPA's proposal is allowable under the IPA Act, it is not clear that the IPA's approach best meets other statutory goals within Section 1-75(c)(1) of the IPA Act. On one hand, Section 1-75(c)(1)(C) requires 50% of new build solar RECS "to the extent possible" to come from the Adjustable Block Program. 20 ILCS 3855/1-75(c)(1)(C)(i)-(iii). On the other hand, Section 1-75(c)(1)(K) requires that the IPA design the Adjustable Block Program "transparent schedule of prices and quantities . . . and for renewable energy

credit prices to adjust at a predictable rate over time." 20 ILCS 3855/1-75(c)(1)(K). Taken together, this language suggests that while the IPA should design the Adjustable Block Program to come as close to the REC delivery goal as possible, it also should be transparent with block quantities. JSP Obj. at 28-29.

An approach that would better meet the statutory goals would be to first allocate capacity to the three mandated block categories in the minimum size the statute allows. *See* 20 ILCS 3855/1-75(c)(1)(K)(i)-(iii). The remaining 25% would sit idle until the IPA concluded in its own discretion that expanding existing blocks or adding new blocks would be a prudent step, but no later than one of the block categories filling up all three blocks. In that event, the remaining 25% of Adjustable Block capacity would be used to create an additional block once the last available block in a block category filled up or when, in the IPA's discretion, Approved Vendor demand in earlier blocks warrants expanding Block 3 or offering subsequent blocks, whichever comes first. JSP Obj. at 29.

The Joint Solar Parties opine that holding back capacity that can be added once all existing blocks for a particular category have been filled provides a smoother, more flexible approach. The market need not fear a sudden and significant IPA reallocation that could more easily happen under the IPA's approach. In addition, adding fourth (and subsequent) blocks for block categories that are popular will allow the price to adjust downward in a smoother fashion rather than relying on a more dramatic price adjustment to discourage more build for a particular project type. The nascent Illinois solar market will be better able to adjust and meet customer demand. JSP Obj. at 30.

In response to the IPA's counterarguments, the Joint Solar Parties note that the IPA does not appear to address the issues raised by the Joint Solar Parties. The Joint Solar Parties' clarify that they are concerned that if there is a "gold rush" (i.e. very rapid oversubscription of the first three blocks in a group) in one category under the IPA's plan, future projects in that category may have to wait until there is available budget, creating a boom and bust situation. PA 99-0906 was intended specifically to avoid the boom-bust cycle under previous law. *See, e.g.*, 20 ILCS 3855/1-75(c)(1)(K). The IPA's response quoting the statutory requirement that new blocks are to automatically open appears to not account for budgetary limits. *See* IPA Resp. at 44. The Joint Solar Parties believe there is a realistic chance that the IPA could hit its maximum budget through 2020-2021 depending on small subscriber participation, block pricing, other procurement decisions, and the speed at which blocks fill up. The Joint Solar Parties believe there is no guarantee that the IPA will have the ability to automatically add capacity to any category beyond the initial amounts outlined in this plan. JSP Rep. at 20.

For the reasons stated above, the Joint Solar Parties recommend that the Commission modify the Plan to accommodate the Joint Solar Parties' initial capacity allocation proposal. Specifically, the Joint Solar Parties recommend that the IPA keep Block 1 and Block 2 the same, reduce the size of Block 3, and add capacity to Block 3 or subsequent blocks from reserved capacity if the particular category within is showing strong demand. This will increase the chances that the IPA can build all 666 MW of new distributed and community solar while also sending the market the correct signal of where resources are allocated. JSP Rep. at 21.

2. Summit Ridge

Summit Ridge agrees with the objection and proposed solution put forth by the Joint Solar Parties (JSP Obj. at 28-30) related to the expected imbalance in the number of applications submitted among the three Adjustable Block Program categories and recommended withholding of the final 25% of the program's capacity to reactively deploy those funds to whichever category(s) exhibits a significantly higher application volume than the others, thereby facilitating the most rapid and efficient deployment of solar. Summit Rep. at 1.

Conversely, Summit Ridge disagrees with the IPA's assertion in its response to this objection that this would be an "unnecessary step" to take. IPA Resp. at 43-45. While the IPA notes that it "has no experience to date operating its Adjustable Block Program and analyzing resulting interest in these categories," it should be noted that Summit Ridge and many other stakeholders do have experience with incentive programs with similar structures, some aspects of which were incorporated into the design of the Plan. Summit Rep. at 1-2.

Based on this experience in other markets with community solar/virtual net metering constructs, as well as the significant amount of development activity currently occurring toward community solar projects in Illinois in anticipation of the Adjustable Block Program, Summit Ridge would contend that it is safe to project that the community solar segment will experience a disproportionately high volume of program applications. This is largely due to the increased availability of suitable sites in comparison to the other categories, economies of scale, and greater efficiency of installation associated with developing remotely sited systems with little to no space constraints. It should also be noted that the lead-up to the opening of the Adjustable Block Program has been a long one, resulting in a high number of early entrants into the community solar market throughout the State. By all indications, this has led to what will very likely be a higher level of pent-up demand than the IPA is considering, even with the relatively robust set of requirements that the agency has wisely put in place to mitigate this issue. Summit Rep. at 2.

Summit Ridge proposes facilitating the flexibility to meet this anticipated demand (or unanticipated demand from a different category) by reverting to the initial category allocations set forth in the IPA's initial Draft Plan and reserving the final 25% of the Adjustable Block Program's capacity that was left to the IPA's discretion to allocate it according to the market forces exhibited by each category in the opening phase of the program. Summit Ridge agrees with the IPA's assessment in Section 2.5.1.1 of the initial Draft Plan that this final 25% "can be allocated to adjust for ongoing program performance of the other categories." Summit Rep. at 2.

3. ELPC

ELPC states that, according to the Plan, the IPA is currently allocating capacity up-front with the express intent to reallocate that capacity later, based on market response. Plan at 95. ELPC believes that the IPA's initial allocation of capacity to specific market segments will create expectations among market participants and their financiers that could lead to confusion and market disruption later if the initial allocation is adjusted. ELPC notes that the IPA is required to "consider stakeholder feedback when making

adjustments to the Adjustable Block design." 20 ILCS 3855/1-75(c)(1)(M). Market confusion and backlash would be unproductive and could complicate any reallocation. Furthermore, delaying the allocation of this capacity will provide the IPA with greater flexibility. This includes the flexibility to respond to unanticipated problems such as those that would be created by a rush on the program or the failure of the small customer adder to incent community solar developers to serve that market segment. Therefore, ELPC believes the Plan should be modified to eliminate up-front Plans to reallocate blocks. ELPC Resp. at 26-27.

4. CCSA

CCSA notes its support for the Joint Solar Parties' recommendation to hold back 25% of the IPA's discretionary capacity to allow the program to respond to market needs. If a 40% small customer participation target is not met in Block 1, the Program Administrator could assign additional capacity in Block 2 or 3 from the discretionary capacity that is held in reserve. This additional capacity would be dedicated to projects with small subscribers. If there is demonstrated demand for projects with small subscribers (via applications that are not accepted into Block 1) then this additional capacity could be tapped to meet that demand. This option would keep program costs down by providing for more capacity, rather than increasing the adder. CCSA Obj. at 9.

5. IPA

The IPA believes the Joint Solar Parties' proposal is an unnecessary step and that its proposed approach sufficiently accommodates the Joint Solar Parties' concerns. IPA Resp. at 43. To be clear, the IPA does not believe that this requirement mandates equivalent interest in, or contracts executed (i.e., performance) under, each of the categories. The IPA states that it understands these categories to be planning tools used to guide and form initial allocations, with baseline minimum requirements (i.e., at least 25% of an overall whole) applicable to those allocations for proposed block size equivalency. IPA Resp. at 43-44.

Mindful of this understanding, the Plan proposes an equivalent 33.3% - 33.3% - 33.3% allocation across all three categories by evenly allocating the remaining 25% across the three specified categories. As the IPA has no experience to date operating its Adjustable Block Program and analyzing resulting interest in these categories, the IPA believes it may be premature to prioritize any one category over another. Should interest indeed be significantly greater for any one category, this may be accommodated by the "automatic opening of the next step as soon as the nameplate capacity and available purchase prices for an open step are fully committed or reserved." 20 ILCS 3855/1-75(c)(1)(K); IPA Resp. at 44.

Thus, the Joint Solar Parties' claim that the IPA's proposed allocation "runs into trouble if one of these three categories attracts far more nameplate capacity in proposed projects from Approved Vendors than the category's allocation—while one or both others languish in the first or second block of three" is confusing; in such a case, the category attracting more interest simply proceeds ahead. While withholding capacity as the Joint Solar Parties propose could allow for an additional allocation after a third block closed, it would require smaller initial block sizes in service of addressing interest level differentials that could just as easily be addressed in the IPA's next Plan update, occurring

approximately one year after the Adjustable Block Program commences operation—or through relying on its Section 1-75(c)(1)(M) authority allowing for "[p]rogram modifications to any price, capacity block, or other program element that do not deviate from the Commission's approved value by more than 25%" to "take effect immediately" and "not subject to Commission review and approval." 20 ILCS 3855/1-75(c)(1)(M); IPA Resp. at 44.

ELPC provides a Response supportive of the Joint Solar Parties' proposal that 25% of Adjustable Block Program capacity be withheld, rather than distributed evenly across size categories as proposed in the Plan. ELPC Resp. at 26-27. The IPA disagrees that "confusion" or potential "market disruption" would be avoided if the IPA withheld allocating capacity that "shall be allocated as specified by the IPA in the long-term renewable resources procurement plan" (20 ILCS 3855/1-75(c)(1)(K)(iv)) to instead distribute at its future "discretion." IPA Rep. at 18.

The IPA clarifies that any future "reallocation" would not necessarily diminish the capacity available for a category, as capacity allocations across categories are not a zero-sum game beneath a fixed amount. Likewise, a block being initially "oversubscribed" (i.e., the 30 MW example on p. 96 of the Plan) would not require "reallocating" capacity from one category to another. Instead, a future reallocation would more likely alter the percentage assigned to categories, likely through increasing the capacity available for another category reflecting that category's increased market interest. IPA Rep. at 18-19.

6. Commission Analysis and Conclusion

By way of background, Section 1-75(c)(1)(K) of the IPA Act requires that the IPA's Adjustable Block Program include the following block groups, with the following minimum allocations:

> (i) At least 25% from distributed renewable energy generation devices with a nameplate capacity of no more than 10 kilowatts.
>
> (ii) At least 25% from distributed renewable energy generation devices with a nameplate capacity of more than 10 kilowatts and no more than 2,000 kilowatts.
>
> (iii) At least 25% from photovoltaic community renewable generation projects.

For the remaining 25%, Section 1-75(c)(1)(K)(iv) provides that it "shall be allocated as specified by the Agency in the long-term renewable resources procurement plan." IPA Resp. at 43.

It appears to the Commission as though the IPA intends to add more capacity to a block if there is a large demand for a particular block. The IPA seems to say that if a block needs more capacity, it will be allocated more capacity and the other blocks will not be affected by the addition of capacity to the block in need. Although the IPA claims that this should satisfy the concerns of the Joint Solar Parties and others, the Commission does not agree. The IPA's position does not appear to take into account the possibility that the budget will not allow for added capacity.

The Commission adopts the proposal of the Joint Solar Parties. They have raised a valid concern regarding the appropriate reaction of the IPA if a particular block becomes oversubscribed. By reserving 25% of the Adjustable Block Program capacity by megawatt, as outlined in the IPA's BOE (IPA BOE at 31-32), the IPA can respond to the market without being further constrained by the budget.

B. Section 6.3.1 Transition Between Blocks

1. EDF

EDF explains that the Plan, in an attempt to create a smooth transition between blocks in the Adjustable Block Incentive, the IPA has proposed the concept of a "soft close." The soft close would essentially allow any projects submitted within the first 45 days of the program opening to be included in Block 1. Plan at 96. If the capacity submitted in this initial period exceeds 200% of Block 1's capacity, the IPA will evaluate the budget and implement a lottery system to allocate projects into Block 1. *Id*. Projects that are not chosen in the lottery will be placed into Block 2. *Id*. The lottery system proposed by the IPA offers no preference for projects, such as those that are more likely to materialize on time and as expected. EDF commends the IPA for its adoption of such provisions to prevent unintended rushes on the block program that could cause the budget to spiral out of control, and hamper the IPA's ability to effectively implement its plan. EDF offers some additional requirements to be included to meet the goals of PA 99-0906. EDF Obj. at 8.

EDF notes that the statute requires that "[e]ach contract shall include provisions to ensure the delivery of the renewable energy credits for the full term of the contract." 20 ILCS 3855/1-75(c)(1)(L)(iii). The implementation of a pure lottery system will not necessarily ensure projects that are awarded to the block are the most likely to be energized and successfully deliver RECs on time. Conversely, EDF maintains that a lottery system that prioritizes higher quality or more likely projects increases the likelihood that the RECs will materialize over the full term of the contract. EDF Obj. at 8-9.

The legislation outlines that there should be prioritization for new build. 20 ILCS 3855/1-75(c)(1)(B). By creating a pure lottery system without any criteria, EDF opines that it is possible - if not likely - that projects with greater progress towards development, are closer to energization, or use a standard contract may be bumped out of the initial block while other systems which are only in initial planning phases or do not follow a standard contract get awarded. This discourages projects from moving toward energization before submitting to a block, and creates a risk that a greater number of projects that are awarded do not actually come to fruition. By utilizing a scoring or weighted lottery system, the IPA can ensure that systems that receive awards in the early blocks are systems which will actually be built, energized, and succeed in delivering REC's on time. EDF Obj. at 9.

EDF further notes that the Plan does not explain how this system may impact the following blocks. The Plan sets out a process whereby projects that are submitted for Block 1 but are not selected through the lottery will be "held for approval" and included in the next block at the applicable price. Plan at 96. The concern draws from experience in other states such as Minnesota where pent-up demand and a rush to build large-scale

community solar projects resulted in 2,000 community solar garden applications equaling approximately 800 MW's immediately upon program opening. If Illinois were to see similar levels of initial rush within the first 45 days, the application for Large Distributed Generation and Community Solar blocks could exceed the Block 1 limits by 1000%. EDF Obj. at 9-10.

Additionally, EDF states many larger distributed generation and Community Solar projects will be submitted into Block 1, and the Plan includes no carve out for a certain percentage of this Block to be allocated to smaller projects. This violates the statute's requirement of "robust" residential and small customer participation. 20 ILCS 3855/1-75(c)(1)(N). A key goal of the legislation is to ensure residential and small commercial projects can participate, and to maximize the budget to allow for these projects. *Id*. A lack in prioritization of residential and small commercial projects will discourage opportunities to participate in the programs, and create perverse incentives for bad actors. The current proposal could jeopardize residential and small commercial projects' access to the RPS budget by forcing the IPA to allocate it all to the expected rush of large commercial and community solar projects. EDF Obj. at 10.

Given the above concerns, the IPA's soft-close proposal and 45-day hold open proposal could be appropriate only for small systems, if also paired with close monitoring and protections against a gaming of block sizes. EDF Obj. at 11-12.

EDF notes that the IPA responded to parties and proposed modifications to its proposal which increase opportunities for small subscriber participation particularly in the community solar block. IPA Resp. at 46-47. The IPA proposed to reserve 50% of funding from the first community solar block for projects that include at least 50% small subscribers. *Id*. at 46. In the event that the number of proposed projects with at least 50% small subscribers exceeds 50% of available funding, a lottery process would determine which projects were selected to that 50% reserved block, and the balance of those projects would go into the lottery for the remaining 50% of funding (along with projects that do not include 50% small subscribers). IPA Resp. at 46-47; EDF Rep. at 12-13.

EDF appreciates this thoughtfully crafted approach to maximize opportunities for systems with small subscribers, and supports the modification to the Plan. EDF agrees with the IPA that such an approach would create additional incentive for community solar projects to engage small subscribers, and would increase the likelihood that projects with a larger percentage of small subscribers are selected for the block. Given that, and the possibility that the IPA can amend its plan later if specific scoring criteria becomes necessary, EDF supports the IPA's approach to managing initial demand for the Adjustable Block Program. EDF Rep. at 13.

2. Joint Solar Parties

The Joint Solar Parties have two primary concerns with the IPA's approach. First, in order to apply for any block in the Adjustable Block Program, a project must have a signed interconnection agreement, all non-ministerial permits, and evidence of site control. In practice, that means the project must be "shovel ready," meaning both there is less risk of a project not going forward and the developer has already expended significant funds—potentially upwards of six figures—toward site control, interconnection,

and permit acquisition by the time of application. Furthermore, the developer may have secured a customer (distributed generation) or customers (community solar), as well as financing. The lottery system introduces blind luck as a determining factor influencing whether all of that work—and expense—will pay off. Though imperfect, a first come/first served process affords applicants more control over the success or failure of a project to secure a position in the program at Block 1 pricing and a green light to work toward energization. JSP Obj. at 25-26.

In addition to eliminating the role of luck, a first-come/first-served approach conveys the additional advantage that applicants will know the fate of their project's eligibility for Block 1 at the point in time at which an application is approved by the Program Administrator. If a lottery could be triggered at any point in the first 45 days after Block 1 opens, Approved Vendors face a long period of uncertainty, which in turn translates into additional risks and the potential for significant delay for Approved Vendors. Progress on customer contracts, financing arrangements, pre-construction development work, equipment and labor procurement must essentially halt while applicants wait to see whether a lottery will be triggered and whether their project will be selected. JSP Obj. at 26-27.

The Joint Solar Parties acknowledge that the "gold rush" problem that IPA was responding to with its lottery proposal could be a real problem, but recommend that the Commission reject EDF's Block 1 proposal. The Joint Solar Parties note that EDF suggests that a weighted lottery system would increase the number of approved community solar systems that serve smaller subscribers. The Joint Solar Parties are concerned that a requirement to announce a small subscriber target will discourage some Approved Vendors from targeting small customers, because of risk that insufficient subscribers will be obtained. Taken together, while the Joint Solar Parties agree that small subscriber participation is important, the Joint Solar Parties believe that EDF's weighted lottery proposal would not accomplish its goals and would cause substantial harm to developers (and thus their customers). JSP Resp. at 9-10.

As the Joint Solar Parties understand the IPA's modified approach for Block 1, if over the first 21 days Block 1 is open, 200% of the original capacity will be available. If the 200% is exceeded within 21 days, the IPA will devote 50% of "funding" to projects that pledge at or above 50% small subscribers. A lottery will be held for those projects pledging small subscribers if 50% funding is oversubscribed; those who do not prevail in the lottery go to a general pool (with projects that do not pledge 50% small subscribers). Those projects enter a secondary lottery. It is not clear what will be done with those projects not selected in the secondary lottery—especially if project capacity exceeds the size of Block 3. *See* IPA Resp. at 46-47; JSP Rep. at 16-17.

While the Joint Solar Parties appreciate that the IPA is attempting to create a system that protects small subscriber participation, the Joint Solar Parties are concerned that this approach will have a negative impact on financing. An Approved Vendor will submit and have to wait up to 21 days to find out whether they prevailed in at least one lottery before receiving their REC price—if they make it into Block 1 at all. JSP Rep. at 17.

The Joint Solar Parties opine that a better approach would be to shorten the period to trigger the lottery and reverting to first come/first served afterward. While the IPA did not explain why a five-business day trigger for a lottery (followed by first come/first served) was a logistical challenge, the Joint Solar Parties accept the IPA at its word. The shorter the time between the Block 1 open date and the end of the time that could trigger a lottery, the more positive impact on financing terms the Joint Solar Parties expect to see. JSP Rep. at 18.

The Joint Solar Parties continue to recommend approval of their approach, but acknowledge that a period beyond five business days may be necessary for the lottery trigger if the IPA believes that five business days is insufficient. While the Joint Solar Parties cannot make a concrete proposal without knowing why the IPA believes five business days is difficult to manage, the Joint Solar Parties recommend that it be the shortest amount of time the IPA believes it can administer. The Joint Solar Parties propose 10-15 calendar days, which—while longer than five days—will reduce uncertainty from 21 days and thus have a less negative effect on financing. Following that time period, if the lottery does not trigger, Block 1 should remain open until 45 days after it opened or proceed on a first come/first served basis until it hits 200% of its initial capacity. JSP Rep. at 18-19.

3. ELPC

ELPC opines that the IPA's plan to hold the first Block of the Adjustable Block Program open for 45-days could create two distinct unintended negative consequences in the event of a rush on the program. First, a major program rush that extends for a full 45-days and that significantly exceeds the capacity available in Block 1 would create confusion, uncertainty, and risk among program participants. Second, a major rush could pre-empt the IPA's ability to monitor block activity and make changes as necessary to ensure market segments are moving as planned. ELPC states that if there is rush on the program from projects with no small subscribers, there will be nothing the IPA can do if the entire capacity allocated to that market segment gets used up, which would be contrary to the statutory requirement to "ensure robust participation opportunities for residential and small commercial customers." 20 ILCS 3855/1-75(c)(1)(N). Furthermore, as EDF highlights, the same risk applies to the relatively smaller systems that participate in the Block reserved for 25 kW to 2 MW distributed generation systems. EDF Obj. at 10. Thus, ELPC opines that the Plan should be modified to minimize the risk of these potential negative outcomes, while taking into account the valid concerns that some parties have raised about technical failures and gaming that have occurred in other markets. JSP Obj. at 27; EDF Obj. at 10; ELPC Resp. at 25-26.

4. CCSA

CCSA notes that the IPA has made it clear it believes the small customer adders will achieve the statute's small customer participation requirement. While CCSA believes the revised adders will likely spur developer interest in securing residential customers, there are no guarantees without a mandate. As such, there are several potentially feasible mechanisms (beyond the small customer adders) that can ensure participation opportunities are afforded to residential and small commercial customers. In all cases, however, close monitoring of small subscriber participation is required, as are

mechanisms to prevent gaming. The most important aspect in determining a mechanism is building in the flexibility to course-correct before the majority of program capacity is allocated, which could happen quickly upon program launch in 2018. A review in 2019, as suggested in Section 7.6.1, will be too late to enable an adjustment in Blocks 1-3, which could have the effect of leaving residential and small commercial customers out of a program that was explicitly designed to include them. CCSA supports the Joint Solar Parties' Objection rebutting the lottery approach proposed by the IPA. CCSA additionally proposes the following options that will allow the Plan to ensure small customer participation but notes that there may be other approaches to achieving the result of small customer participation; the key is for the IPA to adopt some effective mechanism to ensure that participation. CCSA Obj. at 7-8.

CCSA proposes that the Program Administrator monitor the small subscriber levels proposed by applications in Block 1. If a capacity target of 40% small subscribers is not met in Block 1, the Program Administrator would adjust the adder upward by 12.5% (half of the 25% allowed by statute) for Block 2. If a capacity target of 40% is still not met in Block 2, the Program Administrator would create a capacity carve-out for Block 3. This carve-out could work in one of two ways. The Program Administrator could impose a 25% or 50% small subscriber requirement on each project, or devise a prioritization of projects that include small subscribers, up to the 40% target, after which, any projects may apply for the remaining capacity of Block 3. While adjusting the REC price may be a useful tool that the Program Administrator can use, this mechanism alone does not *ensure* the policy objective will be met. This approach allows for the possibility of a REC adjustment to work before moving on to a capacity requirement. Alternately, the Program Administrator could choose to move directly to a project-based or capacity-based mandate for the Block 2, if additional program funding were constrained or if a mandate were otherwise warranted. In the event that a minimum small subscriber requirement is triggered for Block 3, it will be necessary to have an accountability mechanism in place to ensure that the requirement is met. For example, if a threshold was set at 25% in order to get into Block 3, applicants should have to maintain at least 25% small subscriber participation in order to retain their position in Block 3. CCSA Obj. at 8.

CCSA notes the IPA's amended proposal to hold a weighted lottery that would prioritize projects that propose to allocate at least 50% of their capacity to small subscribers. If those projects do not meet the requirement, the IPA proposes to remove the small subscriber adder plus an additional 20% of the REC contract value. IPA Resp. at 46-47. CCSA appreciates the recognition and consideration behind the IPA's new proposal for a lottery mechanism but believes it will create new uncertainties for the industry that are worse than the theoretical problem the lottery was intended to solve. The IPA's proposal is unnecessarily complex and may fail to meet even the stated objective. For example, if applications account for only 199% of Block 1 capacity, this option would not be triggered. In other words, if the IPA has a concern that they need to give priority to projects with small subscribers then that would be the case if Block 1 were 199% or 201% subscribed. In any case, a lottery would not be a prudent mechanism to address that concern, as it does not accomplish the goal of providing an opportunity for robust participation. CCSA Rep. at 2.

But more fundamentally, the total volume of projects in Block 1 is not related to the small subscriber target. Any qualified project (with permits, site control, and an interconnection agreement) will have an equal chance to participate in the ABP when Block 1 opens, whether it has 0% or 100% small customer participation. A "gold rush" at the opening of the first block is not an indicator that small customers are not being awarded robust participation opportunities, and the IPA should not design the program in ways that conflate these separate program metrics. CCSA Rep. at 2-3.

CCSA asserts that the options it has put forth represent strong compromise positions among a diversity of providers. These options would achieve the same goal of the IPA's proposed weighted lottery but represent a simpler approach that is supported by the industry. It also gives the IPA's initial adder-based structure ample opportunity to provide small subscribers with access to the market before providing a backstop mechanism to ensure they have opportunities to participate. CCSA Rep. at 3.

5. Summit Ridge

Summit Ridge disagrees with the IPA's response to parties' objections. IPA Resp. at 45-47. While Summit Ridge agrees with the IPA's decision to shorten the Block 1 window, Summit Ridge would contend that the reduction from 45 days to 21 is not sufficient. Even with the relatively high barriers to entry that were incorporated into the Plan as requirements for project application submission, Summit Ridge predicts that based on past experience and current market sentiment that the proposed 200% lottery trigger threshold will likely be exceeded within the first few days of the program opening, if not on Day 1. Summit Rep. at 3.

In addition to the primary flaws with a pure lottery solution cited by both JSP and EDF, Summit Ridge points out the following concerns with the revised and proposed lottery construct put forth by the IPA in its most recent form: 1) favors larger developers that are proportionally risking less of their total capital relative to smaller developers, including many local/regional developers; 2) introduces blind luck into the program, which greatly complicates the decision-making process by developers regarding capital deployment and, in turn, will likely lead to a slower and less efficient deployment of solar under the program; 3) indirectly effectively requires 50% participation by residential and/or small commercial subscribers in community solar projects, something that was specifically avoided by the IPA in both its initial and revised versions of the Plan due to its interpretation of PA 99-0906; and 4) provides little guidance as to whether subsequent block funding will be used to meet the potential oversubscription of Block 1 at the currently proposed 4% price drops, or will potentially allow for a higher number of megawatts to be built at reduced REC prices. Summit Rep. at 3-4.

6. IPA

The IPA appreciates the concerns raised and acknowledges that managing initial demand in the Adjustable Block Program (particularly for community solar) may be challenging. This process involves a number of unknowns, such as how many developers will be ready with projects at the time the program launches and how developers will seek to develop projects serving various customer segments. The IPA is cautiously optimistic that while there is great interest in developing the community solar market in Illinois, the "initial rush" will be less than that of, for example, Minnesota due to stricter co-location

and site maturity requirements. Still, the risk of initial applications potentially exceeding projected available future funds does exist, leading the IPA to propose a lottery structure to manage it. IPA Resp. at 45. In light of objections, and also to further increase the opportunities for small subscriber participation (because it is in community solar rather than the two distributed generation categories that this risk may be highest), the IPA now proposes a revised approach as follows:

- Initial application period would be for 21 days rather than 45 days.
- If after 21 days project applications would use more than 200% of Block 1 volume, then there would be a lottery to select projects. For community solar projects the following additional provisions would apply:
    - Priority will be given to projects that propose to include at least 50% small subscribers. 50% of the available funding would be reserved for these projects. If the number of proposed projects with small subscribers exceeds that funding then there would be a first lottery for just that pool of projects. (If the proposed projects do not use up that funding, the balance of available funds would be available for other projects that are part of this initial application period.) Projects not selected would then be placed in a lottery for the remaining 50% of funding along with projects that do not include small subscribers.
    - To ensure that projects that propose to include small subscribers (in order to get prioritization) live up to that commitment, those projects will be required to meet their proposed subscription levels within one year of energization. Failure to do so would result in the projects not receiving any small subscriber adder and would be subject to a 20% penalty on the total value of the REC contract.
- If after 21 days applications do not exceed 200% of Block 1 volume, then the Block would remain open until filled, as described in the Plan.

Plan at 96. The IPA believes this approach is preferable to what was proposed by the Joint Solar Parties or EDF. While Approved Vendors should have plenty of time to prepare applications for the program launch, the five business day window as proposed by the Joint Solar Parties is a very short time period that could be difficult to manage by the Program Administrator and the IPA. The EDF's proposal is rather vague about how to score projects. Given the concerns raised by parties about small subscriber participation, the IPA's approach proposed herein tightens up the management of the potential initial application rush as desired by the Joint Solar Parties, and it creates a prioritization of small customers as desired by the EDF. It furthermore creates an

additional incentive to improve opportunities for projects that include small subscriber participation as desired by multiple parties. IPA Resp. at 46-47.

The IPA maintains that the Joint Solar Parties' arguments would no longer apply to the IPA's updated proposal because, as shown below, it now provides community solar project developers with two paths forward regarding small subscribers:

> Option 1: If an Approved Vendor is willing to take on additional risk (because the Agency's updated proposal would eliminate all small subscriber adders and impose a 20% penalty on projects that fail to meet proposed subscriber levels within one year of energization if they elect to participate in the initial phase of the lottery for community solar projects making small subscriber commitments), then it could elect an option to declare at the time of application that it will have at least 50% small subscribers and then would have an increased chance of being selected through a lottery. 50% of available funding in the community solar Block 1 lottery would be reserved for projects that make such a declaration.
>
> Option 2: If the Approved Vendor does not want to take on that risk but has small subscriber participation as outlined in the Plan, then the project would not receive any additional weighted consideration in the lottery. In such case, the project could still receive small subscriber adders, based on the level of small subscriber participation that it demonstrates at the time of energization and thereafter, as described in Sections 6.15.4 and 6.17 of the Plan.

The IPA also notes that its revised proposal changes the window for the initial opening of Block 1 from 45 days to 21 days, while the Joint Solar Parties had suggested a lottery be considered after a five-day period. The IPA would not object to a slightly shorter opening window than 21 days (perhaps 14 calendar days), but continues to believe that five days is too short. IPA Rep. at 19-21.

The IPA thus requests that the Commission approve its proposal on this topic as found in the Plan and as modified and clarified by its Response and this Reply.

7. Commission Analysis and Conclusion

The Commission appreciates the IPA's efforts to address the concerns of parties regarding small subscriber participation in community solar projects. The Commission notes that, in the IPA's Response, the IPA revised its proposal for managing initial demand for the Adjustable Block Program for Community Solar. The Commission finds that the changes greatly increase the likelihood that projects selected for the Community Solar block will include a substantial number of projects with at least 50% small customer subscribers. The Commission finds this to address the concerns of parties regarding the possibility that community solar for large subscribers could quickly reserve all the capacity in the community solar program. This proposal is adopted.

The Joint Solar Parties are also concerned with the use of a lottery to select projects. The Commission agrees that there could be an element of unfairness to random selections because a lottery fails to recognize the readiness of early applicants. The Commission finds this to be reduced through the application of a shorter window. The IPA has now agreed to shorten the window for the initial opening of Block 1 from 45 days to 21 days, but the Commission observes that an even shorter window will reward early applicants, limit enrollment, and allow for applicants to know whether they have been accepted in a quicker timeframe. The Commission directs the IPA to shorten the window to 14 days for the initial opening of Block 1.

C. Section 6.4 REC Pricing Model

1. Joint Solar Parties

The Joint Solar Parties' first issue is that the Adjustable Block pricing model should more accurately and comprehensively reflect the energy losses between when the sun's rays hit the solar panel and the AC output of the inverter. Currently, the Adjustable Block pricing model acknowledges a 4% reduction of the inverter. However, as Sandia National Lab's PV Performance Modeling Collaborative has explained, that leaves out several steps that each lead to losses. The Joint Solar Parties understand that the total, cumulative effect of these losses (including the inverter loss) is approximately 26-28%. To effectuate these changes, SEIA recommends the following changes to the Adjustable Block pricing model spreadsheets:

- Step One—Input Assumption Tab (cell D6): For sizing the direct current ("DC") system, use alternating current ("AC") AC-DC conversion factor that captures all losses (not just the inverter loss). Industry average is around 75% to capture all losses
- Step two—CREST Input Tab (cell G27): Ensure that the total installed cost per watt remains the same after adjusting the capacity factor to show a larger DC system size. Currently, when adjusting the AC-DC conversion factor, the total costs remain constant and the $/w cost goes down. The formulas translating the NREL benchmarking study data in the Input tab into Capital Costs in the CREST input tab likely need to be updated to keep cell G27 constant.

JSP Obj. at 31-32.

The Joint Solar Parties further explain that when changing the AC-DC loss factor, the model should be adjusted to make sure that the cost per watt on a DC basis stays constant. *See* JSP Obj. at 31-32. The IPA correctly points out that cell G27 does not flow through to any other parts of the model. *See* IPA Resp. at 48. But the IPA further stated that the loss factor does not change the monetary cost of constructing a 2 MW AC system, per the NREL benchmarking data (*see id*.) and the Joint Solar Parties argue that this conclusion is not correct for two reasons. JSP Rep. at 23.

First, the loss factor does change the cost per watt of installing an AC system – because a higher loss factor means that more panels, which are rated on a DC basis,

must be installed to have the same output on an AC basis, which thus raises the total cost to install a 2 MW AC system. It does not change the cost per watt on a DC basis, but the developer must install more watts DC to reach the desired 2 MW AC output. For a 2MW AC system, a 25% loss factor means that 2.667MW DC must be installed to achieve a 2MW AC output. This is shown in the REC model – when the loss factor is 0.96, the model shows a 2.083MW DC system (cell G8, CREST Input). However, when the loss factor is changed to .75, cell G8 in CREST Input tab shows that a 2.667MW DC system must be installed. JSP Rep. at 23.

Second, the cost per watt used in the CREST model is a DC number, not AC. Per Appendix D copied below, the IPA's REC Pricing Model uses the NREL Q1 2017 Benchmarking Report for estimating installed costs. Tables D-1 to D-6 all report cost per watt on a DC basis. Per Table D-6, the total cost of installing a 2,000 kW DC (i.e. 2 MW DC) system is $3,482,076; the table also states this as $1.74/w DC. The IPA model reduces various components of this cost by 4% to translate 2017 costs into 2018 costs, with a cost per watt DC of approximately $1.70. Using $1.70/W DC, the total cost for installing a 2,667kWDC system should be approximately $4,533,900, not $3,540,644 which is currently in cell G26. JSP Rep. at 23-24.

While the IPA was correct that our previously referenced cell G27 does not flow to the rest of the model, the total installed costs in cell G26 of the CREST Inputs tab reflects the higher DC system size and that the units between system size and cost are parallel with each other and the rest of the model—in DC. It is critically important that the units match. JSP Rep. at 24.

In addition to the AC/DC issue, the Joint Solar Parties note that several events have taken place at the federal level since the IPA filed the Plan that should be taken into account by the Adjustable Block model. Two of particular interest include the final import tariffs being set for solar cells from certain countries and changes in corporate tax rate (which reduces both a developer's tax liability and the value of accelerated depreciation). The Joint Solar Parties note that the IPA specifically identified the import tariff and federal tax issues generally (though not the corporate tax rate and accelerated depreciation specifically). *See* Plan at 108-111. The Joint Solar Parties recommend that the IPA specifically take these and other major events into account in setting final pricing within 60 days of the Final Order in this docket, and that the IPA provide a dollar-for-dollar increase in the cost inputs to CREST to best reflect actual increases and decreases in costs and revenues. JSP Rep. at 25.

In addition to modifying the capacity factors to be in the correct units, the Joint Solar Parties also recommend that the capacity factors the IPA uses reflect different capacity factors for rooftop and ground mount systems. JSP Obj. at 32-33. The Joint Solar Parties note that it appears the Adjustable Block pricing model uses the wrong transmission charge for competitive classes. JSP Obj. at 33-34.

2. Elevate/GRID

Elevate/GRID state that the custom capacity factor does not provide for an accurate input for various project types. For instance, capacity factor is typically a higher percentage for ground mounted solar, where there is little or no shading, and the orientation of the solar array can be optimized; it is often a lower percentage for rooftop

installations, where shading is commonly more of an issue, and the orientation of the solar array is often fixed by the orientation of the roof. Elevate Obj. at 10-11.

Elevate/GRID also suggest that the interest rates for all Illinois Solar for All projects/models should be higher; i.e. 7% to 8% rather than 6%. In addition, other inputs that determine the overall terms of debt servicing (debt service coverage ratio, fees, loan terms, etc.) should be adjusted to generally reflect a greater debt burden for low income projects. Elevate Obj. at 11.

Finally, Elevate/GRID conclude that the project cost per watt is inaccurate. The project cost per watt is lower for Low-Income Distributed Generation ($1.64/W) than Low-Income Community Solar ($1.72/W) or Non-Profits and Public Facilities ($1.69/W). These figures assume a 2MW system size and costs are prorated up for smaller system sizes, but in Elevate/GRID's opinions, a similarly sized Distributed Generation system would not cost less than a Non-Profit or Community Solar system. The difference appears to be in financing costs, which results in a lower incentive rate for Distributed Generation than Community Solar, and different (generally lower except at <10kW size level) rates for Distributed Generation and Non-Profit. Lumping single-family and multi-family affordable housing into the Distributed Generation sub-program results in an inaccurate cost estimate. Multi-family affordable housing should instead have the same assumptions as Non-Profit and Public Facilities. Elevate Obj. at 12.

Elevate/GRID argue that the Adjustable Block Program Distributed Generation Pricing Model in Appendix E-1 should separate out single family from multi-family, and multi-family should have the same cost assumption in the model as Non-Profits and Public Facilities (filed Appendix E-5). The organizations opine that the model cannot assume single family and multi-family have the same cost because these types of low-income solar projects face much different financing barriers. Elevate Obj. at 12.

3. ComEd

ComEd notes that President Trump approved new tariffs on imports of solar cells and modules, including an immediate tariff of 30%, with the rate declining before phasing out after four years. In light of anticipated changes based on parties' comments and the impacts of the federal tax reform legislation and new tariffs on the import of foreign solar panels, ComEd agrees with the IPA's proposed approach to address in this docket the impacts of new tariffs on the import of foreign solar panels, and further recommends that the tax effects of the federal tax reform law be addressed in this proceeding. Specifically, ComEd requests that all of these issues be considered and approved by the Commission in its Final Order in this docket. While ComEd concurs with the IPA's proposal to publish final prices within 60 days after the approval of the Plan, ComEd recommends that this publication be in the form of a compliance filing in this docket. ComEd Resp. at 5; ComEd Rep. at 25-26.

In addition, ComEd requests that the Commission's Order clarify and confirm that the prices reflected in the compliance filing are the Commission's "approved value[s]." 20 ILCS 3855/1-75(c)(1)(M). Because "[p]rogram modifications to any price, capacity block, or other program element that do not deviate from the Commission's approved value by more than 25% shall take effect immediately and are not subject to Commission review and approval," it is imperative that the Commission plainly define and identify the

approved values in this docket. *Id*. This will eliminate any ambiguity regarding the baseline approved values, and ensure that the IPA, together with the parties, can fully take advantage of and maximize the streamlined process for adjusting pricing up to the 25% threshold, which is critical to ensuring the success of the Adjustable Block Program. ComEd Rep. at 26.

As a final matter, ComEd notes that the IPA indicates that it will wait one year after program launch (rather than six months, as initially proposed in the Plan) to consider whether to make significant changes to block sizes and REC prices. IPA Resp. at 87. While ComEd appreciates the value in allowing sufficient time for market data to mature, ComEd also encourages the IPA to avoid unnecessarily restricting its ability to act in the event that certain adjustments need to be made early on while the program is in its nascent stages. ComEd Rep. at 27.

4. IPA

The Joint Solar Parties recommend three additional changes to the Adjustable Block Program pricing model in their Objections. First, the Joint Solar Parties recommend that a PV panel's loss of energy upon conversion from DC power to AC at the inverter should be 25% rather than the 4% assumed in the filed Plan. As part of this change, the Joint Solar Parties also recommend adjusting the REC Pricing Model so that the cost per DC watt (see Appendices E-1 and E-2, CREST Inputs worksheet, cell G27) remain constant even after this adjustment. JSP Obj. at 31. The IPA agrees that 25% is an appropriate AC-DC loss factor and asks the Commission to approve that change. As to the recommendation of keeping the cost per DC watt constant relative to that in the filed Plan, the cell at issue in the model spreadsheet is merely an illustrative quotient of dollars per kW-DC; its value does not flow into any other aspect of the model. What is really unchanged even after the Joint Solar Parties' proposed change to loss factor is the monetary cost of constructing a 2,000 kW AC solar installation, per NREL benchmarking data. Thus, the IPA opposes the Joint Solar Parties' proposed change on the cost-per-watt issue. IPA Resp. at 48.

Second, the Joint Solar Parties recommend that the IPA adjust the standard capacity factor to be in the same units as the rest of the model, i.e., in percentage of DC capacity rather than percentage of AC capacity. JSP Obj. at 31. Additionally, the Joint Solar Parties recommended that the Agency consider that the capacity factor of a rooftop solar system will be less than the capacity factor of a ground mount system. Based on data provided by SEIA, the Joint Solar Parties recommended using a 14% DC capacity factor for distributed generation (presumed to be rooftop) solar projects and a 15.5% DC capacity factor for community solar systems (presumed to be ground mount, fixed tilt). JSP Obj. at 33. The IPA agrees that these changes to the capacity factors are reasonable and proposes adopting them. The changes to the capacity factor that the IPA here supports are similar, but not identical, to Elevate/GRID's proposed capacity factor of 15% for both distributed generation and community solar. Elevate Obj. at 10-11; IPA Resp. at 48-49.

Third, the Joint Solar Parties recommend using in the model's net metering calculations, for what they called "competitive class customers" of ComEd, the volumetric transmission rate for hourly supply customers. JSP Obj. at 33-34. The Agency agrees

that, as the model in the filed Plan assumes that ComEd's commercial and industrial customers pay an hourly (Locational Marginal Price) supply rate, their volumetric transmission rate should also be assumed as that for hourly customers. IPA Resp. at 49-50.

Elevate/GRID propose a modification related to REC pricing for multi-family participants in the REC pricing model: they suggest that the Illinois Solar for All Distributed Generation Incentive pricing model in Appendix E-3 (the text of the Elevate/GRID Objection at 12 refers to "Appendix E-1," but the IPA assumes this was in error) should only consider single-family residential structures (and not multi-family), while multi-family structures with rooftop solar installations should "have the same cost assumption in the model as Non-Profits and Public Facilities." (Elevate/GRID relatedly complain on the same page that the modeling assumptions for Low-Income Distributed Generation result in an overall project cost per watt that is too low compared to Low-Income Community Solar and Nonprofit/Public Facility projects, because the Low-Income Distributed Generation cost modeling (Appendix E-3) is wrongly including multi-family affordable projects, which Elevate/GRID assume to have cheaper development costs than single-family homes.) Elevate Obj. at 12. Elevate/GRID do not explain why this assumption should hold, particularly as non-profits and government facilities are assumed to have no income tax liability. Without any detailed support for this assumption, the Agency urges that the Commission reject it. IPA Resp. at 95-96.

Elevate/GRID argue that the assumed interest rates on debt for Illinois Solar for All Program projects should be increased from 6%, which is also found in the non-low-income REC pricing models, to 7% or 8%. Elevate Obj. at 11. They also argue that other assumed financing terms should be made more onerous in the model. The IPA opposes this proposal, as not enough information has been provided to support the supposition of more onerous financing terms. It is not clear that lenders will treat private developers less favorably if developing solar projects in low-income areas. IPA Resp. at 97.

In response to ComEd, the IPA states that it agrees that, with the federal tax legislation now complete, stakeholders should have an opportunity to respond in this proceeding to the proposed application of that legislation to the REC pricing model. With that in mind, the IPA hereby commits to update the inputs in its REC pricing model based on the recent changes to the Internal Revenue Code at the same time as it files an update to the model in this proceeding based on any solar component import restrictions that may be imposed by the United States President. IPA Rep. at 22.

The IPA states that it does not oppose ComEd's recommendation that the final REC prices, which are to be published by the IPA within 60 days of Commission approval of the Plan (Plan at 98), should be framed as a compliance filing. ComEd Resp. at 5; IPA Rep. at 22-23.

5. Commission Analysis and Conclusion

It appears that the IPA has accepted several of the proposed changes to the REC pricing model. They are settled and adopted by the Commission.

With respect to the two changes proposed by Elevate/GRID, the Commission agrees with the IPA that there is not enough information to adopt Elevate/GRID's proposed changes. These charges are not adopted by the Commission.

The Commission agrees with both ComEd and the Joint Solar Parties that the final prices should take into account the new tariffs for solar cells and new corporate tax rate. The Commission further agrees with ComEd that the final REC prices to be published by the IPA should be filed within 60 days as a compliance filing in this docket. The compliance filing will reflect the Commission's approved values as required by Section 1-75(c)(1)(M) of the IPA Act.

In its RBOE, the IPA notes that, in response to the concerns of EDF, it will monitor the REC pricing model. The Commission agrees that this is appropriate and, if the impact of any adjustment is less than 25% of the REC price, it could be implemented by the IPA without formal approval. IPA RBOE at 31-32.

The IPA requests permission that it be allowed to implement a change to its final model within 60 days after the Commission's decision to capture the impact of new steel and aluminum tariffs, if necessary. The Commission finds this to be appropriate and the IPA's request is granted.

In their RBOE, the Joint Solar Parties suggest that an additional change be made to the REC Pricing Model regarding bonus depreciation. This proposal has not been fully developed and cannot be adopted by the Commission.

The Commission approves the proposed changes contained in the February 27, 2018 REC Pricing Model Update, as requested by the IPA in its BOE (IPA BOE at 33) and consistent with the findings herein.

D. Section 6.7 Contracts

1. Ameren

In Section 6.7 of the Plan, it states that contracts may be assignable, and an assignee must agree to adhere to all applicable terms and conditions required of the assignor. Ameren believes an additional criterion should be added to ensure efficient contract administration: the assignor and the assignee should be required to notify the contracting utility of any assignment, and provide the utility with all pertinent financial, settlement and contact information. Ameren believes that further details surrounding the notification can be finalized during contract development, but recommends the Plan reference the requirement for notification in the Plan. AIC Obj. at 2.

2. Commission Analysis and Conclusion

As no party appears to have responded or disagreed with the proposal, it is adopted by the Commission. Ameren's proposal is reasonable.

E. Section 6.12.1 Technical System Requirements

1. Joint Solar Parties

The IPA proposes that in order to apply for the Adjustable Block Program, the Approved Vendor must have secured all non-ministerial permits for the facility. *See, e.g.*,

Plan at 115. The Joint Solar Parties are concerned that: 1) it may not be clear at the time of application whether some permits are necessary; 2) some non-ministerial permits are only issued at or just before the time of construction; and 3) it is likely that not even all permits identified by the IPA will be required for each particular site. The Joint Solar Parties recommend the IPA clarify that the non-ministerial permit requirement is only applicable to applicable non-ministerial permits. JSP Obj. at 42-43.

2. IPA

The IPA agrees with the Joint Solar Parties' proposed change as the IPA's intent was not to create unnecessarily difficult requirements for projects, but rather to provide some certainty related to the viability of projects to proceed towards completion. The proposed clarification achieves that purpose. IPA Resp. at 50.

3. Commission Analysis and Conclusion

The Joint Solar Parties' objection is reasonable, and their proposed language clarifies the IPA's intent regarding permits. The Joint Solar Parties' proposal is adopted.

F. Section 6.12.2. Metering Requirements and Section 6.14.5. Converting System Size into REC Quantities

1. Bosch

Bosch explains that it is deploying a DC microgrid system that connects on-site distributed generation (solar PV and energy storage) directly to energy-efficient building loads (e.g., lighting, ventilation, and motors, which natively operate on DC but typically use rectifiers to take standard AC power) via a 380V DC building architecture. This is a building scale microgrid applicable to new construction and retrofit facilities. Bosch's system eliminates the use of AC/DC rectifiers at the loads and the need for DC/AC solar inverters in the path of these connected devices. A DC microgrid reduces power losses associated with inverters and rectifiers and can result in 8-10% overall energy savings, thereby more efficiently using clean, self-generated power. This reduction in power conversion equipment also eliminates frequent points of failure in the system making the overall system more reliable and reduces maintenance costs. Bosch Obj. at 2.

Bosch's DC microgrid system interconnects in parallel with the utility using a bidirectional inverter. This device is capable of exporting excess DC energy or importing energy to power the DC loads. However, the size of this bi-directional inverter is not proportional to the capacity of the solar PV arrays. Instead, Bosch states that the nameplate rating of this device is generally 30% smaller than the capacity of the solar PV arrays as the solar PV arrays first sends DC energy to power the connected DC building loads then subsequently exports the remaining energy through this device to the building. Bosch Obj. at 2.

Bosch asserts that DC microgrids that are powered by solar PV arrays that would otherwise qualify for the Adjustable Block Program should be allowed to participate in the Program. Bosch states that because the metering standard that the IPA has proposed for the Adjustable Block Program was designed for AC-based Solar PV systems, DC microgrids and other behind-the-meter DC systems that use inverters that are smaller than the total capacity of the solar PV arrays, would not be able to receive incentives

based on the total capacity of the PV system under the proposed Procurement Plan. Bosch Obj. at 3.

Bosch further notes that the IPA has proposed to adopt the metering standard that it developed for the Supplemental Photovoltaic Procurements in 2015. In essence, this proposed metering standard would require any system larger than 10 kW to use an ANSI C.12 certified revenue-quality meter or a meter that meets the ANSI C.12 standard. The ANSI C.12 standard is a meter accuracy standard that applies to AC meters and does not cover DC meters. Unfortunately, Bosch is not currently aware of an external DC meter accuracy standard, and thus, there is no independent testing body that certifies meters to such a standard. Bosch maintains that manufacturers that currently provide DC meters perform all applicable or substantially similar ANSI C.12 tests to produce the meter accuracy results specified in their meters' specification sheets. These DC meters are certified by an independent testing body for safety, such as Underwriters Laboratories ("UL"). UL Std. 61010.1. Bosch, for example, utilizes a DC meter that is ±0.2% accurate according to the manufacturer specifications. Bosch Obj. at 3-4.

Bosch recognizes the importance of metering actual system performance to "ensuring the integrity of the RPS," which is the IPA's intent in proposing its metering standards for the Adjustable Block Program. In order to accommodate DC microgrids and other DC-based technologies in the program and to verify that DC microgrid systems that have received an incentive are generating the expected quantity of RECs, Bosch proposes that the Commission require the IPA to include a DC-specific metering standard. Bosch Obj. at 4.

Bosch notes that the IPA, in its Response, argued that extensive factual and record development would be necessary to approve such an alternative for DC-based technologies. Bosch disagrees that additional and extensive record development is needed to provide for a DC metering alternative. Bosch suggests that the Commission could look to the simple alternative adopted for California's Self- Generation Incentive Program. *See* Self-Generation Incentive Program Handbook (December 18, 2017) at 57, available at: https://www.selfgenca.com/. Bosch Rep. at 3.

This simple change maintains the ± 2% accuracy requirement, but permits DC meters to use the meter manufacturer's specifications in the interim until a testing protocol and certification standard similar to ANSI C-12 is established for DC meters. The Plan could include a very simple amendment to include this or similar language without the need for extensive fact-finding or additional process. Approving the Plan without this flexibility will bar DC building grids, DC microgrids and other systems using this technology from participating in the Adjustable Block Program. Bosch urges the Commission to embrace this opportunity to accommodate the use of DC based technologies, which could lead to significant energy savings in Illinois. Bosch Rep. at 4.

Moreover, for its Adjustable Block Program, the Procurement Plan defines "nameplate capacity" as "the aggregate inverter nameplate capacity in kilowatts AC." Plan at 122. This measurement of nameplate capacity determines the system size for purposes of calculating the total number of RECs that a system will produce, which in turn determines the incentive amount that a project receives. For Bosch's DC microgrid system, the bi-directional inverter size is typically smaller than that of the kW capacity of

the solar PV arrays because most of the solar PV electricity produced by the system is used to directly power the DC-based loads. In this circumstance, using this definition of nameplate capacity to calculate the incentive amount prejudices DC-based technologies by basing incentives on the size of the inverter, rather than the actual capacity of the solar PV arrays. Bosch Obj. at 5.

The Plan also uses this definition for the standard capacity factor to calculate the expected production of a system. If Bosch and other program participants using DC-based technologies are limited to using inverter capacity to calculate expected production, but they use a smaller inverter size than the size of their system, they would not be able to receive an incentive for all of the RECs their systems actually produce. Bosch Obj. at 5.

The Plan permits an Approved Vendor to propose "an alternative capacity factor based upon an analysis conducted using PV Watts or an equivalent tool." Plan at 121. Bosch appreciates this flexibility, and is hopeful that it and other DC-based technology applicants will be permitted to utilize alternative capacity factors that account for the fact that their systems are typically much larger than the capacity rating of the inverter. Bosch also encourages the IPA to amend the Plan to include a capacity factor that is AC/DC agnostic. Bosch Obj. at 5-6.

Bosch acknowledges that the definition of nameplate capacity is based on PA 99-0906. Bosch does not, however, believe that the General Assembly intended to discriminate against DC microgrid systems in the calculation of incentives. Thus, Bosch recommends that the Procurement Plan be revised to provide that, for DC-based systems that use an inverter size that is smaller than that of the capacity of the solar PV arrays, an Approved Vendor be permitted to either use the nameplate capacity of the size of AC inverter that the system would have used were it not a DC-based system, or that the IPA permit DC-based systems to use the kW capacity rating of the solar PV arrays. Bosch Obj. at 6.

Bosch appreciates and supports IPA's statement in its Response that it "does not disagree that Bosch may propose such an alternative capacity factor based on an analytical tool equivalent to PV Watts." This is expressly permitted by the Plan. Plan at 121. An alternative capacity factor may be necessary because standard capacity factors (such as PV Watts) take inverter efficiency into account. If the majority of the electricity produced by the behind-the-meter solar system does not go through the inverter because it is consumed by the DC-based loads, the capacity factor calculation would over-penalize a DC-based system for power losses associated with inverters. Thus, Bosch appreciates the flexibility the Plan provides for alternative capacity factors. Bosch Rep. at 5.

Unfortunately, an alternative capacity factor does not solve the issue regarding the definition of "nameplate capacity." Neither PV Watts nor any other tool of which Bosch is aware would permit an applicant to correct for the difference in capacity between the renewable energy generating system and the inverter size via the capacity factor. Instead, PV Watts de-rates a system if the solar capacity is larger than the inverter capacity. Thus, Bosch maintains that the Commission should consider requiring a revision to the Plan to expressly change the manner in which capacity is calculated for such technologies. Bosch Rep. at 5.

2. ELPC

ELPCA states that while it does not imagine a prohibition on DC-based technologies to have been the IPA's intent in Plan development, any effective prohibition would run counter to the clear intent of the IPA Act to encourage renewable resources that "will reduce long-term direct and indirect costs to consumers by decreasing environmental impacts and by avoiding or delaying the need for new generation, transmission, and distribution infrastructure," and to develop "new renewable energy resources in Illinois…" 20 ILCS 3855/1-5(6). Therefore the Commission should direct the IPA to ensure that its Plan does not inadvertently prohibit participation from solar systems that do not convert the DC electricity produced to AC electricity. ELPC Resp. at 23-24.

3. IPA

The IPA notes that Bosch proposes that the Commission require the IPA to adopt a DC-specific metering standard. IPA Resp. at 51. The IPA cannot support this proposal, because it has come very late in the development of its Plan: Bosch chose not to offer any comments on this topic in either the IPA's solicitation of informal comments on the LTRRPP in June 2017 or in comments to the Draft Plan in November 2017. A technically intensive question like this would benefit from extensive factual development. As potentially persuasive authority, Bosch points to a July 2016 decision of the California Public Utilities Commission ("CPUC"). *See* CPUC Rulemaking 12-11-005, Decision 16-06-055 at 43 (June 23, 2016). The IPA argues that the CPUC, in that proceeding, based its decision on this point on a previous CPUC Staff Proposal that discussed the issue of DC-based microgrids at pages 34-35 following a fact-gathering process. In the instant proceeding, nothing like that process has occurred. The IPA notes that Bosch was a commenter in the 2016 California process, so there is no reason why Bosch could not have offered technical information previously here. Additionally, the IPA's metering standard in the Supplemental Photovoltaic Procurement has been in effect for nearly three years now and has worked without issue for the IPA and industry participants. Modifying that standard should require more development of information than what Bosch has provided here. IPA Resp. at 51-52.

Second, Bosch objects to the IPA's definition of "nameplate capacity" (*see, e.g.*, Plan at 32), for purposes of determining participation in the Adjustable Block Program under Section 1-75(c)(1)(K) of the IPA Act, as "aggregate inverter nameplate capacity in kilowatts AC." But the IPA states that its definition is simply taken from Section 1-10 of the IPA Act as modified by PA 99-0906. While the IPA lacks information to comment on the policy wisdom of this proposal, the law is clear: the IPA must use a system's inverter nameplate capacity in kilowatts AC (*see* 20 ILCS 3855/1-10), and a proposal to rewrite that law should not be adopted. IPA Resp. at 52-53.

Bosch also complains that the Plan proposes to use the same definition of "nameplate capacity" to estimate a PV system's expected production over the 15 years of an Adjustable Block Program contract. Bosch argues that because its systems' inverter size is below the PV generating capacity, the IPA's standard formula (*see* Plan at 122, n. 341; see also Appendix E-1 at "Cash Flow" worksheet, row 5) for projecting future production will underestimate a Bosch microgrid system's 15-year REC production and

thus not pay it enough should it be selected for the Adjustable Block Program. As a possible remedy to this problem, Bosch points to the Plan's provision (*see* Plan at 122) that an Approved Vendor may "propos[e] an alternative capacity factor based upon an analysis conducted using PV Watts or an equivalent tool." (Bosch Obj. at 5). The IPA does not disagree that Bosch may propose such an alternative capacity factor based on an analytical tool equivalent to PV Watts. IPA Resp. at 53.

4. Commission Analysis and Conclusion

It appears to the Commission that the parties may be able to reach agreement on the fundamental question posed by Bosch, but have not reached agreement on how to implement Bosch's proposal. Bosch did not participate early enough in this process and the Commission and the IPA have not been presented with enough information to adopt the changes that Bosch seeks. The Commission expects the parties to work together to reach a resolution. The Commission understands that this may not be resolved until the 2019 Plan update.

Therefore the Commission directs the IPA to work with Bosch and other stakeholders to ensure that its Plan does not inadvertently prohibit participation from systems that do not convert the DC electricity produced to AC electricity.

G. Section 6.13 Customer Information Requirements/Consumer Protections

1. CSG

CSG explains that in order to participate in the Adjustable Block Program under Section 1-75(c)(1)(K) of the IPA Act, an entity selling RECs must qualify as an Approved Vendor. The IPA proposes that among the qualifications for becoming an Approved Vendor is that the entity abide by portions of the Commission's rules concerning consumer protection and RESs - 83 Illinois Administrative Code 412, "Obligations of Retail Electric Suppliers" ("Part 412"). CSG understands that this would apply to Approved Vendors dealing with distributed generation systems or community solar subscription shares below 100 kW. Plan at 118. While CSG recognizes and appreciates the need to protect consumers from unscrupulous entities, CSG has several significant concerns with this requirement. CSG Obj. at 9-10.

CSG's first significant concern relates to the application of specific consumer protection provisions designed for RESs to Approved Vendors. As an initial matter, Part 412 exists under the auspices of the PUA (*see*, for example, 220 ILCS 5/16-115A) in order to govern the interactions between RESs and consumers. The rulemaking docket that resulted in the currently effective version of Part 412 (Docket No. 15-0512) was conducted under the PUA and Illinois Administrative Procedure Act (5 ILCS 100/1-1 *et seq.*) with significant input from RES stakeholders. Moreover, several of the provisions in Part 412 exist in order to address specific problems created by problem actors in the RES community. The Plan now seeks to apply many of these same rules to Approved Vendors. CSG Obj. at 10.

The problem with doing so, CSG argues, is that the IPA is essentially proposing to adopt rules outside of the rulemaking process. CSG asserts that by adopting portions of Part 412 for its own purposes and applying them to Approved Vendors under its

jurisdiction, the IPA is adopting a new rule in a manner conflicting with its own rulemaking procedure in Section 3700.300 of 2 Ill. Adm. Code 3700, "Organization, Rulemaking and Public Information." CSG Obj. at 10-11.

Related to the concern with adopting a RES rule for Approved Vendors is that some of the provisions that the Plan proposes to apply to Approved Vendors do not make sense in the general context of Approved Vendors while other provisions only make some sense if the Approved Vendor's product is simply electricity (rather than a PV system installation). The IPA seems to recognize that differences exist between RESs and Approved Vendors since it does not recommend that all of Part 412 be applicable to Approved Vendors. Plan at 118. To the extent that the Commission rejects CSG's argument in the section above, CSG has identified particular Part 412 provisions from among those listed in the Plan that should not be generally applicable to Approved Vendors. CSG Obj. at 11-18.

When confronted with concerns about the application of Part 412 provisions to Approved Vendors, the AG, ELPC, and the IPA responded strongly in favor of the Plan's consumer protection provisions. *See* AG Resp. at 2-8, ELPC Resp.at 15-18, IPA Resp.at 53-67. CSG does not disagree with the recitation of the IPA's authority to develop procurement programs under Sections 1-20(a)(1.5) and (b) and 1-75(c)(1)(A), (I), (K), (M), and (N) of the IPA Act. AG Resp.at 2; ELPC Resp.at 15-16; IPA Resp. at 56. CSG, however, does not agree with any inference that the IPA Act essentially gives the IPA carte blanche authority to propose whatever consumer protection terms it deems appropriate. CSG Rep. at 13-14.

Upon considering all of the arguments on this issue, CSG understands that no one opposes the inclusion of basic consumer protection provisions in the Adjustable Block Program. But rather than impose rules meant for RESs on Approved Vendors, CSG recommends that the Commission modify the plan to remove the obligation to follow Part 412 and direct the IPA to develop particular consumer protection terms tailored to Approved Vendors. The IPA should also be required to do so with the input of interested stakeholders. If deemed necessary, the Commission could consider establishing minimum consumer protection parameters. If the Commission elects not to follow this approach, CSG still relies on its secondary recommendation regarding the applicability of particular provisions in Part 412. CSG Obj. at 12-18. CSG seeks greater clarity and practical consumer protection provisions for the ABP. CSG Rep. at 17.

In the event that the adoption of Part 412 for Approved Vendors is allowed, CSG at a minimum recommends that the well-intentioned consumer protection terms not be retroactively applied. CSG understands that the specified consumer protections, both those in Part 412 and those identified elsewhere in the Plan with which Approved Vendors must abide, would apply to any PV system energized after June 1, 2017. The problem with this approach is that the final requirements for becoming an Approved Vendor, including those related to consumer protection, will not be known until April 3, 2018. Solar arrays have undoubtedly been installed and energized since June 1, 2017 in compliance with PA 99-0906 and the owners of the generated RECs, which likely include homeowners and businesses as well as solar developers, may plan to offer those RECs under the Plan. CSG Obj. at 18.

CSG notes as well that the Joint Solar Parties proposed a solution to this problem. To be eligible to participate in the Adjustable Block Program, the Joint Solar Parties recommend that distributed generation systems energized, distributed generation systems with contracts executed, or community solar subscriptions executed between June 1, 2017 and 15 business days after the Commission approves the Plan be required to provide the IPA's Program Administrator with the documentation upon application submission. CSG supports this concept as an alternative to its own proposal because it will allow the systems in question to still participate in the Adjustable Block Program even if, at the time the distributed generation system or subscription was energized or agreed to, compliance with the (then unknown) consumer protection provisions was lacking. CSG Rep. at 17-18.

CSG is concerned with the practical implementation of the Joint Solar Parties' proposal. CSG states that the language in the Joint Solar Parties' proposal could be read to mean that Approved Vendors will need to obtain contract amendments within 15 business days of the Plan being approved. In the event that this is the case, CSG submits that 15 business days may not be sufficient time for an Approved Vendor to secure signed contract amendments from all counterparties. Furthermore, if the Commission adopts the proposal to have consumer protection provisions developed with the input of interested stakeholders, it is highly unlikely that such provisions will be developed and distributed within 15 days of the Plan's approval. To address this concern, CSG suggests that the Joint Solar Parties' proposal be modified and clarified: to be eligible to participate in the Adjustable Block Program, (1) distributed generation systems energized, (2) distributed generation systems with contracts executed, and (3) community solar subscriptions executed on or after June 1, 2017 must provide the IPA's Program Administrator with the following documentation upon application submission:

- a signed contract amendment that brings the contract or subscription agreement into full compliance with the minimum contract requirements in the approved Plan;
- the disclosure form, signed by the customer post-contract execution; and
- a statement, signed by the customer, affirming receipt of the consumer protection brochure.

Rather than impose an arguably artificial deadline for meeting these conditions prior to application submission, CSG suggests that Approved Vendors be allowed to comply with the conditions any time before application submission. CSG intends to fully comply with any consumer protection provisions, but because it is unknown when the specifics of the consumer protection provisions will be known, Approved Vendors should have until they submit applications under the ABP to demonstrate consumer protection compliance for projects secured on or after June 1, 2017 through the date of application. Once the specific consumer protections provisions are known, CSG expects all new contracts to comply with the provisions at the outset. CSG Rep. at 18-19.

2. CCSA

CCSA states that consumer education and engagement is absolutely critical to building a successful market. Any negative press or anecdotes about community solar hurt the entire market, which is why CCSA has included consumer protection among its core principles and requires members to adopt the SEIA Solar Business Code. CCSA supports consumer protection measures that are right-sized to foster a healthy, competitive, and reliable market. Because CCSA is not aware of any major consumer protection problems in other states, CCSA avers that the most logical approach to consumer protection is one focused on customer education. CCSA Obj. at 10-11.

CCSA acknowledges the consumer protection challenges that retail suppliers have created for states but it is crucial to note several important differences between retail suppliers and community solar providers. Community solar providers engage in long-term relationships with their customers; because integrated billing options do not exist, community solar providers need to continually interact with customers. If customers are well educated up-front and understand the terms of their contract, it greatly reduces the number of questions and complaints that providers need to field, lowering customer management costs for providers. Moreover, providers need to keep customers happy to ensure that the project continues to remain subscribed. There are also a finite number of customers, subscribing to a single project. This fact alone implies a smaller risk than that posed by the retail supply market. Additionally, community solar projects represent real, long-term assets that have inherent value, unlike retail suppliers that are speculating on energy futures. And finally, there is no threat of electricity shut-off as a result of non-payment of community solar subscription fees. These characteristics should be kept in mind when determining how to balance consumer protection with innovation and administrative efficiency. CCSA Rep. at 5.

CCSA disagrees with the requirement in Section 6.13 of the Plan which states that "Vendors must also agree to provide sales and marketing information, included contract prices and sales volumes, to the Agency on a confidential basis. The Agency will use this information for internal purposes to track market progress." CCSA submits that the inclusion of contract prices and other contract-related information is unjustified. While the IPA may endeavor to keep this information confidential, due to mistakes in processing it is possible for this information to inadvertently be made public (as has been the case in other markets). This opens up data privacy issues and creates an additional burden on the IPA to protect the data. CCSA opines that if there is a specific concern, the IPA should be able to request this information but, otherwise, it should not be a general requirement. CCSA Obj. at 11.

CCSA disagrees with the IPA that contract pricing and related information are necessary to ensure that ratepayers are benefitting from this program. Within the framework of the Plan, the only contract that is paid through utility rates is the REC contract between the Approved Vendor and utility. Accordingly, the Plan includes extensive safeguards to ensure that the RECs that are contracted for will be delivered and that ratepayers are in fact receiving the clean energy benefit they are paying for. CCSA Rep. at 5-6. By contrast, the subscription agreement between a community solar provider and customer is a standalone contract between two private entities. Neither the utility nor the broad base of ratepayers is party to this contract; it is not funded through

utility rates, and it is not paid through the customer's utility bill. The IPA has not explained what criteria it would use to judge whether a community solar customer is benefiting from his or her subscription or what steps it would take if it were not satisfied with the terms of a subscription. To CCSA's knowledge, this type of information is not collected in any other community solar market in the country. CCSA Rep. at 6.

Section 6.13.2 of the Plan states that, "To the extent feasible, the Agency will work with its Program Administrator to maintain a public database of complaints (with any confidential or particularly sensitive information redacted from public entries)." While CCSA understands the rationale for such an effort, there are a number of reasons to proceed with caution. For starters, the largest suppliers will typically have the largest total number of complaints, even if their complaint rates are low on a per-customer basis. Additionally, in other markets it has not always been easy to define what a "complaint" is. Furthermore, there is questionable value to prospective customers in elevating/publicizing minor complaints that are resolved quickly. What is relevant are serious complaints that were not quickly resolved after being escalated to a regulatory body – those are important data points that would get lost in the noise if they are included alongside minor complaints. A public database may be a useful consumer protection tool if the right process is established to make sure that only companies causing egregious, repeated problems are included, but that may be difficult to establish. Any effort to publicize complaints should always include a "cure" period and process for community solar providers to rectify any perceived or real problems. CCSA Obj. at 12.

3. Ameren

In Section 6.13, Ameren notes, the Plan's reference to model power purchase agreements from the SEIA could be interpreted to suggest that the generator owner may sell the energy from the generator directly to an end-use customer. Ameren recommends the Plan clarify that, in Illinois, no marketer or generator may sell power to an end-user without being a Commission-certified RES or utility. AIC Obj. at 2.

As the Joint Solar Parties acknowledge, the term "power purchase agreement" has different meanings in different contexts. JSP Resp. at 69 n.4. ELPC and Joint Solar Parties describe the colloquialism "power purchase agreement" as financing instruments for non-utility-scale renewable generation facilities. ELPC Resp. at 20-21; JSP Resp. at 69-70. Ameren responds that the term "purchase power agreement" is also more generally used in the electricity industry to describe an agreement between a seller and a buyer of power or energy. AIC is merely trying to clarify that a sale of energy to an end-use customer would require RES certification. The IPA expressed support for AIC's clarification at pages 69-70 of the IPA's Response to Objections. AIC Rep. at 3.

The different meanings of the term "power purchase agreements" used in the Plan can cause confusion, and such confusion can be avoided easily. AIC would propose the alternative revisions to Section 6.13, at page 117, to remove the term and replace it with the descriptive phrase used by the ELPC in its Response. ELPC Resp. at 20; AIC Rep. at 3-4.

4. Joint Solar Parties

The Joint Solar Parties recommend that the Commission modify the consumer protections proposed by the IPA to fit within the statutory framework within which the Adjustable Block Program operates. At the outset, the Joint Solar Parties note that they advocate for strong consumer protections locally and nationally and all believe that problem actors can have a strong negative impact on emerging solar market development. In the Joint Solar Parties' view, one of the best consumer protections is empowering consumers with knowledge to help them better navigate the various products and services and find one that best fits their needs. At the same time, the Joint Solar Parties believe educating businesses about consumer protection and giving them the necessary tools furthers the State's consumer protection goals. JSP Obj. at 8.

To this end, the Joint Solar Parties note that each of its members have developed a range of materials for both consumers and industry, such as SEIA's consumer guides, standard disclosures, and Solar Business Code. In particular, all members of the SEIA are bound by its Solar Business Code, which includes requirements from prohibitions on unfair and deceptive practices to guidance on solar-specific issues including the use of the word "free," savings claims, and RECs. The Joint Solar Parties continue to recommend that the IPA use these documents, particularly its disclosure forms and Solar Business Code, as a basis for addressing the customer-solar developer relationship. The Joint Solar Parties state that there is significant overlap in letter and spirit between its Solar Business Code and the IPA-proposed consumer protections. JSP Obj. at 8-9.

The IPA decided not to adopt or propose modifications to the Solar Energy Industries Association's standard disclosure form, instead noting in a footnote that: "the Agency is concerned that they do not fully capture the information the Agency believes that potential program participants need to have, in particular, standardized comparisons of energy costs." Plan at 117 n.337; JSP Obj. at 23. It is impossible to respond to the IPA's criticism when the IPA provides little specificity. This discussion would be significantly more straightforward if the IPA would provide a concrete proposal for a uniform disclosure. While the Joint Solar Parties respect that the IPA may wish to wait to hire the Adjustable Block Program Administrator, it is impossible for the Joint Solar Parties or other stakeholders to comment on the IPA's proposed requirement to require a standard disclosure without knowing why the IPA rejected other approaches such as SEIA's standard disclosure. JSP Obj. at 23- 24.

The Joint Solar Parties do understand, however, that the IPA could not (even if it wanted to) simply adopt SEIA's Solar Business Code as binding upon all Approved Vendors. This is because without authority to impose consumer protections, those protections will likely fail. The IPA appears to acknowledge that authority for consumer protections poses a challenge: "the Agency recognizes that it is not a regulatory agency." Plan at 11. ELPC states that this is not to say the IPA has no authority over solar developers. *See* 20 ILCS 3855/1-75(c)(1)(N). The Joint Solar Parties argue, however, that this passage does not grant the IPA plenary authority over all participating "Approved Vendors" without limitation simply because the IPA can set "terms, conditions, and program requirements." The Joint Solar Parties also note that disproportionately burdensome requirements relative to consumer benefits directed at small subscribers may contravene the statutory requirement that the terms and conditions "ensure robust

participation opportunities for residential and small commercial customers." JSP Obj. at 9.

Thus, while the Joint Solar Parties do not necessarily disagree on a policy level with the IPA establishing "common sense provisions to ensure that entities developing projects seeking to participate in this program are held to high standards for consumer protection," even full agreement on a policy level is insufficient to grant authority. That an agency's proposals are expedient or desirable is insufficient to grant authority for an administrative agency to go beyond its statutory charter. *See Commonwealth Edison Co. v. Ill. Comm. Comm'n*, 538 N.E.2d 213, 219, 181 Ill. App. 3d 1002 (2d Dist. 1989). Thus, the IPA does not gain authority where none previously existed by simply making a finding (or the Commission making a finding) that a particular consumer protection is desirable, expedient, or "common sense." JSP Obj. at 10.

In addition, the Joint Solar Parties wish to note that while the Joint Solar Parties support the IPA considering a range of entities as Approved Vendors, the IPA notes that some Approved Vendors may not interact directly with customers. *See* Plan at 111. While the IPA appears to acknowledge this in some respects, other consumer protection requirements (particularly where the IPA imports sections of Part 412 without modification) may be avoided if the Approved Vendor does not directly interact with the customer. The Joint Solar Parties suggest that the IPA view the inequitable treatment of different Approved Vendors as a reason to be circumspect with consumer protections, rather than justification for further statutory overreach to attempt to regulate more entities that are not Approved Vendors (such as Approved Vendors' agents or vendors). JSP Obj. at 10.

Moreover, the IPA proposes that Approved Vendors lose their status in scenarios that involve subjective determinations by the IPA. First, the IPA proposes to revoke an Approved Vendor's status if the IPA proposes changes to any of an Approved Vendor's "and/or their subcontractors/installers and affiliates['s]" marketing materials and the IPA's proposed changes are not implemented. *See* Plan at 112. Materials covered include "at minimum, printed materials, advertising through television and radio, websites (including affiliate websites), web ads, marketing via email or social media, and telemarketing scripts." *Id*. Second, the IPA proposes that if the IPA finds that an Approved Vendor "violated consumer protection standards may be subject, at minimum, to suspension or revocation of their Approved Vendor status by the Agency." Plan at 119. These two bases for revocation of Approved Vendor status should be eliminated, or at minimum subjected to a dispute resolution procedure compliant with Section 10-65(d) of the Illinois Administrative Procedure Act. 5 ILCS 100/10-65(d).) JSP Obj. at 11.

In addition, although perhaps facially objective, the Joint Solar Parties believe that the requirement that Approved Vendors "[d]ocument that all installers and other subcontractors comply with applicable local, state, and federal laws and regulations" is so nebulous as to be subjective. Plan at 112. The Joint Solar Parties could understand the value of this requirement if the IPA identified a (reasonable) number of requirements to document or required Approved Vendors to take commercially reasonable steps to ensure their contractors comply with the IPA requirements. The Joint Solar Parties could also understand an Approved Vendor representing that it believes it is in compliance with applicable law (perhaps a bit more broadly defined). However, by not only requiring

compliance by the Approved Vendors and their installers and subcontractors with all law but requiring compliance be documented—under penalty of revocation of Approved Vendor status—could potentially result in a cartoonish recordkeeping requirement to document compliance with literally every potentially applicable federal, state, and local law or regulation. If even possible, the proposed requirement would impose such extreme cost and time burdens on Approved Vendors that it would discourage companies from entering the Illinois market or potentially make solar unaffordable for customers that cannot purchase larger systems or subscriptions (such as residential customers). This requirement should thus be dramatically narrowed or eliminated. JSP Obj. at 11-12.

With regard to revisions to marketing materials, while the Joint Solar Parties greatly respect the experience and expertise of the IPA, the IPA does not have in its statutory charter any requirement or authority to review marketing materials. Perhaps in part for this reason, the IPA does not have technical expertise in review of marketing materials. The Joint Solar Parties are therefore concerned that IPA review could end up reviewing marketing materials on an ad hoc basis, due to the lack of statutory standards or course of dealing. The Joint Solar Parties are concerned about the potential for inconsistent "recommendations" from the IPA between different Approved Vendors, or the IPA holding Approved Vendors to different standards than any other legal regime that impacts advertising and marketing. Further, the IPA provides no guidance on how it would evaluate marketing materials, which potentially leaves companies at the mercy of the IPA's subjective views. JSP Obj. at 12-13.

With regard to complaints, the Joint Solar Parties again note that there is no statutory charter for the IPA to take and adjudicate complaints. Similarly, the IPA does not have technical expertise in receiving, evaluating, and adjudicating customer complaints—nor does it currently have a process to do so to the Joint Solar Parties' knowledge. The IPA has not proposed a process for evaluating and adjudicating complaints, including providing due process for an Approved Vendor to contest complaints. JSP Obj. at 13. The Joint Solar Parties maintain that a better approach for complaints is to provide ratings similar to the Commission's star ratings for RES. Those ratings are based on complaint rates. Once the Adjustable Block Program is up and running and Approved Vendors have time to develop a customer base, such ratings may help consumers decide between competing offers without shutting Approved Vendors out of the Adjustable Block Program. JSP Obj. at 14.

The Joint Solar Parties note that Approved Vendor status appears to fall squarely within the definition of "license" in the Illinois Administrative Procedure Act. Section 1-35 states in whole "'License' includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law, but it does not include a license required solely for revenue purposes." 5 ILCS 100/1-35. Approved Vendor status is an "approval" or "similar form of permission required by law." As a result, Section 10-65(d) of the Illinois Administrative Procedure Act is triggered, governing revocation of licenses including the following:

> Except as provided in subsection (c) [inapplicable to Approved Vendor licenses], no agency shall revoke, suspend, annul, withdraw, amend materially, or refuse to renew any valid license without first giving written notice to the licensee

> of the facts or conduct upon which the agency will rely to support its proposed action and an opportunity for a hearing in accordance with the provisions of this Act concerning contested cases. At the hearing, the licensee shall have the right to show compliance with all lawful requirements for the retention, continuation, or renewal of the license.

5 ILCS 100/10-65(d). While Section 10-65(d) does contemplate summary revocations, summary revocations may only be conducted when "public interest, safety, or welfare imperatively requires emergency action . . . summary suspension of a license may be ordered pending proceedings for revocation or other action. Those proceedings shall be promptly instituted and determined." *Id*. Thus, some form of administrative hearing is required even in the most extreme cases where the IPA could meet the statutory standard for emergency action. Joint Solar Obj. at 14.

Based on a review of the Plan, the Joint Solar Parties are unaware of the IPA having any dispute resolution procedure for any revocation of Approved Vendor status, much less one that complies with the Illinois Administrative Procedure Act. Unless and until the IPA constructs these mechanisms, the Commission should not approve grounds for revocation of Approved Vendor status that the Joint Solar Parties fear could be legally nullified for non-compliance with the Illinois Administrative Procedure Act. Joint Solar Obj. at 15.

Second, the Joint Solar Parties disagree with the IPA's argument that Approved Vendor status is not a license. First, at least one Illinois court has recognized that necessary prequalification to bid on a state agency's procurement is a license. *See Fitch/Larocca Assocs. v. Skinner*, 436 N.E.2d 17, 106 Ill. App. 3d 522 (Ill. App. Ct. 1st Dist. 1982).) In *Fitch/Larocca Assocs*., the court explicitly held that by authorizing prequalification standards and making clear prequalification was a prerequisite to bidding, the lack of a specific statutory command that bidders be prequalified or explicit statutory requirements were insufficient to demonstrate that prequalification was not a license. 436 N.E.2d at 19; JSP Rep. at 15.

The IPA's argument that the Adjustable Block is "solely for revenue purposes" is incorrect on its face: the Adjustable Block Program is not a grant, it is a program that allows utilities to contract for the purchase of RECs from qualified facilities. Whether one categorizes RECs as goods or services, the Adjustable Block Program is a sale, not a grant. The Adjustable Block Program is no more a grant than Capital Development Board contracts with architects in *Fitch/Larocca Assocs.* were a grant. The Joint Solar Parties are unaware of an equivalent to Approved Vendor status for utility-scale procurements, so the IPA's example of utility-scale procurements is inapposite. In any event, the Joint Solar Parties' concern is about revocation of the license covered by Section 10-60(a) of the Illinois Administrative Procedure Act, not failing to meet requirements as an initial matter as in the IPA's example. JSP Rep. at 15-16.

The Joint Solar Parties understand the value of consumer protections, from customer disclosures and education to monitoring bad actors. Instead of fully spelling out the IPA's proposed consumer protections applicable to Approved Vendors, however, the IPA simply referenced Subpart B of Part 412 of the Commission's rules. These rules for

the most part deal with the relationship between RESs and residential customers and commercial customers with very small (15,000 kWh) annual usage, and are highly specific to how an RES is regulated and how an RES interacts with utilities and customers. Even with the subsections identified by the IPA, simply replacing "Approved Vendor" for "RES" would lead to nonsensical results, many of which the IPA does not have the authority to impose. In addition, there are sections identified by the IPA as applicable where cross-references are provided to sections not on the IPA's list, making it confusing to determine what does or does not apply. JSP Obj. at 15.

As an initial matter, it is important to note that the statutory underpinnings of Part 412 are simply not applicable to Approved Vendors. Sections 16-115 through 16-115B of the PUA do not apply to Approved Vendors (unless an Approved Vendor separately holds a certificate pursuant to Section 16-115). *See* 220 ILCS 5/16-115 to 115B. Also, Section 2EE of the Illinois Consumer Fraud and Deceptive Business Practices Act does not apply to Approved Vendors. 815 ILCS 505/2EE. Even if the Commission disagrees with the Joint Solar Parties' interpretation of IPA and Commission authority to impose selected Part 412 requirements on Approved Vendors, the Commission should reject imposition of any sections of Part 412 on Approved Vendors. The Joint Solar Parties explains this is because it is inappropriate to impose even the sections of Subpart B identified by the IPA on Approved Vendors and simply replace "RES" with "Approved Vendors." Certain requirements only make sense with an entity (like a RES) providing electric supply, while others are the result of RES-specific experiences in Illinois. JSP Obj. at 17-21.

The Joint Solar Parties states that they initially understood the IPA to recommend that all Approved Vendors must follow the Sections of Part 412 literally as written. *See* Plan at 118. Now, based on the IPA and AG's responses, the Joint Solar Parties understand that the IPA wishes to develop new protections inspired by those sections of Part 412, but not literally importing them. The Joint Solar Parties appreciate the clarification by the IPA and AG, and do not object to the Commission approving the IPA creating marketing standards. The Joint Solar Parties believe the IPA may be considering taking stakeholder input on the actual consumer protections—the Joint Solar Parties strongly recommend that approach. JSP Rep. at 12.

The Joint Solar Parties recommend that the Commission not only restrict the requirements derived from Part 412, but also the customers to whom those requirements apply. While the Joint Solar Parties believe that Part 412 should be completely inapplicable to Approved Vendors who are not separately RESs, the Joint Solar Parties offer an alternative proposal in the spirit of compromise to reduce applicability to customers with subscriptions under 25kW. The Joint Solar Parties note that the overwhelming majority of Part 412, Subpart B only applies to residential and "small commercial" customers, which in this context means non-residential customers using under 15,000 kWh per year. *See, e.g.*, 83 Ill. Admin. Code §§ 412.100, 412.10. According to PV Watts, a 12 kW south facing system in Chicago or Peoria would generate roughly 15,000 kWh. In contrast, the IPA seeks to apply Part 412's protections to subscriptions of up to 100 kW subscriptions. *See* Plan at 118; JSP Obj. at 22.

The Joint Solar Parties also propose 25kW because it would harmonize applicability with two other IPA-proposed effects. The Part 412 applicability would

coincide with the enhanced community solar disclosures for subscriptions under 25kW. *See, e.g.*, Plan at 139-142. Also, the Part 412 applicability would coincide with the small customer adders for community solar. *See* Plan at 102-103. Thus, although there would be a greater administrative burden exclusively on under 25kW subscriptions, it would also come with an adder to mitigate the costs and maintain competitive neutrality between Approved Vendors who work with small subscribers and those who do not. Otherwise, the Joint Solar Parties fear that the increased administrative burdens on 25-100kW subscriptions without an adder will lead many Approved Vendors to largely ignore that segment. The Joint Solar Parties also note the disconnect in having special Part 412-inspired protections for 25-100kW community solar subscribers when the actual Part 412 protections do not even apply to those same customers. JSP Obj. at 22-23.

The IPA also proposed requiring that Approved Vendors, if they are developing community solar, provide with their Adjustable Block application a "copy of the contract between the project developer and the Approved Vendor (if they are separate entities)." Plan at 118. The IPA provides no justification or rationale for why the IPA needs to review this contract in any context but in particular in the community solar context. The Joint Solar Parties asserts that the IPA should view the challenges of regulating developer-customer interactions through the Approved Vendor construct as a reason to be circumspect in consumer protections, rather than an invitation for the IPA and/or Commission to push further beyond the IPA's statutory authority. Furthermore, the contract between a project developer and Approved Vendor may not relate to customers at all. For example, if an Approved Vendor is acquiring a project from a developer, this contract could take the form of an asset purchase agreement, with commercially sensitive pricing and terms. There is no rationale for the IPA to review such a contract. JSP Obj. at 24-25.

In addition, the Joint Solar Parties note that CSG argued that imposing consumer protection requirements on systems installed before approval of the Plan would be an illegal ex post facto requirement. *See* CSG Obj. at 18-19. To address the outstanding concern of the application of consumer protections for energized or near-energized Adjustable Block Program-eligible facilities, the Joint Solar Parties recommend that the Commission and the IPA provide clarity within this docket to avoid market confusion. Providing a pathway for systems that are energized (or subscriptions that are contracted for) before the official launch date of Adjustable Block Program to meet these consumer protection requirements will avoid consumer frustration if the system is ineligible for the Adjustable Block Program while providing the same contractual and standard form disclosure protections as any other customer. JSP Resp. at 6-7.

To protect those customers who have already energized distributed generation systems, contracted for distributed generation systems or contracted for community solar subscriptions, the Joint Solar Parties recommend the following solution to allow impacted systems to meet the substantive consumer protection requirements outlined in the Plan. To be eligible to participate in the Adjustable Block Program, distributed generation systems energized, distributed generation systems with contracts executed, or community solar subscriptions executed between June 1, 2017 and fifteen business days after the Commission approves the Plan must provide the Program Administrator with documentation upon application submission. Failure to meet these requirements by the

time the system is submitted to the IPA will result in rejection of the related system from the Adjustable Block Program. JSP Resp. at 7.

Granting the importance of the problem that CSG seeks to address, the Joint Solar Parties recommend that the Commission reject CSG's *ex post facto* rule argument. The Joint Solar Parties note that the Plan is not itself a rule—in fact, it is a plan that creates the Adjustable Block Program and rules for participation. Furthermore, Section 1-75(c)(1)(K) states that "[o]nly projects energized on or after June 1, 2017 shall be eligible for the Adjustable Block program," but contains no guarantee that all such projects shall be eligible or successfully enrolled in the Adjustable Block Program. 20 ILCS 3855/1-75(c)(1)(K). CSG cites no case law for the proposition that a program authorized by statute cannot impose requirements on participation. The Joint Solar Parties aver that CSG's position that imposing any consumer protections on systems installed before approval of the Plan would be an impermissible ex post facto rule should be rejected. JSP Resp. at 7-8.

The Joint Solar Parties note that Ameren suggests that the Commission add language to the Plan stating that a power purchase agreement is only possible with a RES. *See* AIC Obj. at 2. The Joint Solar Parties explain that there is a type of contracting arrangement colloquially referred to as a "power purchase agreement" for distributed and community solar that involves the customer paying a certain price for each unit of energy generated by the facility but without the customer taking title to the energy. Ameren is, of course, correct that for utility-scale solar a "power purchase agreement" has the meaning that they ascribe to it. In other words, while the distributed and community solar contracting mechanism is called a "power purchase agreement," it does not involve a wholesale or retail energy transaction that is not otherwise authorized by law (for instance by net metering or virtual net metering). Because Ameren's concerns are based on a misunderstanding of the use of "power purchase agreement" in context, the Commission should reject Ameren's proposed language. JSP Resp. at 19.

5. LVEJO

LVEJO argues that the IPA has a plenary authority to establish terms, conditions and program requirements for community renewable generation projects. *See* 20 ILCS 3855/1-75(c)(1)(N). The IPA is mandated to consider the welfare of Illinois residents in its procurement and power purchasing activities. The General Assembly explicitly identifies the "..welfare, and prosperity of all Illinois citizens" and the "…well-being of Illinois residents" as being fundamental to the IPA's responsibilities. 20 ILCS 3855/1-5(1), (6) and (8). The IPA is further charged to implement renewable energy procurement and training programs to "…enhance the public health and well-being of Illinois residents, including low-income residents. 20 ILCS 3855/1-5(12)(H). The law requires that the IPA must act consistently with these principles in its procurement and power purchasing activities. 20 ILCS 3855/1-5(12). These "welfare" and "well-being" goals are an unambiguous and repeated statutory mandate, separate from other statutory priorities related to public health, environmental quality and a sustainable electric system. Illinois law identifies consumer protection as "vital" to the welfare of Illinois consumers in the context of energy law. 815 ILCS 505/10d(a); LVEJO Resp. at 2-3.

LVEJO notes that the IPA identifies several reasons why consumer protections are essential to secure the welfare and well-being of Illinois residents as part of a Plan. The IPA's justifications are found throughout the Plan. LVEJO notes the IPA's reasons for the comprehensive consumer protection program it proposes, which are:

1. Approve Vendors Based On Uniform, Professional Standards of Practice.
2. Maintain the Credibility of the Adjustable Block Program.
3. Protect Individual Consumers From Incorrect, Inaccurate or Deceptive Information.
4. Ensure the Financial Benefits of This Ratepayer-Funded Program Are Not Claimed by Entities Using Incorrect, Inaccurate or Deceptive Information in Their Dealings With Consumers.
5. Address the "Information Asymmetry" Between A Salesperson and A "Small-Scale" Subscriber In Light of the Complexity of the Potential Transaction.
6. Develop Proactive Measures That Are Informed by the Recent History of Alternative Retail Electric Suppliers in Illinois.

LVEJO Resp. at 4-7.

The most objected-to aspects of the IPA's package of consumer protections are references to existing consumer protection regulations in Part 412, which apply to RESs. In response to these objections, it is important to underscore the IPA's explicit acknowledgement that "…Approved Vendors will not necessarily be RESs. The IPA further acknowledges that as Approved Vendors, these entities are not governed as a matter of law by the Commission's Rules applicable to RESs. Instead, as contemplated by PA 99-0906, the IPA's implementation of changes to the Illinois RPS is articulated in a procurement plan, not a rulemaking proposal. LVEJO Resp. at 8.

Importantly, the Plan does not propose a simple, wholesale incorporation by reference of 83 IAC Part 412, Subpart B into its Procurement Plan, or any expansion of the RES regulatory scope to include Approved Vendors. Instead, the IPA uses specific Sections of 83 IAC Part 412, Subpart B as source material to inform the kinds of protections it will apply to Approved Vendors operating within the Agency's Plan. The IPA's explicit goal is to provide "equivalent" levels of protection as now exist for RESs related to marketing standards and practices. LVEJO Resp. at 9.

Regardless, LVEJO maintains that there is no prohibition on the IPA or any other state agency tapping into the experience and institutional knowledge of another state entity to inform its own activities and decisions. In the present case – which contemplates a new wave of interactions between electricity vendors and Illinois consumers – it would be naïve to ignore the hard fought "lessons learned" from the marketing and sale of energy-related products in the RES programs. It is reasonable and prudent to proactively reference the resulting "workable blueprint" of measures that are designed to minimize

the risk of harm, and to be transparent about specific expectations. This approach also creates consistent best practices across programs that may have different legislative origins and purposes, but which pose the same kinds of risks for Illinois consumers at the point of solicitation. LVEJO Resp. at 9-10.

Some objections arise from Section 6.13.2. of the IPA's Plan, which establishes a protocol for monitoring consumer complaints. As previously noted, the IPA is charged to secure the welfare and well-being of Illinois residents in the activities it conducts and supervises, and the concept of welfare includes consumer protection. Moreover, the IPA is given an omnibus authority to establish the "terms, conditions and program requirements" for community generation renewable programs. 20 ILCS 3855/1-75(c)(1)(N). Taken together, these statutory provisions provide a strong foundation for the IPA to incorporate the monitoring of consumer complaints into the job description of the Program Administrator and to include related responsibilities for public education, public communication, inter-agency coordination, recordkeeping and reporting. The IPA is also acting within the scope of its authority by establishing and administering a vendor approval system that includes an annual renewal requirement; no party objects to this. LVEJO Resp. at 10.

LVEJO points out several other provisions of the IPA Act and other laws that provide a basis for the IPA to accept, record, report, refer and act upon consumer complaints. The IPA is required to ensure that the process of power procurement is conducted in an ethical and transparent fashion. 20 ILCS 3855/1-5(12)(E). The IPA is authorized to request information, and to make any inquiry, investigation, survey, or study that the IPA may deem necessary to enable it effectively to carry out the provisions of the IPA Act. 20 ILCS 3855/1-20(b)(20). In addition, the IPA is mandated to establish procedures for monitoring the administration of any contract administered directly or indirectly by the Agency. 20 ILCS 3855/1-35(1). Finally, cooperating with other Illinois public agencies in responding to consumer complaints is expressly authorized by the Illinois Intergovernmental Cooperation Act. 5 ILCS 220/3; LVEJO Resp. at 11.

Taken together, these statutory provisions provide a strong justification for the IPA to engage in proactive consumer education, ongoing communication with Illinois consumers as well as related recordkeeping, reporting, evaluation and interagency communication. The Commission should confirm Section 6.13.2 of the IPA Plan as proposed. LVEJO Resp. at 11-12.

6. ELPC

As an initial matter, ELPC fully believes the IPA has the authority to include consumer protection requirements in the Plan and strongly supports the IPA doing so. ELPC does, however, agree that additional clarity related to those consumer protections should be offered – the Plan itself does not necessarily need to include all these clarifying details, but information about the process and steps that will be taken to fully flesh out the requirements should be provided, and the described process should include stakeholder involvement. In addition, the IPA should offer a pathway for solar systems energized on or after June 1, 2017 to be eligible for the adjustable block program in the event they did not follow consumer protection guidelines that were not yet established at the time of their development. ELPC Resp. at 15.

CSG suggests that the IPA is "essentially proposing to adopt rules outside of the rulemaking process" (CSG Obj. at 10), while the Joint Solar Parties also appear to question the IPA's authority to set terms and conditions applicable to Approved Vendors. JSP Obj. at 9. ELPC opines that these objections to the IPA's legal authority are baseless. The legislature granted the IPA broad authority under the IPA Act to implement the programs under its jurisdiction. The IPA Act provides that "[e]xcept as otherwise limited by this Act, the Agency has all of the powers necessary or convenient to carry out the purposes and provisions of this Act." 20 ILCS 3855/1-20(b). These include, but are not limited to, the ability "[t]o request information, and to make any inquiry, investigation, survey, or study." This specific power is relevant, for example, to the IPA's proposal that it review marketing materials for the adjustable block program. ELPC Resp. at 15-16.

ELPC states that the IPA also has more specific authority under the new RPS provisions, as amended by PA 99-0906. For example, the IPA is charged with "design[ing] its long-term renewable energy procurement plan to maximize the State's interest in the health, safety, and welfare of its residents." 20 ILCS 3855/1-75(c)(1)(I). ELPC believes that ensuring high standards of consumer protection are fundamental to the IPA's mandate to maximize the health, safety, and welfare of Illinois residents. Section 1-75(c)(1)(K) acknowledges that the IPA can set terms and conditions for projects under the Adjustable Block Program, and Section 1-75(c)(1)(N) even more explicitly states that the IPA "shall establish the terms, conditions, and program requirements for community renewable generation projects." Importantly, Section 1-75(c)(1)(M) recognizes that all of the details of the adjustable block program need not be established in the Plan, as the IPA is "authorized to retain one or more experts or expert consulting firms to develop, administer, implement, operate, and evaluate the Adjustable Block program." ELPC Resp. at 16.

It is critical to realize that the IPA is not proposing in the Plan to "regulate" entities in a legal sense and, therefore, a rulemaking is not required to implement consumer protection provisions. Rather, the IPA is instituting requirements for companies that wish to participate in a state-run incentive program. These companies are entirely free to participate in the open market and offer their goods and services without following these requirements. However, if they wish to reap the benefits of the state program, they must abide by the terms and conditions established by the agency running the program, pertaining to consumer protection or otherwise. ELPC Resp. at 16-17.

ELPC notes that there is an occasional theme in the JSP comments that characterizes the Plan's consumer protection requirements as "regulation" rather than program design. ELPC disagrees. PA 99-0906 created several new subsidy programs for solar companies in Illinois—using Illinois ratepayer dollars—and the law empowers the IPA to create reasonable program requirements to ensure the success of these programs and the protection of Illinois customers. No solar company is forced to participate in these new programs or is restricted from doing business in Illinois in any other way if it chooses not to participate. ELPC strenuously disagrees with the Joint Solar Parties that the IPA's program requirements are akin to a "license" within the meaning of the Illinois Administrative Procedure Act. *See* JSP Obj. at 14; ELPC Resp. at 17-18.

ELPC agrees with the CSG and the JSP that greater clarification should be included in the Plan on a few issues. First, the Plan states that "Approved Vendors will

be expected to comply with marketing standards equivalent to" various sections of the Commission's new Part 412 marketing rules for RESs. Plan at 6.13. Because the context of RESs providing alternative electricity supply is very different from the context of the Adjustable Block Program and the various roles that Approved Vendors may play, this framing may not provide complete clarity on what exactly would be required of Approved Vendors. While greater clarification on what the "equivalent" to the Part 412 sections specifically requires of Approved Vendors is advisable, it need not be spelled out in the Plan. Section 1-75(c)(1)(M) authorizes the IPA to "retain one or more experts or expert consulting firms to develop, administer, implement, operate, and evaluate the Adjustable Block Program." This language clearly indicates that the legislature did not intend the IPA to develop full details for the Adjustable Block Program before Plan approval. Indeed, requiring this level of detail in the Plan would be inconsistent with past IPA procurement plans, not to mention unwieldly. ELPC suggests that the Plan should instead set forth a plan to work with stakeholders to more fully flesh out the adjustable block program equivalency of the identified Part 412 provisions. ELPC Resp. at 18-19.

Second, the Joint Solar Parties raise the issue of the revocation of Approved Vendor status. JSP Obj. at 11-14. While ELPC does not necessarily agree with all of the Joint Solar Parties' statements on this issue, ELPC does believe it is important that a clear and objective process be developed for Approved Vendor status revocation, and that a dispute resolution process would be advisable. Once again, the full details need not be laid out in the Plan, but the IPA should indicate how those details will be developed and that stakeholders will have a chance to provide input before the process is finalized. ELPC Resp. at 19.

Third, the Joint Solar Parties expressed concern about the Uniform Disclosure Statement requirements. JSP Obj. at 23-24. Similar to the above issues, ELPC believes that greater clarity is needed, but does not necessarily need to be included in the Plan itself. Rather, the IPA should describe how it will develop the Uniform Disclosure Statement, which should include stakeholder input. Additionally, the form should be made available before the Adjustable Block Program opens. ELPC Resp. at 19.

A final consumer protection concern is the status of systems that would otherwise be eligible for the Adjustable Block Program that were energized on or after June 1, 2017, but before final consumer protection guidelines were established. ELPC believes that the Adjustable Block Program should establish a pathway to eligibility for these systems. The IPA Act specifically provides for the eligibility of projects energized on or after June 1, 2017. *See* 20 ILCS 3855/1-75(c)(1)(K). Allowing such projects to participate in incentive programs only if they meet guidelines that did not exist at the time of their development is likely to effectively bar numerous projects energized after June 1, 2017 from participating. Early actors should not be disadvantaged simply for being early actors and barring early projects from later participation is likely to chill the market, resulting in exactly the opposite of the predictable scaling up of the solar PV market intended by P.A. 99-0906. 20 ILCS 3855/1-75(c)(1)(K). Again, the full details for a pathway to program eligibility can be developed after the Plan is approved, with stakeholder input. ELPC Resp. at 19-20.

Ameren raises a concern that the Plan's reference to model power purchase agreements could be interpreted in a way that would conflict with Illinois requirements for

RESs. AIC Obj. at 2. ELPC does not share Ameren's concern. The model power purchase agreements referred to in the Plan are financing instruments commonly used in the solar and cogeneration industries for behind-the-meter facilities that serve a host customer. Illinois law is clear that these power purchase agreements financing instruments do not require the project owner to register as a RES. ELPC Resp. at 20. The IPA proposes to address this concern by clarifying that "any underlying retail energy sale would require valid certification as a retail electric supplier." IPA Resp. at 69. ELPC is satisfied with this clarification with the understanding that solar power purchase agreements do not typically involve an underlying retail energy sale. ELPC Resp. at 20-21; ELPC Rep. at 30.

7. AG

The Joint Solar Parties and CSG assert that the IPA and the Commission lack the authority to include consumer protections in the Plan. The AG opines that these objections are incorrect. As part of the long-term renewable planning process, the General Assembly directed the IPA to "develop," and the Commission to review and approve, "procurement programs." 20 ILCS 3855/1-75(c)(1)(A); *see also* 20 ILCS 3855/1-20(a)(1.5) (authorizing the IPA to "[d]evelop a long-term renewable resources procurement plan . . . for the programs" specified in the statute). AG Resp. at 2.

The AG states that program development necessarily includes several different components, such as creating a set of requirements that participants must agree to if they wish to be involved in, and benefit from, the programs. For example, with respect to community solar in particular, the General Assembly provided that "[t]he Agency shall establish the terms, conditions, and program requirements for community renewable generation projects" who seek to participate in programs created by the Plan. 20 ILCS 3855/1-75(c)(1)(N). Contrary to the objections of CSG, the General Assembly did not direct the IPA to create the statutory programs in a rulemaking. Rather, it directed the IPA to do so in its Plan. AG Resp. at 2-3.

The AG points out that the Plan's consumer protections apply to "Approved Vendors" who choose to participate in the IPA's programs, not to the solar industry in general. *See* Plan at 117. Thus, the IPA is not attempting to regulate an industry; rather, it is proposing terms and conditions for "programs" that it is "develop[ing]" pursuant to statute. AG Resp. at 3.

With respect to the proposal to review marketing materials, the Joint Solar Parties assert that the IPA does not know how to review marketing materials and does not know how to make consistent recommendations about them. JSP Obj. at 12. Joint Solar Parties also claim that the IPA has no ability to evaluate consumer complaints. *Id*. The AG does not share these views of the IPA and the third-party administrative partners it proposes to retain in the Plan. AG Resp. at 4.

The AG notes that "[t]he Director of the Illinois Power Agency must have at least 15 years of combined experience in the electric industry, electricity policy, or electricity markets." 20 ILCS 5/5-222. Additionally, he or she "must possess: (i) general knowledge of the responsibilities of being a director, (ii) managerial experience, and (iii) an advanced degree in economics, risk management, law, business, engineering, or a related field." *Id*. The IPA is directed by statute to retain a third-party program administrator(s) for the

Illinois Solar for All Program whose qualifications include experience in "administering low-income energy programs and overseeing statewide clean energy or energy efficiency services." 20 ILCS 3855/1-56(b)(5). The IPA is also authorized to retain experts or expert consulting firms "to develop, administer, implement, operate, and evaluate the Adjustable Block program." 20 ILCS 3855/1-75(c)(1)(M). The AG is confident that the IPA itself, and in combination with its program administrators, is, and will be, well-equipped to identify problematic marketing and to fairly and properly assess when entities have violated consumer protection standards. No changes to the Plan are warranted. AG Resp. at 4-5.

Joint Solar Parties object to the Plan's use of selected Part 412 requirements, stating that the IPA lacks authority to incorporate them into the Plan and that the requirements are confusing to them. JSP Obj. at 15; *see also* CSG Obj. at 10, 11-18. The AG disagrees. First, the General Assembly directed the IPA to "develop" "programs" in the Plan. This wide grant of authority should be understood by the Commission as including the incorporation of consumer protection requirements. Second, the IPA's explanation of why selected provisions of the Part 412 rules are useful and which ones are relevant also makes clear that the rules are a "blueprint" and that "equivalent" standards should guide Approved Vendors' marketing. *See* Plan at 118; AG Resp. at 5-6.

The AG disagrees with CSG's rationale for carving off pieces of the requirements to only apply to specified Approved Vendor categories. Some of the rules are not applicable to certain companies because the company is not interacting with a customer or is not engaging in a specific type of purchase or sale. The rules govern conduct if an entity chooses to pursue that conduct. The rules do not impose affirmative obligations or burdens, and no changes are needed to the Plan's incorporation of them as a "workable blueprint for expectations of Approved Vendors." Plan at 118; AG Resp. at 7-8.

The Joint Solar Parties urge the Commission to force the IPA to provide the actual standard disclosure form that Approved Vendors will be required to use as part of the Plan. JSP Obj. at 23-24. The Joint Solar Parties urge the IPA to use the disclosure form created by the industry trade organization Solar Energy Industries Association. The AG recommends that the Commission approve the Plan's approach. Plan at 117 n.337. Contrary to the Joint Solar Parties' objection, the IPA has already provided a detailed explanation of what the standardized disclosure form will include and is open to considering aspects of SEIA's form. *See* Plan at 117. AG Resp. at 8-9.

The Plan provides that Approved Vendors must "agree to provide sales and marketing information, including contract prices and sales volumes, to the Agency on a confidential basis." Plan at 118. The Commission should not accept CCSA's desire to modify this provision. The IPA has explained that "[t]he Agency will use this information for internal purposes to track market progress" (emphasis added). Plan at 118. The IPA's need for information is self-evident in that the plan, and the programs created through the Plan, are to be revisited every two years pursuant to statute. 20 ILCS 3855/1-75(c)(1)(A). The AG submits that all involved parties and stakeholders have indicated their interest in having programs introduced by the statute function effectively and produce positive results for consumers and the environment. Informational-gathering aspects of the Plan must be affirmed, not reduced in scope. AG Resp. at 9.

CCSA also discusses the Plan's intent that the IPA and its Program Administrator(s) will create and maintain a publicly accessible database of consumer complaints. CCSA Obj. at 12; Plan at 119. CCSA does not object to the existence of the database but believes that it will not be useful to consumers unless certain factors are addressed. The AG agrees that the public database envisioned by the Plan should be designed and adjusted as needed to ensure it is a meaningful resource for customers; however, similar to development of the IPA's standard disclosure form discussed above, the details of the complaint database need not be set forth in the Plan itself but rather should be established once the Program Administrator is in place and with interested stakeholders potentially in a working group setting. AG Resp. at 10.

The AG notes the argument of the Joint Solar Parties regarding how to apply the Plan programs' consumer protection requirements to systems that are energized between June 1, 2017 (the effective date of PA 99-0906) and the approval and finalization of such requirements. The Joint Solar Parties provide a recommendation for how such a pathway could work that includes providing materials to the IPA. The AG recommends that the IPA and its program administrators specify when these materials must be submitted to qualify the project for participation in the programs. The IPA and its program administrators should also provide declaration forms that project developers can complete and sign if their customers are not responsive to good faith attempts to contact or for customers that refuse to sign an amended contract or disclosure form. At the same time, the notice and consumer protection compliance documents should include information to the customer that he or she can contact the relevant program administrator or the IPA for additional information, to ask questions, or to submit concerns or a complaint. Finally, the IPA and its program administrators should retain the ability to exclude projects that in their determination represent deceptive marketing or bad faith business practices through complaints or other information brought to their attention, whether or not customers have signed contract amendments or disclosure forms. AG Rep. at 2-3.

Accordingly, the AG supports a modification to the Plan that would address how eligible projects that are already energized or that have already acquired customers can be deemed by the IPA and its program administrators to be in compliance with the Plan programs' consumer protection requirements through a common sense approach that does not automatically exclude such projects and does not completely exempt them either. AG Rep. at 3.

8. CUB

CUB states that the consumer protections afforded by the Plan are prudent exercises of the IPA's statutory authority to develop a procurement program designed "to maximize the State's interest in the health, safety, and welfare of its residents." 20 ILCS 3855/1-75(c)(1)(I); CUB Rep. at 2. CUB maintains that the IPA has legal authority to condition Approved Vendors' eligibility for the Adjustable Block Program on meeting consumer protection standards. The IPA Act authorizes the IPA to condition eligibility for the Adjustable Block Program on an Approved Vendor's adherence to the consumer protection standards stated at Section 6.13 of the Plan. Section 1-75(c)(1)(N) of the IPA Act charges the IPA with "establish[ing] the terms, conditions, and program requirements for community renewable generation projects with a goal to expand renewable energy

generating facility access to a broader group of energy consumers, to ensure robust participation opportunities for residential and small commercial customers and those who cannot install renewable energy on their own properties." 20 ILCS 3855/1-75(c)(1)(N). CUB Rep. at 2.

Further, CUB offers that the IPA Act conveys to the IPA not just the authority, but the obligation, to take necessary measures in the Plan to protect consumers. The IPA Act tasks the IPA with "[ensuring] that the process of power procurement is conducted in an ethical and transparent fashion." 20 ILCS 3855/1-5(12)(E). The Plan makes good on the IPA's statutory duty by holding participating vendors to the consumer protections to which the Joint Solar Parties and CSG object. CUB Rep. at 2-3. CUB joins the AG in asking the Commission to approve the Plan's requirement that Approved Vendors "[a]gree to make changes to marketing materials as instructed by the agency." AG Resp. at 4–5; Plan at 112. CUB shares the AG's view for two reasons: 1) the provision falls within the IPA's consumer protection mandate by prohibiting only materials that are deceptive, confusing, or misleading and 2) the IPA is qualified to determine whether marketing materials run afoul of this standard. CUB Rep. at 3.

CUB shares the AG's view that the Commission should approve the Plan's requirement that Approved Vendors "agree to provide sales and marketing information, including contract prices and sales volumes, to the Agency on a confidential basis." Plan at 118. CCSA disagrees, contending that Approved Vendors should only have to disclose this information to the IPA upon request and for cause because "it is possible for this information to inadvertently be made public." CCSA Obj. at 11. The separate Joint Solar Parties objections, to which CCSA is a party, similarly disfavor disclosure requirements. The Joint Solar Parties reason that some contracts do not relate to customers and contracts might "contain commercially sensitive pricing and terms." JSP Obj. at 25. In response, CUB offers that any contract that may affect the price consumers pay is relevant to consumers and therefore properly subject to IPA review. The IPA routinely handles commercially sensitive information and does so securely, as it is legally obligated to do. As the AG notes, "[t]he IPA has explained that '[t]he agency will use this information for internal purposes to track market progress." Plan at 118. The IPA collects this information to inform its process, mandated by statute, of revising the Plan every two years to account for changes in market conditions. CUB recognizes the value of requiring these contracts' terms be disclosed to the IPA and sees no threat to confidentiality therein. CUB Rep. at 6-7.

CUB notes that the Joint Solar Parties object to the Plan's requirement that Approved Vendors document legal compliance, claiming that it is "so nebulous as to be subjective." JSP Obj. at 11. CUB disagrees. Compliance with the law is an objective determination, and documenting compliance is simplified by installer and subcontractor licensing and certification requirements. Installers and subcontractors must be licensed or otherwise certified and are required to confirm compliance with all applicable laws and regulations in order to maintain their certifications. For example, Illinois law requires that all installers of distributed generation facilities, except self-installers, maintain Distributed Generation Installer Certification. 83 Ill. Admin. Code 468. As part of the process, "[t]he applicant certifies that it will remain in compliance with all applicable laws and regulations and Commission rules and orders" as well as certify legal compliance of its employees,

agents or contractors. 83 Ill. Admin. Code 468.60. To document compliance with applicable laws and regulations, a vendor would need only to document that they are certified. CUB is not aware of any circumstances under which documenting an installer or subcontractor's compliance with applicable laws would entail, as the Joint Solar Parties suggest in their objections, "extreme cost and time burdens" for the Approved Vendors. JSP Objections at 12. Accordingly, CUB sees no reason to modify this requirement. CUB Rep. at 4-5.

In response to the objections of the Joint Solar Parties and CSG to applying standards modeled after select Part 412 requirements to Approved Vendors. The AG concedes, and CUB does as well, that Part 412 was drafted with RESs in mind. That does not mean, as the Joint Solar Parties and CSG suppose, that standards designed for RESs cannot inform requirements applicable to non-RES. The IPA agrees with the objectors that applying the Part 412 rules to non-RESs would be inappropriate, which is why the Plan does not do that. The IPA plainly states in the Plan that it "recognizes that Approved Vendors will not necessarily be [RESs], and thus as Approved Vendors are not governed … by the Commission's Rules applicable to RESs," but nonetheless, the Part 412 rules "provide a workable blueprint for expectations of Approved Vendors." Plan at 118. CUB sees no problem with holding non-RESs to consumer protection standards equivalent to those in place for RESs. CUB Rep. at 5.

CUB agrees with the AG that the Commission should approve the IPA's plan to develop a public complaint database. CUB is of the opinion that, as a general matter, giving consumers access to more information is better. Further, in focusing on the risk of decreased consumer trust from potential over-reporting, CCSA's objections overlook the potentially far greater erosion of consumer confidence that could result from under-reporting. CUB Rep. at 7.

CCSA's objections underscore the complexity of determining how much public disclosure is the right amount. In the Plan, the IPA demonstrates its respect for the gravity of this challenge, stating that it will work with the Program Administrator to develop the specifics of the public database. Rather than unilaterally design the database from scratch by decree, the IPA has begun a collaborative, adaptive process. CUB encourages the IPA to seek out stakeholder feedback on how best to design the database and disclosure requirements. For its part, CUB favors giving consumers more information so they can decide for themselves what matters to them and what does not. CUB Rep. at 7-8.

There is no dispute that protecting consumers from dishonest and deceptive business practices is prudent. In their objections, the Joint Solar Parties concede they "do not necessarily disagree" that the consumer protection standards the IPA has enacted under the Plan are good policy. JSP Obj. at 10. Nonetheless, they assert, incorrectly, that the IPA's authority to "establish the terms, conditions, and program requirements" for such programs does not allow the IPA to condition Approved Vendor eligibility on complying with measures intended to prevent the deception, confusion, or misleading of the consumers paying for these programs. CUB Rep. at 8.

In making this argument, the Joint Solar Parties attempt to conflate conditions for participation in a ratepayer-funded, IPA-administered program with the type of policy

pronouncements of general application that are the exclusive purview of regulatory agencies. The IPA, the Joint Solar Parties, ELPC, and CUB agree that the IPA "is not a regulatory agency and does not have jurisdiction over all distributed generation installations or community solar projects across the state" (Plan at 117), but the Plan makes no such broad-sweeping regulatory pronouncements. Rather, these conditions apply only to participation in the procurement programs the IPA administers. By participating in an IPA-administered incentive program open only to qualified Approved Vendors, a company avails itself of the conditions of remaining an Approved Vendor. If it does not wish to adhere to these standards, the company need not participate in the program. CUB Rep. at 8-9.

The Joint Solar Parties further object to the Plan's terms authorizing the IPA to suspend or revoke an Approved Vendor's status for failure to adhere to the IPA's standards for consumer protection and the content of marketing materials. JSP Obj. at 11-14. In response, CUB clarifies again that the IPA has the authority to condition eligibility for ratepayer-funded programs it administers on participants' adherence to consumer protection measures. The IPA Act grants the IPA "all of the powers necessary or convenient to carry out the purposes and provisions of th[e] Act," which include the ability "[t]o request information and to make any inquiry, investigation, survey, or study." 20 ILCS 3855/1-20(b); ELPC Resp. at 15. Based on this language, and for the reasons stated above, CUB views the Plan's disclosure and transparency requirements as a reasonable exercise of the IPA's information gathering and investigative authorities. CUB Rep. at 9-10.

ELPC "agrees with [CSG] that there should be a pathway for consumer protection compliance and program participation for systems energized after June 1, 2017, but developed before the establishment of consumer protection guidelines." ELPC Resp. at 19. CUB agrees with both CSG and ELPC on this point and suggests that already-energized systems have forty-five days to make any adjustments necessary to be eligible for the Adjustable Block Program once the program rules are set. That being said, CUB recognizes that, as ELPC points out in its response to objections, "the full details for a pathway to program eligibility can be developed after the LTRRPP is approved, with stakeholder input." *Id*. at 20; CUB Rep. at 10.

9. IPA

In understanding the timing and scope of the IPA's consumer protection proposals, the following points about the Plan approval process are instructive: first, the IPA generally proposes certain key requirements—but not all terms, conditions, and requirements applicable to procurement process participants—as part of its underlying Procurement Plan. Effectively, this means proposing those procurement elements for which Commission approval should specifically be obtained to provide clarity and certainty to affected parties (whether potential bidders, the counterparty utilities, or the Commission itself). IPA Resp. at 54.

Second, while important participation issues may be addressed as part of the Plan approval proceeding, more granular development of actual procurement participation terms, conditions, and requirements occurs after the IPA's Plan approval process. For its competitive procurement events, this process is managed by the IPA's Procurement

Administrator - a third-party consultant responsible for activities described in part in Section 16-111.5(e)-(f) of the PUA with dedicated expertise in competitive energy/capacity/REC procurement events. In general, approximately six weeks to two months prior to a competitive procurement event, the Procurement Administrator publishes its finalized "RFP Rules" setting forth participants' participation requirements. IPA Resp. at 54-55.

Third, with some exceptions, specific forms are developed after the plan approval process, and generally not submitted during the Plan approval process. As required by law, REC delivery contracts are developed by the Procurement Administrator in consultation with the affected utilities, Commission Staff, and the IPA and are subject to an open comment process prior to finalization. Specific forms, including those used for the submission of an actual bid, are generally published along with final RFP requirements or shortly thereafter. IPA Resp. at 55.

The IPA asserts that its authority with respect to developing conditions applicable to IPA-administered program participation is expressly stated in the law with respect to community renewable generation projects (including community solar) participating in its proposed programs: for such projects, "[t]he Agency shall establish the terms, conditions, and program requirements for community renewable generation projects with a goal to expand renewable energy generating facility access to a broader group of energy consumers, to ensure robust participation opportunities for residential and small commercial customers and those who cannot install renewable energy on their own properties." 20 ILCS 3855/1-75(c)(1)(N). For the Adjustable Block Program generally (i.e., distributed PV generating systems), that same authority to establish program "terms, conditions, and requirements" is implicit in the statutory assignment of responsibility to the Agency (and the Program Administrator it may hire) to "develop, administer, implement, operate, and evaluate" the Adjustable Block Program. 20 ILCS 3855/1-75(c)(1)(M); IPA Resp. at 55-56.

In terms of when those program terms, conditions, and requirements are to be developed, the IPA is challenged by a timing issue. Under Section 1-75(c)(1)(M), "[t]he Agency shall be authorized to retain one or more experts or expert consulting firms to develop, administer, implement, operate, and evaluate the Adjustable Block program" to be retained "in the same manner, to the extent practicable, as the Agency retains others to administer provisions of this Act, including, but not limited to, the procurement administrator." Effectively, the Agency's Program Administrator for its Adjustable Block Program is the equivalent of its Procurement Administrator for its competitive procurement events. As with its valuing of relevant prior experience in retaining its Procurement Administrator, the IPA's draft Program Administrator RFQ seeks to recruit firms with meaningful experience in the management of state renewable energy incentive programs similar to the Illinois Adjustable Block Program. IPA Resp. at 56.

However, the IPA cannot select and hire its Program Administrator until after the conclusion of this proceeding. Section 16-111.5(b)(5)(ii)(B)(cc) of the PUA requires that the Plan "[i]dentify the process whereby the Agency will submit to the Commission for review and approval the proposed contracts to implement the programs required by such plan." Section 16-111.5(b)(5)(iii) further provides that "[t]hird parties shall not begin implementing any programs or receive any payment under this Section until the

Commission has approved" the Program Administrator's "contract or contracts under the process" identified by the IPA and approved by the Commission in its Plan. Taken together, this leaves the IPA's execution of a contract with its Program Administrator as subject to a contract approval process which must first be approved through approval of the Plan. IPA Resp. at 56-57.

For this plan approval proceeding, the IPA has taken an approach similar to its prior competitive procurements with respect to its proposed terms, conditions, and other requirements for the Adjustable Block Program: obtain Commission approval regarding the broader elements of its proposals to provide clarity and certainty to parties (proposing an Approved Vendor process, proposed basic Approved Vendor requirements, propose consequences for the failure to maintain compliance with that process, propose that as a program term and condition, Approved Vendor marketing practices and other activities meet the minimum requirements applicable to alternative retail electric suppliers under Title 83, Part 412 of the Illinois Administrative Code where applicable). From that framework, actual forms and more detailed operational guidelines—the programmatic equivalent of RFP requirements and participation forms with respect to its competitive procurement events—can then be developed. IPA Resp. at 57-58.

Thus, in this proceeding, the IPA is simply seeking approval for what it has sought in past plan approval proceedings: not the approval of all terms and requirements applicable to participation, but approval of its proposed Plan for the development of terms, guidelines, and requirements governing subsequent programs and procurement events. While specific key details are indeed proposed for approval, others may be too granular or premature for this Plan approval process and would benefit from the assistance of the IPA's eventual Program Administrator. Others still may address unforeseen issues yet to be raised. In all instances, the IPA is committed to ensuring that stakeholder feedback is received and valued prior to the finalization of specific program participation requirements. IPA Resp. at 58.

Notably, in establishing any program terms, conditions, and requirements, the IPA avers that it is not "regulating" an industry—or even "regulating" any specific market activity within that industry—and cannot fairly be characterized as attempting to do so. It is simply setting the terms, conditions, and requirements applicable to the specific programs and procurement events that it is required to administer. The IPA is merely setting terms applicable only to participation in those programs and procurement events that it administers. Thus, an entity choosing to market community solar subscriptions but selling RECs from those projects into another market or to a different buyer—or even to the same buyers (such as through a competitive procurement event for RECs conducted to meet the requirements of Section 1-75(c)(1)(B)), but just not through the Adjustable Block Program—would not be subject to the IPA's proposed Approved Vendor requirements. Nothing in its Plan proposes to regulate activities generally or asserts "plenary" authority over the industry; it merely proposes conditions applicable to parties seeking the benefits of a specific form of REC delivery contract through a specific state-administered program. IPA Resp. at 58-59.

As trade associations representing project developers and installers, the Joint Solar Parties may not necessarily like all of the IPA's proposed conditions for participation in an IPA-administered program; some of these conditions disallow certain marketing

practices or seek to hold those who market community solar subscriptions to the same standards as those who market traditional energy supply contracts, and that may prove challenging for certain firms or business models. But the IPA's authority to set those requirements is clear because the IPA is tasked by law with proposing, developing, administering, and creating terms and conditions applicable to the Adjustable Block Program. Should a project developer find those terms and conditions too onerous, it may simply choose to not sell its RECs through the Adjustable Block Program and continue to operate outside of the IPA's proposed requirements for that program. IPA Resp. at 60-61.

In complaining about the basis for the IPA's consumer protection requirements, the Joint Solar Parties also offer the statement that "there is not a factual record in the present docket for imposing most if not all of the Part 412-related consumer protections." In response, the IPA states that the Joint Solar Parties' continued references to "the factual record" either willfully ignore the justifications for consumer protections set forth in the Plan itself or believe this Plan approval process is part of a regulatory paradigm distinct from any prior Plan approval process. IPA Rep. at 27-28. Second, as LVEJO highlights, the Plan itself demonstrates a strong and well-researched "record" for robust consumer protections. LVEJO Resp. at 4-8. Plan at 179; IPA Rep. at 28-29.

With respect to the need to have some predicate process associated with disallowing a prior-Approved Vendor's ability to continue participating in the Adjustable Block Program, the IPA agrees: it would not cause a prior-approved program participant to lose its approval to continue participating in the Adjustable Block Program without a process through which it offers the opportunity for responsive comment from that vendor before making a final determination. IPA Resp. at 61.

The IPA states that with respect to expertise on issues such as marketing materials, the IPA plans to hire a Program Administrator with not only sufficient expertise, but experience in other markets, and would call upon that entity to assist it in the evaluation of underlying Approved Vendor conduct. IPA Resp. at 61.

Also, approving a vendor for participation in a state-administered incentive program is not a "license," and the Joint Solar Parties point to no legal authority establishing it as such. JSP Obj. at 14-15. As the very definition offered by the Joint Solar Parties indicates, a license is a "form of permission required by law," but not one required "solely for revenue purposes." 5 ILCS 100/1-35. If an entity may no longer participate as an Approved Vendor in the Adjustable Block Program (i.e., "revocation"), it would still be permitted to operate in the exact same market space conducting the exact same activities; it would just lose the opportunity to receive revenue through REC contracts of this specific type. IPA Resp. at 62.

With respect to the IPA's proposal that for participation in its Adjustable Block Program, "the Commission's Title 83, Part 412 rules provide a workable blueprint for expectations of Approved Vendors" and Approved Vendors "will be expected to comply with marketing standards equivalent to" select sections of Commission-approved rules for marketing practices by alternative retail electric suppliers (Plan at 118), the IPA is not seeking to "impose" Part 412 on program participants. JSP Obj. at 15. Nor is it claiming that Part 412, as a matter of law, applies to Adjustable Block Program participants.

Instead, the IPA carries clear authority to set the terms and conditions associated with participation in its program, and believes that compliance with minimum consumer protection standards must be one such program term and condition. The IPA believes that creating requirements equivalent to select Part 412 sections constitutes the best approach for those minimum standards. IPA Resp. at 62-63.

The IPA explains that Part 412 contains baseline requirements for RESs marketing energy supply contracts in Illinois. Among them are "green products," which are energy supply contract offers marketed in part around the environmental attributes associated with the contracted-for supply. Customers may be confronted with a choice between these options—say, a "green product" offer from a RES, and a community solar project subscription—each of which claims a meaningful environmental value proposition through entering into a new electric supply offer. Against this backdrop, insofar as it could through its Adjustable Block Program rules, the IPA believes that it would be appropriate to create equivalency, where appropriate, between how these competing products may be marketed, thus allowing for consumers to make more informed, apples-to-apples comparisons. IPA Resp. at 63-64.

Whether there is propriety in regulating distributed renewable energy system sales or community solar subscriptions generally is not at issue in this proceeding. The IPA has no authority in this arena. But for those projects seeking the privilege of receiving a generous 15-year, pre-paid (or partially pre-paid) REC delivery contract through the IPA administered Adjustable Block Program, baseline safeguards to ensure positive customer experiences are necessary and appropriate. The IPA believes it would be prudent to borrow the consumer protection principles found in many of the Part 412 rules and apply them to the marketing of distributed PV generation systems and community solar subscriptions under the Adjustable Block Program, where appropriate. IPA Resp. at 64.

With respect to the challenges identified by the Joint Solar Parties and CSG of applying of individual sections of Part 412, the IPA agrees in part with the Joint Solar Parties and CSG that in not every subpart of every section can the term "Approved Vendor" be substituted for "RES" with entirely coherent results. JSP Obj. at 15-23; CSG Obj. at 11-18. But the spirit of each of those requirements can be reflected in the IPA's program guidelines, and the sections identified by the IPA were identified accounting for their applicability to activities under the Adjustable Block Program. Thus, through this proceeding, as an Approved Vendor program participation term and requirement, the IPA seeks Commission approval to develop "marketing standards equivalent to" the Part 412 sections outlined in the Plan—and not simply the ability to draft guidelines which crudely substitute terms. IPA Resp. at 64-65.

CSG argues explicitly, and the Joint Solar Parties may be arguing implicitly, that through borrowing content from Part 412 "the IPA is essentially proposing to adopt rules outside of the rulemaking process." CSG Obj. at 10-11. The IPA asserts that these arguments must be rejected. IPA Resp. at 65. First, the key difference between the Commission's establishment of obligations for RESs through administrative rules, and the IPA's development of program requirements through this proceeding and thereafter is that the Commission's Part 412 rules govern the very act of the retail sales of electricity. The IPA's proposed marketing requirements, however, are merely terms and conditions applicable to only those entities who actively choose to participate in this specific state-

administered incentive program, and the authority to propose these requirements connects back to the IPA's clear statutory authority to develop terms, conditions, and requirements applicable to its programs. Should a party choose not to participate in the Adjustable Block Program, it could legally market distributed PV generation systems or community solar subscriptions without being bound by these requirements. Thus, the IPA maintains it is not establishing policy that applies to a market segment through an administrative rule; it is establishing program terms. IPA Resp. at 65-66.

Second, the General Assembly did not offer any indication that creating conditions applicable to program participants would require the Agency (or Commission) to undertake a rulemaking. Where the General Assembly has directed the IPA to conduct rulemakings, it has provided express direction to do so. *See*, *e.g.*, 20 ILCS 3855/1-35(1)-(3). It certainly did not do so in directing that the IPA "establish the terms, conditions, and program requirements" for its programs, while then requiring that those programs be proposed as part of a Commission-contested proceeding for their approval. IPA Resp. at 66.

CSG also argues against what it considers to be "retroactive application" of consumer protection proposals approved through this proceeding. CSG Obj. at 18-19. While the IPA commits to handling issues related to the application of these requirements to PV systems energized after June 1, 2017 but prior to the Plan's approval reasonably and will seek to identify good faith efforts at compliance, the very design of the law is that Adjustable Block Program terms, conditions, and requirements could never be known until, at earliest, the date of Commission approval of the IPA's Plan. IPA Resp. at 67.

The IPA recognizes the practical challenge of monitoring and enforcing requirements upon transactions occurring prior to the Program's start date; as this makes the application of marketing standards incredibly difficult, a focus on contract elements and required disclosures may be more appropriate. Further, the IPA recognizes that prohibiting systems that would be otherwise qualified for the Adjustable Block Program but for their marketing standards non-compliance (during the period outlined by the JSPs) from participating may adversely impact the very customers that the IPA is seeking to protect (i.e., the homeowners or small businesses that are the owners or hosts of those systems). As a result, a more appropriately tailored pathway for compliance should be developed for these systems, and the IPA believes that the Joint Solar Parties proposal constitutes a permissible approach. IPA Rep. at 26-27.

The Joint Solar Parties additionally argue that the IPA's proposed consumer protection requirements should apply only to systems or subscriptions below 25 kW in size. JSP Obj. at 22-23. In its Plan, the IPA identified 100 kW as a more appropriate threshold, but certainly considered 25 kW as a potential breakpoint as well. To the IPA, the question turns on whether customers in the 25 kW-100 kW market segment would benefit from safeguards of the type proposed by the IPA. The IPA believes they would and thus believes its proposal should be maintained, but understands the merits of and rationale behind the Joint Solar Parties' proposal. IPA Resp. at 68.

The Joint Solar Parties also seek more information about what the IPA finds insufficient about the SEIA's disclosure form. JSP Obj. at 23-24. At a minimum, the IPA believes there are indeed challenges in allowing customers to make apples-to-apples

comparisons of the economic value of competing offers using only the information disclosed through SEIA's disclosure form (as the IPA understands that uniform assumptions about future energy prices informing savings estimates or payback periods are not required), but would commit to taking stakeholder feedback on this issue and others from stakeholders in the development of its form. IPA Resp. at 68.

CCSA believes that the IPA's proposal that Approved Vendors provide information about contract prices and related information is "unjustified" and worries about the IPA and Program Administrator maintaining the confidentiality of such information, believing that it should only be made available upon request. CCSA Obj. at 11. The core of the IPA's concern regarding underlying contract information is ensuring that ratepayers are indeed benefitting from ratepayer-funded programs, and having a sufficient understanding of marketplace activities to propose course corrections through its Plan revision process should they not be. The IPA believes this information is crucial to achieving that end, and would not support the removal of this requirement. With respect to confidentiality concerns, the IPA is not aware of any concerns specifically applicable to it or its management of information and is bound by law to adequately protect any confidential information provided to it. *See* 20 ILCS 3855/1-120. The IPA procures nearly a billion dollars' worth of energy every year on behalf of the state's three largest electric utilities (and those amounts were even larger prior to the increase in retail choice shrinking the number of eligible retail customers served through IPA energy procurements). The IPA and its consultants have handled a vast quantity of sensitive and confidential data for those procurements without problems. IPA Resp. at 68-69.

The Joint Solar Parties question the IPA's need for the contract between an Approved Vendor and a project developer, to the extent these are separate entities. JSP Obj. at 24-25. Upon reflection, the IPA agrees that the receipt of this contract may be unnecessary, although the IPA will still require basic information concerning underlying project (owner, size, location, interconnection date, etc. at a minimum, to be provided as part of Adjustable Block application forms). Thus, with those caveats, the IPA does not oppose the Joint Solar Parties' proposal on this point. IPA Resp. at 69.

Ameren suggests a minor clarification to Section 6.13 of the Plan, suggesting that the Plan's reference to model power purchase agreements from SEIA could be interpreted to suggest that the generator owner may sell the energy from the generator directly to an end-use customer. Ameren thus seeks that the Plan clarify that any underlying retail energy sale would require valid certification as a retail electric supplier. The IPA is supportive of this change, but suggests that instead of using the term "registered," the term "certified" be used instead. *See*, e.g., 220 ILCS 5/16-115; 83 Ill. Adm. Code Part 451; IPA Resp. at 69-70.

For all the foregoing reasons, the IPA maintains that the Plan's reasonable and sensible approach to developing program terms, conditions, and requirements related to the marketing of distributed generation and community solar systems should be approved by the Commission.

10. Commission Analysis and Conclusion

The Commission notes that many of the comments appear to be based on a misunderstanding that the IPA intends to impose Part 412 on Approved Vendors without

modification. It is clear to the Commission, however, that the IPA intends to develop particular consumer protection terms tailored to Approved Vendors. The IPA's authority for this is derived from the following statutory language:

> The Agency shall establish the terms, conditions, and program requirements for community renewable generation projects with a goal to expand renewable energy generating facility access to a broader group of energy consumers, to ensure robust participation opportunities for residential and small commercial customers and those who cannot install renewable energy on their own properties.

20 ILCS 3855/1-75(c)(1)(N). There is no requirement in the IPA Act that any adoption of terms and conditions, which include consumer protection provisions, must be conducted pursuant to the rulemaking provisions of the Illinois Administrative Procedure Act. Furthermore, it would be inconsistent with the IPA's adoption of guidelines in previous procurement dockets.

The IPA Act further states that:

> The Agency shall be authorized to retain one or more experts or expert consulting firms to develop, administer, implement, operate, and evaluate the Adjustable Block program.

The Commission finds that these two statutory provisions when considered together indicate that the legislature did not intend for the IPA to develop full details for the Adjustable Block Program before Plan approval. The Program Administrator is to develop the program and the Commission notes that the Program Administrator will not be selected until after the Plan's approval.

Thus, the Commission approves the IPA's proposal to fully develop its procurement terms and conditions after the Commission's approval of the Plan and after the IPA's Program Administrator has been selected. The Commission notes with approval that the IPA is "committed to ensuring that stakeholder feedback is received and valued prior to finalization of specific program participation requirements." IPA Resp. at 58. The Commission does not see any need to change the Plan based on parties' arguments regarding Part 412.

Similarly, the Joint Solar Parties' concern regarding the IPA's refusal to adopt one of the Joint Solar Parties' member's disclosure form is premature. The IPA has stated that the uniform disclosure will be developed with stakeholder feedback. The Commission does not generally oversee IPA programs in such granular detail and requiring this level of detail in the Plan would be inconsistent with past IPA procurement plans. The Plan's approach to adopting terms, conditions, and program requirements, including consumer protections, is consistent with the statute, practical, and provides enough detail for purposes of the Commission's approval in this Plan review proceeding. For these same reasons, the Joint Solar Parties' arguments regarding revocation of Approved Vendor status and complaints are rejected. The Commission approves the IPA's plan to work with its Program Administrator to develop processes.

This is not to say, however, that the consumer protection requirements should be developed without stakeholder input. The Commission notes with approval the IPA's commitment to ensuring that stakeholder feedback is received and valued prior to the finalization of specific program participation requirements. IPA Resp. at 58. In its BOE, CCSA requests that the Commission provide further guidance regarding this process. CCSA BOE at 3-4. Accordingly, the Commission directs the IPA, with its Program Administrator, to begin as soon as practicable working with stakeholders to develop appropriate consumer protection provisions. Because potential Approved Vendors will need to incorporate into their respective business models the final consumer protection provisions, the Commission expects the final consumer protection provisions to be available at least 30 days prior to the opening of the Adjustable Block Program application process.

The Commission does adopt one proposal of the Joint Solar Parties – to limit the application of the consumer protections to customers with subscriptions under 25 kW. The Joint Solar Parties explain that a 12 kW south facing system in Chicago or Peoria would generate roughly 15,000 kWh and Part 412 applies to residential and "small commercial" customers who use less than 15,000 kWh per year. In contrast, the IPA seeks to apply Part 412's protections to subscriptions of up to 100 kW subscriptions. The Commission finds the Joint Solar Parties' proposal will result in a more targeted application of consumer protections for both distributed generation systems and community solar subscriptions.

With respect to the argument that the granting of Approved Vendor status on an applicant is the same as granting a license, the Commission disagrees. There is no indication in the statute that the legislature intended for the IPA to grant a license in this circumstance. Also, it is clear to the Commission that the IPA does not have regulatory authority over this industry. The IPA is administering a program for which interested parties must comply with the rules if they wish to receive the benefits of the program. This argument of the Joint Solar Parties is rejected.

The Commission agrees with various parties that projects that have energized since June 1, 2017 should be eligible to participate in the Adjustable Block Program. The Commission finds that the proposal presented by the Joint Solar Parties in their Response (JSP Resp. at 7) as modified by the AG's Reply (AG Rep. at 2-3) provides an appropriately tailored pathway for the projects to participate. The Commission also takes note of CSG's observation in its BOE that the 15 business day aspect of the Joint Solar Parties' proposal may not be practical. Instead, the Commission finds that it is appropriate to allow Approved Vendors until they submit their applications to the IPA to demonstrate compliance with consumer protection provisions for those projects energized since June 1, 2017 and before the consumer protections provisions are completed. CSG BOE at 13. The Commission also notes with approval that the IPA, in its RBOE, has stated that it will monitor, to the extent possible, potential Approved Vendors' conduct to ensure that good-faith attempts to comply with the spirit of pending consumer protection requirements are being made. IPA RBOE at 51. Accordingly, these recommendations are adopted by the Commission.

Consistent with the IPA's authority to adopt terms and conditions for participation in the program, the Commission agrees that it is appropriate for the IPA to review

marketing material and contracts between vendors and subscriber. The Commission notes with approval that the IPA intends to hire a qualified Program Administrator to aid in this review. This is reasonable to the Commission. Also, the Commission agrees that it is a reasonable part of consumer protection that the IPA review contracts with subscribers.

The IPA also proposed requiring that Approved Vendors, if they are developing community solar, provide with their Adjustable Block application a copy of the contract between the project developer and the Approved Vendor. The IPA has agreed that the receipt of this contract may be unnecessary, although the IPA will still require basic information concerning the underlying project (owner, size, location, interconnection date, etc. at a minimum, to be provided as part of Adjustable Block application forms). IPA Resp. at 69. The Commission agrees with the IPA that providing this information is necessary to aid in the review of this Program and the Plan should be amended to reflect this change.

Finally, the Commission adopts Ameren's clarifying language regarding power purchase agreements that takes into account ELPC's language. AIC Rep. at 3-4.

H. Section 6.13.1 Community Solar and Section 6.14 Application Process and Section 6.14.3 Batch Size

1. ComEd

ComEd recommends two sets of revisions to the Plan's proposed Batch Process. First, ComEd proposes that the Plan restore a provision related to administrative efficiency. ComEd states that while both the Draft Plan and filed Plan include the requirement that "[e]ach batch must contain at least 100 [kW] of proposed projects, and may be as large as 2 [MW]," the filed Plan does not retain the Draft Plan's provision ensuring that the efficiencies gained with experience are captured. Specifically, the Draft Plan provided that, "[i]n order to minimize contractual volume as the program expands, once an Approved Vendor has successfully submitted five batches, the minimum size of a batch for that Approved Vendor will increase to 250 kW." Draft Plan at 115. ComEd opines that to minimize administrative costs associated with contractual volumes, this provision should be restored. If, subsequent to increasing the minimum batch size to 250 kW, the IPA concludes that the increase has become a significant impediment to meeting the goals of the Adjustable Block Program, ComEd proposes that the IPA may reinstate the minimum batch size to 100 kW. This proposal thus strikes a balance between ensuring efficiency and meeting the goals of the Adjustable Block Program. ComEd Obj. at 12. In light of CSG's clarification, which ComEd accepts, and ComEd's proposal to grant the IPA flexibility to return to the 100 kW threshold if warranted, ComEd recommends that its proposals to increase the minimum batch size to 250 kW after five successful batches be adopted in the interests of administrative efficiency and reducing costs. ComEd Rep. at 3.

Second, ComEd proposes several additional clarifications to the Batch Process that are designed to increase administrative efficiency and reduce costs. These include the following:

- Because an Approved Vendor may have multiple batches of projects, utilities may use one master agreement with multiple confirmations for an Approved Vendor rather than having multiple contracts with the same vendor.
- After a batch of projects is approved by the Procurement Administrator, the annual number of RECs and payment amount(s) for the batch will be provided to the utility by the Program Administrator for purposes of contract/confirmation preparation (i.e., the utilities will track the RECs by batch rather than by individual unit).
- The Approved Vendor will designate the batch in PJM's Generation Attribute Tracking System ("GATS") for the RECs generated.
- Utilities will send a report of RECs delivered by batch semi-annually to the Program Administrator.

ComEd Obj. at 13. In its Reply, ComEd states that it appreciates the IPA's clarification and agrees with the IPA's proposal. ComEd Rep. at 22.

2. CSG

CSG does not oppose ComEd's proposed revision outright, but believes that if the Commission adopts it, further refinement is warranted. In those situations where a "soft closing" of a block occurs, as described in Section 6.3.1 of the Plan, the additional 14 days a block remains open after a block volume is used up provides Approved Vendors an opportunity to submit batches that they may have been holding onto as they waited for a few final projects to commit. Under ComEd's proposed revision, Approved Vendors that have already successfully submitted five 100 kW batches will be at a disadvantage if they need to compile 250 kW worth of projects to submit a final batch during the final 14 days of a block's soft closing. Approved Vendors that have not yet triggered the 250 kW batch requirement sought by ComEd would have a competitive advantage in obtaining final project commitments because they would be able to offer higher REC prices knowing they only needed to compile projects totaling 100 kW rather than 250 kW. CSG Resp. at 10. CSG recommends that if the Commission adopts ComEd's proposal, the Commission should also conclude that the 250 kW minimum batch requirement does not apply during the final 14 days of a block's soft closing. CSG Resp. at 10-11.

3. IPA

The IPA states that in response to comments on the Draft Plan highlighting the concern that an increased batch size could impose a burden on smaller Approved Vendors, the IPA determined to keep the minimum batch size at 100 kW in the Plan it filed for Commission approval. The IPA explains that this is most relevant for residential systems. For perspective, a typical residential system is about 5 kW. A 100 kW batch of 5 kW systems would therefore be 20 systems, while a 250 kW batch would be 50 systems. The 100 kW minimum batch size already significantly reduces administrative burden on the utilities compared to individual contracts for each system. IPA Resp. at 70-71.

While ComEd does suggest that the IPA may reinstate the minimum batch size to 100 kW a larger batch size were adopted, the IPA argues that this approach could cause

confusion for Approved Vendors by employing a shifting standard for how many projects need to be assembled into a batch before submission. In addition, because as blocks fill, a Block closes and the next Block opens at a lower price, a larger batch size could prevent an Approved Vendor from successfully submitting a batch of projects before a Block closes—and the entire batch (once assembled by the Approved Vendor) would have to apply at the lower price. As a 100 kW batch size most appropriately balances minimizing administrative burden on the utilities and providing operational flexibility to Approved Vendors, the IPA asserts that ComEd's proposal to increase the batch size should be rejected. IPA Resp. at 71.

ComEd also proposes four additional clarifications. ComEd Obj. at 13. The IPA agrees that three out of these four clarifications are acceptable and would help with administrative efficiency. However, the suggestion that the batch gets designated in GATS is not implementable as proposed—because GATS assigns each system a unique identification number, it is not possible to designate batches in GATS. RECs will have to be generated (and tracked) by systems with individual identification numbers. As systems are energized and assigned an identification number in GATS or Midwest Renewable Energy Tracking System ("M-RETS"), the IPA and Program Administrator will track and correlate those identification numbers with the applicable batch and provide that information to the utility. IPA Resp. at 71-72.

4. Commission Analysis and Conclusion

The Commission agrees with the IPA that ComEd's proposal for a larger batch size could be difficult for residential systems. The Commission finds that a 100 kW batch size appropriately balances a desire to minimize the administrative burden on the utilities and also provide operational flexibility to Approved Vendors. ComEd's proposal to increase the batch size is rejected.

It appears that the IPA has agreed to three of ComEd's additional clarifications. The Commission agrees that they are appropriate and are adopted. With respect to the suggestion that a batch be designated in GATS, the Commission relies on the IPA's expertise that this is not possible. The Commission notes that in its Reply, ComEd accepted the IPA's explanation. This suggestion is not adopted.

I. Section 6.14.6 Batch Contract Approval

1. Joint Solar Parties

The Joint Solar Parties recommend that the Commission eliminate the requirement proposed by the IPA that the Adjustable Block administrator submit individual Approved Vendor-utility contracts to the Commission for approval because it is contrary to statute. The Plan does not explain why the IPA recommends that the Commission approve individual Approved Vendor-utility contracts before they may be executed. Respectfully, the Joint Solar Parties believe that Commission approval of a standard Approved Vendor contract may be necessary, but not of individual contracts that simply fill in the blanks on the Commission-approved standard contract. *See* 220 ILCS 5/16-111.5(b)(5)(iii) and 220 ILCS 5/16 (b)(5)(ii)(D). The Joint Solar Parties argue that these two provision when taken together are clear that the IPA must get Commission approval of the standard Approved Vendor-utility contract and that the Commission must approve how the Adjustable Block

Procurement Administrator reviews and approves contracts. *See* Plan at 119-122. According to the Joint Solar Parties, this comports with historic and ongoing IPA practice to draft a standard contract that bidders may not modify, thus obviating the need for substantive review by the IPA or Commission of the terms of the winning bidders' contracts. JSP Obj. at 37-38.

Conversely, there is no need for the Adjustable Block Program Administrator to be compelled to send pending contracts (using the pre-approved form) to the Commission for final approval but there is potential harm to Approved Vendors. Because there is no statutory standard for the Commission to review and approve, and it is not even clear what facts the Commission would review (or what standard the Commission would use) to make an approval decision or what grounds there would be to not approve. This additional review process—without statutory standards or scope of review—may lead financing parties or customers to perceive additional risk, and ultimately extract additional concessions from the Approved Vendor. The better approach would be for the Commission to approve the form contract(s), and allow the Adjustable Block Program Administrator to approve contracts for utility or IPA countersignature "without further review and approval by the Commission." JSP Obj. at 39.

Ameren agreed with this approach subject to process modifications and explanation that the Commission-approved contract would be a master contract and the IPA will provide confirmations for individual transactions. *See* AIC Resp. at 6-7. The Joint Solar Parties agree with Ameren's proposed approach and recommend that the Commission adopt it. JSP Rep. at 29.

Both the IPA and ComEd oppose the Joint Solar Parties' recommendation, but their reasoning should be rejected. As an initial matter, the IPA "agree[d] that approval of each contract for the Adjustable Block Program may not be required by the [Public Utilities] Act." IPA Resp. at 73. The Joint Solar Parties assert that the IPA's argument that it provides information to the Commission is unconvincing, because nothing prevents the IPA from sharing public or confidential information with the Commission in the normal course, through Commission-mandated reporting as part of the Plan approval process, or through an interagency agreement. Similarly, the IPA argues elsewhere that it can and will police Approved Vendors and their behavior, so it is unclear why the Commission can or should take on the same role. *See, e.g*., IPA Resp. at 54-55, 60; Plan at 119; JSP Rep. at 29-30.

In fact, it appears that the IPA recommended Commission approval mostly as an analogue to its pay-as-bid procurement approach, but the IPA's historic practices do not justify this requirement. The Joint Solar Parties believe that Commission involvement in standard product procurements is not relevant to the Adjustable Block Program. In standard product procurements, the Commission's involvement includes: (1) approving a market-based benchmark against which all bids are judged, and (2) approving results based on Procurement Monitor's report about bidding process execution. In the case of the Adjustable Block Program, there is no procurement event to be monitored and no market-based benchmark because the pricing is standard rather than pay-as-bid. JSP Rep. at 30.

Finally, the IPA argues that "This process should also result in reduced risk or regulatory uncertainty, because Approved Vendors will have the added certainty of their contracts having been approved by the Commission." IPA Resp. at 73. The Joint Solar Parties do not believe there is substantial marginal stability or predictability value from the Commission approving an individual contract when the IPA and Program Administrator has approved and the utilities are required to sign the contracts. On the other hand, the instability of having the Commission review individual contracts without a statutory scope, standard, or process injects substantial uncertainty into the process. JSP Rep. at 30-31.

ComEd makes a statutory argument that the Commission must approve each Approved Vendor-utility contract rather than a master contract. *See* ComEd Resp. at 6-7. The Joint Solar Parties opine that either the IPA's concession that there is no statutory requirement for Commission review or Joint Solar Parties' own statutory arguments are individually sufficient to rebut ComEd's interpretation. JSP Rep. at 31.

2. Ameren

Ameren supports the Joint Solar Parties' proposal and ComEd's proposal with further clarification. Ameren believes that the Adjustable Block Program is well suited for a standard Master Agreement to be developed and approved by the Commission. This Master Agreement would act as the "umbrella agreement" for all Commission Approved Vendors and all future batches. Ameren envisions a scenario where each batch would be executed through a short Confirmation Agreement (which includes price, quantity, project specifics, etc.) and the Confirmation Agreement would be subject to the detailed terms and conditions of the Master Agreement. While it represents a deviation from prior practice for Ameren whereby all contracts were stand alone "long form" agreements that include all the detailed terms and conditions and the price, quantity and project specific details; in the case of the Adjustable Block Program, the Master Agreement with individual Confirmations process would be more administratively efficient and could reduce costs. AIC Resp. at 6.

The process could flow as follows: a) the Commission would approve a standard Master Agreement for the Adjustable Block Program; b) the Commission would also approve each Vendor (hence they become Approved Vendors) prior to the execution of a Master Agreement; c) the Commission would task the IPA and its Procurement Administrator with assigning each Adjustable Block batch to an Approved Vendor (Seller) and Utility (Buyer); d) a Confirmation Agreement would provide the batch details regarding seller, buyer, price, term, project location, etc. and this would be executed under the "umbrella" of the more detailed terms and conditions included in the previously executed Master Agreement. AIC Resp. at 6-7.

3. ComEd

ComEd argues that the IPA Act and PUA specifically and uniquely address the contract execution process and requirements applicable to the Adjustable Block Program. Section 1-75(c)(1)(L)(v) of the IPA Act provides that "[t]he utility shall be the counterparty to the contracts executed under this subparagraph (L) that are approved by the Commission under the process described in Section 16-111.5 of the Public Utilities Act." 20 ILCS 3855/1-75(c)(1)(L)(v). Section 16-111.5 of the PUA in turn requires that the Plan "[i]dentify the process whereby the [IPA] will submit to the Commission for review and

approval the proposed contracts to implement the programs required by such plan." 220 ILCS 5/16-111.5(b)(5)(ii)(B)(cc). The PUA also unambiguously directs that "[t]hird parties shall not begin implementing any programs or receive any payment under this Section until the Commission has approved the contract or contracts under the process authorized by the Commission in item (D) of subparagraph (ii) of paragraph (5) of this subsection (b) and the third party and the Agency or utility, as applicable, have executed the contract." 220 ILCS 5/16-111.5(b)(5)(ii)(D); ComEd Resp. at 7-8.

This requirement that the Commission first approve all Adjustable Block Program contracts prior to execution or implementation is as new as the Program itself, and reflects a distinct departure from the contracting process under the prior RPS. That process, which covered contracts for both electricity and RECs, was governed by Section 16-111.5(e)(2) and specifically focused on the development of a standard contract. *See* 220 ILCS 5/16-111.5(e)(2). While this standard contract development process continues to apply to electricity procurements, the General Assembly elected a different process for the approval of Adjustable Block Program contracts. Indeed, the IPA Act's provisions describing the requirements of the Adjustable Block Program do not include a reference to a standard contract, much less incorporate the process applicable to electricity procurements. ComEd Resp. at 8.

As a final matter, ComEd also recommends that the Plan be revised to more clearly describe the process and timing applicable to the submittal of batches and contracts to the Commission for approval. For example, the Plan notes that the Program Administrator will "[p]repar[e] contracts for Commission review and utility execution" (Plan at 113) and further describes the process by which the "Program Administrator will assign the batch (less any projects not approved) to a utility, prepare the contract, and submit it to the Commission for approval. *Id*. at 121 (footnote omitted). In a subsequent subsection, however, the Plan refers to submitting "approved batches…to the Commission," and explains that "[o]nce a batch is approved by the Commission, the Program Administrator will forward the contract information (e.g., systems information, REC quantities, REC price, etc.) to the applicable utility for the preparation of contracts for execution." *Id*. at 122. The Approved Vendor must execute "the contract within seven business days of receiving it from the utility," and the collateral requirement must be satisfied "within 30 business days of Commission approval of the contract." *Id.* In sum, ComEd opines that it is not clear from these provisions whether the contracts are being submitted for Commission approval together with the batches or if contract approval will occur in a second submittal to the Commission. ComEd accordingly requests that the IPA clarify this process. ComEd Resp. at 9-10.

4. IPA

The IPA notes that the relationship between the IPA and the Commission is a set of checks and balances. The IPA states that it included the provision for Commission review and approval because it is analogous to the Commission's approval of the results of competitive procurements, where a standard contract is developed, but the actual results of the bid selection process must be approved by the Commission. It is not sufficient for the IPA's Procurement Administrator and the Commission's Procurement Monitor to agree on the results of the bid evaluation. While the IPA agrees that approval of each contract for the Adjustable Block Program may not be required by the Act, it

constitutes good business practice and will provide the Commission an opportunity actively monitor the status of the program's progress and provide the Commission a powerful tool to ensure Approved Vendors' compliance with the program terms and conditions. IPA Resp. at 72-73.

The Joint Solar Parties also speculate that this process will create "potential harm to Approved Vendors" and that it "may lead financing parties or customers to perceive additional risk, and ultimately extract additional concessions from the Approved Vendor." JSP Obj. at 39. But the additional review and approval will only add a few weeks (at most) to the process of processing a batch of projects. This process should also result in reduced risk or regulatory uncertainty, because Approved Vendors will have the added certainty of their contracts having been approved by the Commission. IPA Resp. at 73.

The IPA notes ComEd "recommends that the Plan be revised to more clearly describe the process and timing applicable to the submittal of batches and contracts to the Commission for approval." ComEd Resp. at 8-9. The IPA agrees that ComEd may have identified an ambiguity in Section 6.14.6 of the Plan. To clarify any ambiguity, the IPA states that it envisions that the batch approval process will include the following non-exhaustive steps and proposes revising Section 6.14.4 and Section 6.16.6 of the Plan to include this text as needed:

> 1. The Program Administrator will receive an Approved Vendor's batch application for review and approval.
> 2. Once the Program Administrator has approved or rejected projects within that batch submittal, if the batch is approved, the Program Administrator will assign the batch (less any projects not approved) to a utility and prepare the confirmation information (and, in that case, master agreement information, if it is the Approved Vendor's first batch) or contract information related to that batch.
> 3. The Program Administrator will then submit the contract information for that batch to the Commission for approval. The Program Administrator will simultaneously forward the contract information to the applicable utility.
> 4. Once a batch is approved by the Commission, the applicable utility will execute the contract.
> 5. The Approved Vendor will then be required to sign the contract within seven business days of receiving it.

IPA Rep. at 32.

5. Commission Analysis and Conclusion

The Commission agrees with ComEd that the IPA Act and PUA both direct that the Commission review the individual contracts. ComEd relies on the following language in the IPA Act which states that:

> The utility shall be the counterparty to the contracts executed under this subparagraph (L) that are approved by the

> Commission under the process described in Section 16-111.5 of the Public Utilities Act.

ComEd asserts that Section 16-111.5(b)(5)(ii)(B)(cc) of the PUA is the language referenced by the IPA Act. It states that the Plan shall:

> Identify the process whereby *the Agency will submit to the Commission for review and approval the proposed contracts* to implement the programs required by such plan.

220 ILCS 5/16-111.5(b)(5)(ii)(B)(cc) (emphasis added). The Commission agrees with ComEd that this language clearly requires Commission "review and approval" of the contracts.

The Commission notes that the Joint Solar Parties cite Section 16-111.5(b)(5)(iii) of the PUA as the statutory language for the process for the approval of these contracts. It states that:

> The Agency or third parties contracted by the Agency shall implement all programs authorized by the Commission in an approved long-term renewable resources procurement plan without further review and approval by the Commission. Third parties shall not begin implementing any programs or receive any payment under this Section *until the Commission has approved the contract or contracts under the process* authorized by the Commission in item (D) of subparagraph (ii) of paragraph (5) of this subsection (b) and the third party and the Agency or utility, as applicable, have executed the contract.

220 ILCS 5/16-111.5(b)(5)(iii) (emphasis added). Subsection (b)(5)(ii)(D) referenced in this language states in relevant part that:

> *The Commission shall also approve the process for the submission, review, and approval of the proposed contracts* to procure renewable energy credits or implement the programs authorized by the Commission pursuant to a long-term renewable resources procurement plan approved under this Section.

220 ILCS 5/16-111.5(b)(5)(ii)(D) (emphasis added). The Commission interprets these two provisions to also require that the Commission approve the individual contracts. The language cited by the Joint Solar Parties requires that the Plan include a process for the IPA to submit the contracts to the Commission for approval and the language cited by ComEd requires that the Commission approve the process for Commission approval that is included in the Plan. Both sections are about the same process for Commission approval and the process referenced is the process that the IPA has clarified in its Reply based on comments by ComEd regarding ambiguities. The Commission approves the process that the IPA has clarified in its Reply for the submission, review, and approval of the proposed contracts to procure RECs or implement the programs authorized by the Commission pursuant to the Plan. In its RBOE, the IPA requests approval of a

modification to this process. Specifically, the IPA suggests that when the Program Administrator submits contract information to the Commission for approval, that submittal will include the Program Administrator's recommendation for approval of the batch, with a summary of factors relevant to the Plan compliance. IPA RBOE at 54. The Commission agrees that this modification is reasonable and will aid the Commission in its review.

Because the statutory language is clear, the Commission agrees that it must review the individual contracts between the utilities and the Approved Vendors, not just a master contract. To be clear, though, a master contract that is updated by a confirmation agreement providing the batch details regarding seller, buyer, price, term, project location, etc. is a reasonable approach.

J. Section 6.15.4 Additional Requirements for Community Solar Projects

1. Joint Solar Parties

The Joint Solar Parties opine that the Commission should direct the IPA to clarify in the Plan that as community solar systems that are not 100% subscribed at energization add subscribers (including adder-eligible customers), the IPA will true-up the payments made to the Approved Vendor. Under the IPA's proposal, if a community solar system is not 100% subscribed, the Approved Vendor must make quarterly updates to the IPA about its subscription progress. *See* Plan at 124-125. As long as the Approved Vendor demonstrates at least 50% subscription at the time of energization, the IPA will pay a pro-rated portion of RECs due based on subscription (and an adder consistent with the percentage of small customers relative to total system capacity). *See id*.; JSP Obj. at 40-41.

While the Joint Solar Parties do not object to the IPA's recommendation—despite preferring monthly updates as opposed to quarterly—the Joint Solar Parties recommends that the IPA clarify that there will be a true-up for the first payment after subscription levels are increased. The IPA has proposed to have Approved Vendors with community solar receiving 20% of REC payments at energization, which covers three of the 15 years of the contract. However, the Approved Vendor may demonstrate increased subscription levels and eligibility for increased adders as early as the first quarter after energization. That leaves two years and nine months to which that first payment applied for which the Approved Vendor should receive a higher payment. JSP Obj. at 41. The Joint Solar Parties recommend that the Commission direct the IPA to clarify that the Approved Vendor will receive a supplement to the energization payment if the community solar project's subscription levels or adder eligible subscriber levels increase to make the Approved Vendor eligible for increased payments. JSP Obj. at 41.

2. IPA

The IPA appreciates this concern. Because 20% of contract value of the first payment is based on contract value, but not correlated to a time period of REC delivery, it was the intent of the IPA that as subscribers are added, the value of the contract would be adjusted to reflect those subscriber levels and thus be reflected in the subsequent payments (and in theory reduced should subscriber levels drop). The IPA supports the inclusion of the proposed language contained on page 25 of Appendix A to the Joint Solar Parties' Objections with the caveat that the following parenthetical phrase should be

deleted: "(and thus approximately three years)." In addition, the IPA recommends adding an additional sentence: "If subscriber levels (or mixes) change in such a manner that contract value is reduced, the additional payments would also be adjusted downwards accordingly." IPA Resp. at 74.

3. Commission Analysis and Conclusion

The Commission agrees that the Joint Solar Parties have raised a valid concern regarding the operation of the true up for these payments. Also, the IPA's clarification to the Joint Solar Parties' proposal adds a necessary caveat that the payments could be adjusted downward if subscription levels are decreased. The Joint Solar Parties' proposal as modified by the IPA is adopted by the Commission.

K. Section 6.16.1 Credit Requirements Collateral

1. EDF

EDF explains that the IPA has proposed that an Approved Vendor provide and maintain a collateral requirement in the amount of 5% of the batch's total contract value. The Approved Vendor can choose to have the utility take the full collateral requirement out of the final REC payment with the expectation if the system performs it will be returned at the end of the contract, or to maintain the collateral requirement for the life of the project. EDF opines that this requirement could prove to create insurmountable hurdles, especially for the smallest projects, in violation of the statute's goal of robust opportunities for residential and small customers. 20 ILCS 3855/1-75(c)(1)(N). Collateral requirements for projects of any size that are set too high may discourage new build within the State, in contravention of the State's goal of procuring long-term, in-state RECs. EDF Obj. at 17.

A collateral requirement for batches regardless the size of the projects within those batches may have unintended consequences. There could be several projects from a variety of different installers or developers within a batch. The concept of a collateral requirement on an overall batch ignores the true financial risk of holding collateral for the individual project and how that affects project development. If there is an approved vendor "batching" several small systems together from multiple installers, it will still be the installers' obligation to finance the project and assume the risk of the collateral for their individual installation. EDF Obj. at 17.

EDF states that in no other program throughout the country is there a collateral requirement on small projects. EDF opines that the small installers who finance "small deals" have at least 2% higher weighted average cost of capital and that some investors will consider financing smaller deals of less than $25 million, but require a much higher yield on their capital investment, which translates to higher cost for the financing party. These additional upfront financial burdens for small installers or small portfolios can greatly hinder the financing, and, in turn, construction of small projects. Additional transaction costs for small systems will more significantly impact their bottom line and the overall customer price. EDF Obj. at 17-18.

Instead, collateral should be calculated based on the size of the individual project, especially if there is an option to have the collateral taken out of the REC payment. EDF emphasizes the importance of encouraging as much residential and small commercial

system development as possible prior to hitting the 5% net metering cap. While the IPA is understandably concerned with project performance over the 15-year life of the REC, based on the small size of projects in this category, any negative impact of project underperformance will be only as large as the negative impact on project development and goal achievement. Thus, there should initially be no collateral requirement for systems less than 10 kW. The IPA can, of course, review this requirement after the first 4 years to determine whether an underperformance problem does in fact warrant a collateral requirement. EDF Obj. at 18.

EDF suggests that for Large System and Community Solar, the IPA should not require collateral for systems between 10-250 kW, but instead should evaluate a system's output over years 2 and 3 of production and determine whether the system is likely to be significantly below the assumed production over the 15 year REC delivery timeline. Any appropriate claw-back could be done prospectively by reducing the remaining adjustable block incentive payments in years 4 and 5 (the last two, of four, adjustable block incentive payments). This performance-based adjustment in the upfront payments will help mitigate the risks to IPA of projects receiving compensation for underperformance. EDF Obj. at 18-19.

For systems larger than 250 kW, EDF proposes that the IPA use the same performance-based adjustments as those proposed for systems smaller than 250 kW. However, since these systems produce a greater proportion of overall RECs, there is a greater risk that a single or small handful of projects can have an outsized impact on reaching the IPA Act's goals. For these systems, EDF proposes that, instead of requiring contracts to post collateral based on the 5% of the total contract value, collateral should only be required to be posted for 1% of the contract value, consistent with the actual risk of failure over time. If the performance-based adjustments in years 4 and 5 address the risks of a project being improperly built, the collateral requirement can be limited to the risks of a project failing in later years. EDF states that less than 1% of panels fail, and recent experience shows there is steadily decreasing degradation of panel output for new systems. Further, in both GATS and M-RETS, there is an opportunity to auto-transfer minted RECs for a system to a counterparty, minimizing the risk of a project where RECs are minted but not being transferred. The collateral requirement should be aligned with the risk it is trying to address. Thus, it only makes sense to minimize the upfront financial burden on these larger systems over 250 kW, and benchmark the collateral requirement to the studied failure rate of 1%. EDF Obj. at 19-20.

2. Joint Solar Parties

The Joint Solar Parties assert that the Commission should modify the Plan to eliminate references to annual REC delivery requirements from Adjustable Block Program facilities. The Commission should replace these references with REC delivery requirements that focus on the total RECs to be produced by the system over 15 years—whether it takes more time, less time, or exactly 15 years to reach. The total production approach is more consistent with the IPA Act and will lead to a better environment for developers, their customers, and the growth of the solar industry. JSP Obj. at 4.

As both the IPA and the Joint Solar Parties (among others) recognize, the IPA is posed with a significant challenge given that Adjustable Block Program are contracts for

15 years of RECs that are paid out up-front in either one payment (for systems under 10 kW distributed generation) or five payments (for larger distributed generation and community solar systems) that start at the time of energization and end at the four-year anniversary of energization. *See*, e.g., 20 ILCS 3855/1-75(c)(1)(L)(ii) and (iii); Plan at 103-105, 126-27. The Plan addresses the long-term performance risk associated with this up-front payment structure by drawing down collateral if a supplier's portfolio of projects generates less than 100% of anticipated RECs on a rolling three-year average. The Joint Solar Parties support the IPA's proposed portfolio approach as well as the three-year rolling average production, but argues that the annual delivery requirements themselves are an unnecessary burden to project economics because the Plan penalizes anything less than 100% production on a rolling three-year basis without rewarding greater than 100% production in the same timeframe. If the developer's portfolio overproduces, there is no additional payment or benefit. If the developer's portfolio under produces (at any level below 100%), the developer's collateral will be drawn down with a requirement that it be replenished within 90 days. *See* Plan at 127. This requirement will force developers to discount expected production to avoid the risk of shortfall, essentially destroying value that could have reduced customer costs, increased developer upside, or both. JSP Obj. at 4-5.

The IPA appears to have drawn these requirements based on a reading of Section 1-75(c)(1)(L) of the IPA Act. 20 ILCS 3855/1-75(c)(1)(L). Section 1-75(c)(1)(L)(iv), states that "Each contract shall include provisions to ensure the delivery of the renewable energy credits for the full term of the contract." 20 ILCS 3855/1-75(c)(1)(L)(iv). In addition, the last phrases of Sections 1-75(c)(1)(L)(ii) and (iii) both state that "The electric utility shall receive and retire all renewable energy credits generated by the project for the first 15 years of operation." If read literally, these sections require the developer to simply provide their full output over 15 years to the electric utility counterparty in exchange for the prepayment made pursuant to Sections 1-75(c)(1)(L)(ii) and (iii). However, the IPA appears to interpret Section 1-75(c)(1)(L)(iv) as requiring 100% annual delivery over each year of the 15-year term. Joint Solar Parties argue that this is not the best reading of these sections and should be rejected. JSP Obj. at 5.

A better approach that is more consistent with Sections 1-75(c)(1)(K) and (L) of the IPA Act would simply require a facility to generate the estimated 15-year production from a facility in as many or few years as are necessary. Nothing in Sections 1-75(c)(1)(K) or (L)—which establish the Adjustable Block Program—contemplates minimum annual deliveries from individual facilities. In fact, Section 1-75(c)(1)(L)(i) allows the IPA to "procure contracts of at least 15 years in length," even though Sections 1-75(c)(1)(L)(ii) and (iii) only allow for payment of 15 years of RECs. *See* 20 ILCS 3855/1-75(c)(1)(L)(i)-(iii). The best way to reconcile these two sections—without reading out one of them in contravention of canons of statutory construction—is that the Adjustable Block contract must pay for 15 years' worth of RECs but need not deliver those RECs in exactly 15 years. JSP Obj. at 5-6.

A seemingly separate issue with the IPA's delivery approach illustrates why the Joint Solar Parties' proposed approach would produce better results. The IPA currently requires that Approved Vendors provide for each facility an "irrevocable 15 year Standing Order for the transfer of RECs from the system to the utility." Plan at 126. The Joint Solar

Parties opine that pursuant to the GATS operating rules cited by the IPA in a footnote, all of the RECs produced by a system, without regard to whether it overproduced, are taken and retired by the utility. If a developer's portfolio overproduces several years in a row, the utility will be taking possession of the RECs (and presumably retiring them) without compensation to the developer. While this is not the proper forum to address such arguments, the Joint Solar Parties are concerned that this could lead to a taking. JSP Obj. at 6.

The Joint Solar Parties note that the IPA has taken some mitigating steps—such as allowing for developer-proposed capacity factors, introducing the three-year rolling average delivery requirement, and considering delivery requirements at the portfolio level—a better result would be properly treating the REC contract as a total production contract rather than an annual delivery contract. Even with a portfolio-level approach and a three-year rolling average, the Joint Solar Parties argue that developers deal with weather risk that as a practical matter cannot be hedged, but that could be completely eliminated by shifting the focus from annual deliver to total contract delivery. JSP Obj. at 6-7.

For the statutory and practical reasons identified above, the Commission should modify the Plan to eliminate references to annual REC delivery requirements. In their place, as appropriate, the Plan should be modified to require delivery of the expected 15-year production of each Adjustable Block facility given its capacity factor, but allow for delivery in as much or as little time as is required to meet that total. JSP Obj. at 8.

The Joint Solar Parties opine that the Objections of Ameren and EDF regarding collateral provide further support for their proposal, even though neither addresses removing the annual delivery requirement. For instance, Ameren argues: "The nature of collateral under these contracts is to ensure that Ameren Illinois customers, who ultimately pay for the RECs under contract, receive the full benefit promised under the contract." AIC Obj. at 3. Respectfully, given the IPA's proposal for an irrevocable Standing Order, if the Joint Solar Parties' proposal is adopted the only purpose of collateral would be insurance against project default or abandonment during the REC delivery period. *See* JSP Obj. at 7 n.2. In any event, utility rights and remedies in these scenarios will likely be covered under the standard contract separately. JSP Resp. at 3.

EDF's Objections note the burden on Approved Vendors and installers to posting collateral requirements. *See* EDF Obj. at 17-18. While EDF did not explicitly address this issue, the Joint Solar Parties believe that a significant portion of the risk posed by collateral requirements under the Plan as currently drafted is the drawdown and replenishment requirements if a portfolio misses delivery targets. *See* JSP Obj. at 4-5. The Joint Solar Parties' proposal would eliminate the delivery target shortfall collateral risk. *See id*. at 7.; JSP Resp. at 3-4.

ComEd argues that annual delivery requirements are necessary because "the LTRRPP must be designed to achieve the annual statutory RPS goals. Disregarding annual delivery would make it impossible to design a Plan that could achieve annual RPS targets." ComEd Resp. at 9; *see also* AIC Resp. at 5 (raising consistent argument). First, the Joint Solar Parties argue that PA 99-0906 makes clear that development of new solar (and wind) generation takes precedence over top-line percentage goals, so ComEd's

premise is incorrect. Second, it is unclear what impact ComEd believes annual requirements will have on REC production from a system—production estimates are based on average weather years, while actual weather in any one year can vary substantially from the average, without regard to an Approved Vendor's business strategy or the structure of the contract between the utility and Approved Vendor. The Joint Solar Parties note that the penalty for an Approved Vendor missing IPA-proposed delivery requirements is to forfeit collateral, not produce replacement resources. Thus, it is unclear how the contractual remedy of taking collateral helps compliance with the annual percentage requirements of the RPS. The Joint Solar Parties note that the requirement that project-specific capacity factors be justified by PV Watts or another tool will reduce the risk that an Approved Vendor purposefully overestimates the capacity factor. Approved Vendors have every incentive to generate as much as possible—subject to the available solar resource in a particular year. Because the Joint Solar Parties did not oppose the irrevocable standing order to transfer RECs if implemented with the Joint Solar Parties' proposal (and matching the contract length), the utilities need not worry about obtaining every REC actually generated by the facility under either proposal. JSP Rep. at 7-8.

The Joint Solar Parties stress that under the IPA's proposal Approved Vendors cannot hedge weather risk. Thus, even Approved Vendors with the best-run solar facilities will forfeit collateral as if they had mismanaged in the event that weather does not cooperate over a rolling three-year window (where a bad year can penalize an Approved Vendor three times). The Joint Solar Parties opine that a reasonable annual minimum would be fully consistent with the Joint Solar Parties' approach, ensuring that Approved Vendors are not penalized by two bad weather years over a three-year period. The Joint Solar Parties therefore recommend, as an alternative, an 80% minimum delivery requirement, applicable on a three-year rolling average basis to an Approved Vendor's entire portfolio. JSP Rep. at 8-9.

As an aside, the Joint Solar Parties note that the IPA argues that if a facility over-generated over the 15-year standard contract length: "There are no uncompensated RECs . . . instead, payments are based upon an expected number of RECs— which is not the same as the separate number of RECs actually delivered." IPA Resp. at 78. If the IPA included an early termination provision triggered by generation of the entire 15-year REC requirement ahead of schedule, the RECs actually delivered and expected RECs would match. The Joint Solar Parties believe that if these values matched, Approved Vendors would face substantially less risk, which the Joint Solar Parties believe would lead to lower prices for consumers—or, thought of another way, consumers would not have to pay the risk premium for largely unhedgable and unmanageable production risk. JSP Rep. at 10.

Given the Joint Solar Parties' acknowledgement of the need for some reasonable annual delivery requirement, it is incorrect to say that the Joint Solar Parties continue to recommend elimination of the annual delivery requirement. However, instead of exactly 15-year contracts that require 100% delivery and substantial penalties for under delivery (with no additional payments for over-delivery), the Joint Solar Parties continue to recommend contracts that last until the anticipated 15-year production requirement is met. The Joint Solar Parties now simply acknowledge that an 80% annual delivery requirement

over a three-year rolling average on a portfolio basis (subject to the limitations set out above) would better ensure that Approved Vendors are making best efforts subject to weather to deliver RECs. The Joint Solar Parties conclude that this approach is consistent with the IPA and Commission's statutory guidance and authority. For these reasons, the Joint Solar Parties recommend that the Commission approve the Joint Solar Parties' modified proposal. JSP Rep. at 11.

3. Ameren

Ameren notes that the Plan sets a 5% of the total contract value Collateral Requirement for Approved Vendors under the Adjustable Block Program to incent the Approved Vendor to continue to deliver RECs throughout the contract term. The Plan further provides that an Approved Vendor may choose for the utility to withhold this 5% collateral amount from the last REC payment for the system instead of maintaining the 5% Collateral Requirement throughout the contract term. AIC Obj. at 3.

Historically, under competitive processes, the REC collateral requirement has been 10% of the contract value, if the collateral value exceeded $50,000. Under the Plan's proposal, there is no "floor," so the Approved Vendor will provide 5% of the contract value in collateral regardless of the size of the contract. Ameren cautions that the 5% value may not provide a strong enough incentive to ensure Approved Vendors perform (deliver RECs) over the 15 year term of the contract, especially since payment under the contract is front-loaded. The nature of collateral under these contracts is to ensure that Ameren customers, who ultimately pay for the RECs under contract, receive the full benefit promised under the contract. To further ensure Ameren customers receive the full benefit under the contract, Ameren supports increasing the proposed collateral requirement from 5% to 10% of the total contract value. AIC Obj. at 3.

In response to EDF's proposal that collateral be assessed at the project level and not the batch level, Ameren states that it believes this would add an unnecessary level of administration without corresponding benefit. AIC Resp. at 2. Next, Ameren disagrees with EDF's new credit collateral proposal for Small Systems for multiple reasons. First, while Ameren acknowledges that one of the goals of the statute is robust opportunities for residential and small customers, another objective of the statue is to ensure that the RECs customers have already paid for are indeed produced and delivered. The law recognizes the need to incentivize new small system construction through the requirement that RECs are paid in full and up front (to the extent utilities have already collected funds from customers), but also requires contracts to "include provisions to ensure the delivery of the renewable energy credits for the full term of the contract." 20 ILCS 3855/1-75(c)(1)(L)(iv). A requirement of posting and maintenance of collateral helps ensure future performance. AIC Resp. at 2-3.

In addition, EDF comments that small installers have at least 2% higher weighted average cost of capital. While Ameren appreciates that small installers may have additional financing considerations, this is arguably offset by the higher REC prices paid to smaller projects. Ameren does not believe this requirement is burdensome, but is instead reasonable and balanced provision that ensures delivery of the system's RECs over the full 15-year term. AIC Resp. at 3.

Ameren disagrees with EDF's proposal to reduce the collateral requirement from 5% to 0% for systems in the 10-250 kW range, and to evaluate the system's output over years 2 and 3 of production to determine whether claw-back provisions should be triggered in years 4 and 5 to reduce payments. First, it is unclear if year 2 and 3 data are a reliable indicator of future performance, especially considering the variability in generating resources (sunshine/wind) over the term of the contract and solar panel degradation. Second, in a scenario of an under-producing system, there is a chance that more incentives could be paid out through year 3 than what is owed considering 60% of total payments will have already been made before the estimate of future performance is determined. Third, the proposal provides no assurance that the customers will receive delivered RECs in years 6-15. Finally, it is not clear who will be responsible for the year 2 and 3 assessment (e.g., Procurement Administrator, Utilities, etc.), nor it is clear how the responsible party will quantify what it means for a system to be "likely to be significantly below the assumed production over the 15 year REC delivery timeline." AIC Resp. at 3-4.

EDF proposes that the Largest Systems (greater than 250 kW) use the same performance-based adjustments proposed for systems that are 10-250 kW and include a 1% of total contract value collateral requirement. As stated previously, performance-based metrics analyzed using year 2 and 3 data may provide inaccurate projections and introduce ambiguity to the process with unintended consequences. Further, a 1% collateral threshold based on total contract value is not sufficient to provide protections against REC delivery under-performance over a longer term. AIC Resp. at 4.

In response to the Joint Solar Parties' recommendation to eliminate references in the Plan to annual REC delivery requirements from Adjustable Block facilities, Ameren notes that the RPS sets annual REC targets and limits annual REC budgets to ensure cost-effective resources are being procured. 20 ILCS 3855/1-75(c)(1)(B) & (E). Ameren avers that such annual targets and limits cannot be ignored. The Joint Solar Parties' proposal would create optionality, potentially to the detriment of the IPA, by causing deviations in expected versus actual REC deliveries on an annual basis. This in turn could make it difficult for the IPA to assess future quantities of REC procurements and their associated budgets. Therefore, the argument put forth by the Joint Solar Parties should be rejected by the Commission. AIC Resp. at 5.

In its Response, Joint Solar states it does not recommend any changes to collateral requirements from the Plan, but its position appears to be contingent on the elimination of the annual REC delivery requirement. Ameren disagrees with the Joint Solar Parties' apparent conflation of the collateral issue and annual REC delivery requirements. The collateral requirement is intended to incent approved projects to take proactive measures to ensure that RECs are delivered to the utilities for the benefit of customers for the full 15 years of the contract. This issue is independent of the annual REC delivery requirements that are necessary to plan future procurement quantities and budgets to ensure cost-effective resources are procured. For these reasons, Ameren continues to recommend that the Commission make clear that collateral requirements are necessary in Adjustable Block Program contracts, and increase the collateral requirements from 5% to 10%, but also reject the Joint Solar Parties' conflation of the distinct issues. AIC Reply at 2-3.

4. Elevate/GRID

Elevate/GRID are in support of 5% as required in the Plan. Elevate/GRID state that they would also support a lesser amount as suggested by EDF, or exempting projects less than 10 kW from the collateral requirements altogether. Less resourced organizations like nonprofits and community-based organizations interested in participating in the Illinois Solar for All Program will benefit from reduced or eliminated cost requirements such as collateral. A relaxation or elimination of collateral requirements for Illinois Solar for All projects would be a meaningful and appropriate way to ease burdens on solar development in low-income and environmental justice communities, in line with the stated intent of P.A. 99-0906 to facilitate the development of a "a long-term, low-income solar marketplace throughout this State." 20 ILCS 3855/1-56(b)(2); Elevate/GRID Resp. at 2.

5. ELPC

ELPC shares the Joint Solar Parties' concerns that the proposed annual delivery requirements effectively "shoehorn intermittent resources that naturally degrade over time into a rigid and flat per-year delivery requirement," (JSP Obj. at 6) and that doing so leads to inefficient results, unintended by statute. Furthermore, ELPC agrees with the Joint Solar Parties that such inefficiencies will ultimately increase required REC prices for program participants and, therefore, the overall cost of program compliance. JSP Obj. at 4-5. As such, ELPC believes the delivery requirements should be modified to account for degradation, while still meeting the compliance and contractual needs of the IPA and utility counterparties. ELPC Resp. at 24-25.

6. ComEd

ComEd opines that the Joint Solar Parties' proposal should be rejected for several reasons. First, the Plan must be designed to achieve the annual statutory RPS goals. Disregarding annual delivery would make it impossible to design a Plan that could achieve annual RPS targets. Second, the General Assembly unambiguously designed the Adjustable Block Program to contract for the annual delivery of RECs over a 15-year period: "[t]he electric utility shall receive and retire all [RECs] generated by the project for the first 15 years of operation." 20 ILCS 3855/1-75(c)(1)(L)(ii), (iii). As such, delivery of the full 15 years' worth of RECs prior to the 15th year – as the Joint Solar proposal contemplates – would not relieve the generator or developer from the statutory obligation to continue delivering RECs through the end of the 15-year contract period. ComEd Resp. at 10.

Third, as Joint Solar admits, Section 1-75(c)(1)(L) requires that "[e]ach contract shall include provisions to ensure the delivery of the [RECs] for the full term of the contract." 20 ILCS 3855/1-75(c)(1)(L)(iv). The IPA proposes to satisfy this requirement through a three-year rolling average production metric, which provides flexibility to accommodate variables in production due to weather or other factors. Plan at 127. Notably, Joint Solar Parties offer no alternative proposal to fulfill this "delivery assurance" requirement, and instead would require that the IPA, utilities, and their customers wait at least 15 years to determine whether the full quantity of RECs is ultimately delivered. This important statutory safeguard – and the protection it affords to utilities and their customers – cannot be ignored. ComEd urges the Commission to reject this proposal, which

exposes all parties – especially the utility customers that are funding these purchases – to unnecessary risk. ComEd Resp. at 10-11.

7. IPA

The IPA views its collateral requirements as a perhaps unfortunate, but entirely necessary, mechanism to ensure project performance under contracts featuring the up-front payment for a stream of RECs set to be delivered for many years after payment for those RECs is made. As provided for in Sections 1-75(c)(1)(L)(ii) and (iii) of the IPA Act, for distributed generation systems below 10 kW in size, the entire contract value's full payment is required by law to be made for a 15-year stream of RECs upon the system's interconnection and energization. For larger distributed generation and community solar systems, 20% of the full contract value is paid immediately, while the remaining 80% is paid ratably over the subsequent four years. IPA Resp. at 74-75.

While this approach may facilitate additional development, because of its budgeting implications it also creates unique challenges. Namely, prepayment creates increased delivery risk: should a project fail to deliver RECs under the contract (whether due to underperformance, or more troublingly, to take advantage of an opportunity to sell its RECs in another market), the buyer cannot simply withhold or cease payment, as all payment has long since been made. While a favorable outcome in a lawsuit could potentially make the buyer whole, pursuing breach of contract claims for REC non-deliveries presents a messy, problematic, and resource-intensive solution. And with potentially thousands of Adjustable Block Program contracts to manage and administer, it may also be entirely unrealistic. IPA Resp. at 75.

In recognition of these unique challenges, Section 1-75(c)(1)(L)(iv) of the IPA Act requires that for the Adjustable Block Program, "[e]ach contract shall include provisions to ensure the delivery of the renewable energy credits for the full term of the contract." One way to ensure the delivery of prepaid RECs is through an ongoing collateral requirement—should the seller fail to deliver contracted-for RECs, that collateral can be drawn upon, representing a meaningful downside to non-delivery. IPA Resp. at 75-76.

The IPA's Draft Plan proposed that for each Adjustable Block Program contract, the Approved Vendor would be required "to post collateral equivalent to 10% of the total contract value when each Batch's contract is approved." As Ameren points out, this requirement was drawn from collateral requirements applicable to prior large-scale IPA competitive REC procurement events. In response to comments alleging that this requirement may be too onerous for smaller developers or those with less access to capital, the IPA made two major revisions: it lowered its collateral requirement to 5%, and provided the option for Approved Vendors to "choose for the utility to withhold the collateral amount for each system from the last REC payment for the system (or only REC payment for small systems) in exchange for not needing to maintain the ongoing collateral requirement." IPA Resp. at 76.

The IPA believes this approach strikes an appropriate balance between the need to ensure ongoing delivery under projects featuring prepayment provisions while respecting the need to accommodate smaller or less well-capitalized vendors. The IPA notes Ameren's desire for this credit requirement to mirror those used in past procurements, but notes that an ongoing program used to facilitate the development of

small distributed generation and community solar systems through fifteen year contracts featuring minimum batch sizes of only 100 kW is simply a fundamentally different exercise than those prior, large-scale competitive procurements (some of which featured a 1 MW minimum bid size). The IPA further states that the EDF's proposal seems to ignore delivery risks beyond mere system physical underperformance, leaving its collateral requirements effectively de minimis and an insufficient deterrent against other risks of non-delivery. For the foregoing reasons, the IPA opines that attempts to further modify the Plan's collateral requirements should be rejected. IPA Resp. at 76-77.

The Joint Solar Parties object to the Plan's annual REC delivery requirements for the 15-year Adjustable Block Program contracts and propose replacing it with an approach based upon allowing a variable length of time to produce and deliver the quantity of RECs expected to be generated over 15 years. JSP Obj. at 4-8. The IPA does not agree that this approach is better or more consistent with the provisions of the IPA Act and points to Section 1-75(c)(1)(L) of the IPA Act, which provides "[t]he electric utility shall receive and retire all renewable energy credits generated by the project for the first 15 years of operation." 20 ILCS 3855/1-75(c)(1)(L)(ii). Thus, the quantity of RECs to be delivered to the utility is the number of RECs the project produces over 15 years. Allowing REC delivery obligations to end prior to the first 15 years of operation, as the Joint Solar Parties recommend, simply ignores this language in favor of a potentially more convenient approach. IPA Resp. at 77-78.

Furthermore, REC prices are based upon the Plan's REC Pricing Model, and that model essentially determines the revenue shortfall of a project under the revenue received via net metering (and any tax or rebate benefits) versus the expenses of developing and operating the project. That revenue shortfall is translated into a REC price by dividing the shortfall amount by the quantity of RECs expected to be generated over 15 years and the model factors in the natural degradation of production that occurs with PV panels over time. The REC price is then paid out in a front-loaded manner (all upon energization for systems below 10 kW, and over the first four years for larger systems). There are no uncompensated RECs, as the Joint Solar Parties allege; instead, payments are based upon an expected number of RECs—which is not the same as the separate number of RECs actually delivered. IPA Resp. at 78.

At the same time, the IPA's concern with underproduction is that the payment for RECs is predicated on the system being developed and operated as designed, and delivering value to the project host through net metering credits for the associated electricity reducing the customer's electric bill. Additionally, the delivery of RECs at the expected level is also essential to help the utilities meet their annual RPS obligations. Stated differently, the IPA seeks to ensure the utilities meet their RPS obligations; the IPA also seeks to ensure that Illinois homeowners and businesses participating in the Adjustable Block Program receive PV systems that perform as promised by the developer. IPA Resp. at 78.

In Section 6.14.5 of the Plan, the IPA discusses how capacity factors are adjusted to account for the natural degradation of PV panels: "[f]or each system that is approved, a 15-year REC payment amount and obligation level will be calculated for that system and that payment amount will be included in the contract." Plan at 121. The Plan also proposes that "because weather and other factors may impact annual production values,

REC delivery performance will be evaluated on a three-year rolling-average basis." Plan at 127. Inadvertently left unsaid in these statements is that the obligation level for each year of the contract could also be tailored to account for degradation by having the annual REC delivery amounts decrease over time. Combined with the three-year rolling average, this provision provides additional flexibility to manage REC deliveries. IPA Resp. at 79.

The Joint Solar Parties incorrectly assert that "the IPA appears to interpret Section 1-75(c)(1)(L)(iv) as requiring 100% annual delivery over each year of the 15-year term." JSP Obj. at 5. The purpose of the three-year rolling average is to recognize that annual delivery volumes will have some unpredictable variation and to allow for managing that over time. This is further mitigated by the fact that REC deliveries are managed at an Approved Vendor portfolio of projects level, rather than at an individual project level; this spreads out the risk of underperformance of certain projects by offsetting it with potential over-performance of other projects. Finally, Section 6.16.2 of the Plan offers various options that allow an Approved Vendor to request a reduction in REC deliveries. The options contained in Section 6.16.2 provide sufficient relief for systems that do not perform as designed. Likewise, the very reasonable collateral requirements and REC delivery requirements provide the utilities some level of certainty that they will receive RECs to meet their RPS obligations. For all of these reasons, the Joint Solar Parties' proposal to eliminate annual REC delivery requirements should be rejected. IPA Resp. at 79.

The IPA states that it is not clear whether the Joint Solar Parties' fleeting reference to the possibility of a "taking" implicates state or federal constitutional law. But the IPA clarifies that under the Plan, no state action would compel anyone to participate in the Adjustable Block Program; application to the Program and entry into the standard REC delivery contract containing this arrangement would be entirely voluntary. Nor is the Adjustable Block Program the only way that a project owner can sell RECs: if the Joint Solar Parties blanch at the prospect of producing some RECs that nominally go unpaid over the 15 years of the proposed delivery contract and feel that they can find better value elsewhere for their 15 years' worth of REC production, they will retain the ability to eschew the Adjustable Block Program and take a better deal. Thus, the IPA avers, any notion that the Joint Solar Parties demonstrated legal challenges associated with the IPA's annual delivery requirements should not be given serious consideration by the Commission. IPA Rep. at 37-38.

8. Commission Analysis and Conclusion

The IPA's collateral requirement is based on the statutory requirement that:

> Each contract shall include provisions to ensure the delivery of the renewable energy credits for the full term of the contract.

20 ILCS 3855/1-75(c)(1)(L)(iv). The Commission agrees that because these contracts provide for pre-payment for RECs, a collateral requirement is the only way to ensure delivery of the RECs for the full term of the contract. Moreover, the Commission finds that the IPA has appropriately balanced the need to ensure ongoing delivery while respecting the need to accommodate smaller or less well-capitalized vendors. In particular, the Commission agrees with Ameren that although small installers may have

additional financing considerations, this is offset by the higher REC prices paid to small projects. And for small projects, this is 100% paid up-front. The Plan's collateral provisions are approved.

The Joint Solar Parties' recommendation that a facility be required to generate an estimated 15-year production in as many or few years as are necessary is contrary to the law. The last phrases of Sections 1-75(c)(1)(L)(ii) (small distributed generation) and (iii) (large distributed generation and community solar) both state that the "electric utility shall receive and retire all renewable energy credits generated by the project for the first 15 years of operation." As such, delivery of the full 15 years' worth of RECs prior to the 15th year – as the Joint Solar Parties' proposal contemplates – would not relieve the generator or developer from the statutory obligation to continue delivering RECs through the end of the 15-year contract period. This recommendation is not adopted.

The Commission notes that the Plan requires 100% annual delivery over each year of the 15-year term with production determined by a rolling three year average. The Plan states that if the developer's portfolio under-produces, the developer's collateral will be drawn down with a requirement that it be replenished within 90 days. If the developer's portfolio over-produces, there is no additional payment or benefit. It is not clear if over production can be carried forward beyond three years, which the Commission finds to be unreasonable.

To be clear, the Commission finds the annual requirement reasonable, but the interplay with the collateral requirement could be improved. The Commission agrees that the three year average makes sense for determining whether a collateral drawdown is required, but finds that any over production should be carried forward for up to three years after the year of production. In its BOE, the IPA requests that years 1 and 2 not be evaluated on a three year average basis. The Commission rejects this request and finds that utilizing a three year average over the entire contract helps smooth out variations caused by weather. The Commission notes that any RECs associated with over production must still be delivered to the utility during the year of production (and then retired for RPS compliance purposes). ComEd and the IPA argue that the annual requirement is necessary for planning for REC delivery requirements, but the Commission notes that if an Approved Vendor is allowed to carry production forward into an under producing future three year period for purposes of deciding whether a collateral draw down is necessary does not impact the IPA's need to procure RECs for the under producing period. In other words, the banking would only be for purposes of deciding whether collateral needs to be drawn down and replenished. Clearly, any banking would not result in an additional payment at end of the contract. Approved Vendors by taking the up-front payment accept that all RECs must be delivered for the full 15 years and the REC price is determined at the time of signing.

In its RBOE, the IPA acknowledges that Section 6.14.5 of the Plan does not clearly state the IPA's intent to reduce annual contractual delivery requirements by 0.5% each year to account for the degradation of systems. IPA RBOE at 57. The Commission agrees with the IPA that clarifying this Section of the Plan is appropriate and addresses some of the parties' concerns regarding solar facilities' productive capacity over time. With this clarification, the Commission sees no need to allow banking to extend past the

next three year period. In other words, the revision suggested by CSG in its BOE is not adopted.

VIII. CHAPTER 7 COMMUNITY RENEWABLE GENERATION PROJECTS

A. Section 7.3.1 Co-location Standard

1. Joint Solar Parties

The Commission should revise the IPA's prohibition on co-location to allow an Approved Vendor to apply for the Adjustable Block Program for two projects in one location to take advantage of economies of scale. The Joint Solar Parties propose that an Approved Vendor may have two projects summing up to a maximum of 4 MW (AC) on a single parcel or, separately, one ≤2 MW (AC) facility on each of two contiguous parcels. Currently, the IPA proposes that a maximum of 2 MW (AC) of projects may be located on a single parcel and contiguous parcels for a single Approved Vendor. *See* Plan at 134-35. The Joint Solar Parties believe their approach accomplishes the IPA's goals of not repeating the experience of Minnesota where co-location was a factor in oversubscribing the initial program very quickly. However, the Joint Solar Parties also believe their approach will allow Approved Vendors and their customers to take advantage of the benefits of co-location. JSP Obj. at 34-35.

The Joint Solar Parties believe that there are real benefits to limited co-location. First and foremost, co-location helps to de-risk project development by allowing for shared interconnection costs. Until the actual system upgrades have been completed by the utility, costs of interconnection are simply estimates. Even the signed Interconnection Services Agreement, required at the time of application to the Adjustable Block Program, only includes an estimate. As the Adjustable Block Program starts up and in the absence of publicly available data or substantial developer experience with interconnection costs in Illinois, some level of co-location will help reduce unexpected swings in project economics due to interconnection costs and will allow more early projects to succeed. Furthermore, limited co-location will help communities that have limited number of sites available for development select a single preferred developer. Particularly in urban areas, there may be only one or two parcels that are suitable for development of medium to larger (but still under 2 MW (AC)) projects. JSP Obj. at 35.

The Joint Solar Parties opine that there is a real risk to projects if the Plan imposes restrictions based simply on a gross number of projects or megawatts without considering the applicant and the timing of the application. At this early stage of the program, developers (and ultimately the financiers or business partners present or future who may be project owners) have little knowledge of the exact location of where other developers (and ultimately owners) are developing projects. The Joint Solar Parties are concerned that the co-location standard that does not take into account that the timing of the application could result in problems. JSP Obj. at 36.

2. Chamber

The Chamber agrees with the Joint Solar Parties that the IPA should revise its prohibition on co-location to allow an Approved Vendor to apply for the Adjustable Block

Program for two projects adding up to a maximum of 4MW on a single parcel of land, or one 2MW or less facility on each of two contiguous parcels. Chamber Resp. at 1. Permitting the proposed level of co-location will help businesses maximize opportunities to provide more solar to Illinois, make development costs more predictable and competitive, and allow projects to share distribution infrastructure – all while maintaining the integrity of the program and intent of the Act. Chamber Resp. at 2.

3. IPA

By way of background, Section 1-10 of the IPA Act defines both a distributed renewable energy generation device and a community renewable generating facility as "limited in nameplate capacity to less than or equal to 2,000 kilowatts" in size. The IPA argues that the General Assembly created an express 2 MW project size limitation that should not be "gamed" through multiple projects together exceeding that size, and co-location compromises the law's objective that "renewable energy credits are procured from photovoltaic distributed renewable energy generation devices and new photovoltaic community renewable energy generation projects in diverse locations and are not concentrated in a few geographic areas." 20 ILCS 3855/1-75(c)(1)(K); IPA Resp. at 80-81.

With respect to the specific alleged ambiguities raised by the Joint Solar Parties, the Plan is clear: the total combined size of projects owned or developed by a single entity (or its affiliates) on the same or contiguous parcels of land may not be more than 2 MW. Achieving the benefits of a REC contract facilitated by this program requires adherence to the Adjustable Block Program terms, conditions, and requirements—one of which is a prohibition against co-located community or distributed generation projects in deference to the General Assembly's presumed intent. IPA Resp. at 81.

4. Commission Analysis and Conclusion

The IPA Act states that:

> The Adjustable Block program shall be designed to ensure that renewable energy credits are procured from photovoltaic distributed renewable energy generation devices and new photovoltaic community renewable energy generation projects in diverse locations and are not concentrated in a few geographic areas.

20 ILCS 3855/1-75(c)(1)(K). The Commission finds that the Plan's co-location prohibition is a reasonable implementation of this statutory requirement. The Commission agrees that this prohibition will appropriately reduce the ability of developers to group together to avoid size limitations.

B. Section 7.6.1 Small Subscriber Participation

1. EDF

EDF notes that the IPA has outlined a plan which offers an ongoing adder at 25%, 50% and 75% on top of the general block incentive to entice residential and small customer participation. Plan at 102-103; EDF Obj. at 13.

EDF opines that the statute encourages emphasizing "community" in Community Solar, focusing on the benefits of local shared systems and residential participation. PA 99-0906 defines a "Community Renewable Generation Project" as an electric generating facility that: 1) is powered by a renewable resource, such as wind, PV cells or panels, etc., and 2) is interconnected at the distribution system level of an electric public utility. 20 ILCS 3855/1-10. PA 99-0906 requires the development of a Community Solar Program, noting "[d]eveloping Community solar projects in Illinois will help to expand access to renewable energy resources to more Illinois residents." 20 ILCS 3855/1-5(7). The General Assembly explicitly required that the community solar program should expand access to renewable energy to a "broader group of energy consumers," including residential and small commercial customers and those who cannot install renewable energy on their own properties. 20 ILCS 3855/1-75(c)(1)(N); EDF Obj. at 13-14.

According to EDF, for developers, it is financially and administratively more appealing to focus solely on a handful of large commercial customers. The market has seen a direct impact of these added burdens in Minnesota where over 89% of community solar capacity has been signed by larger commercial customers. Because there is not a requirement to procure small customer subscribers, developers choose the financial and administrative "easy route," ignoring the demand from these customers to participate. Alternatively, Massachusetts has had great success with over 130 MW's of developed community-shared solar. This program mandates 50% of the capacity be allocated to customers of 25kW or less, and the program continues to grow. These examples demonstrate that, all else being equal, developers will likely choose to garner higher returns through subscribing purely large commercial and industrial customers. EDF Obj. at 14-15.

EDF recognizes the IPA's attempt to quantify what successful participation by small customers would be in the Community Solar Program, by stating that the IPA will consider revising the plan in 2019 "...if residential participation rates (measured in capacity) are in aggregate under 25%." Plan at 138. As an initial point of clarification, any goal should be based on small subscriber participation - not just residential participation. Secondly, EDF is incredibly concerned that by 2019, most, if not all of the community solar capacity in the Adjustable Block program will be reserved. While the IPA rightly notes that the statute only requires robust participation "opportunities" for small customers, as opposed to a mandated participation level, the initial rush of large customer community solar applications could deplete such opportunities. Experience in other states such as Minnesota, which received 2,000 community solar garden applications equaling approximately 800 MW's immediately upon program opening, raises concern that there will be no community solar opportunities or capacity left to ensure residential and small commercial participation shortly after the program opens. EDF Obj. at 15-16. Thus, the IPA should follow the success of the Massachusetts program and require 25% capacity subscription of all projects from residential and small commercial customers. It may otherwise be impossible to meet the statutory obligation without creating a requirement for residential and small commercial participation. EDF Obj. at 16.

EDF notes that the IPA's response in Section 6.3.1 revised its proposal for managing initial demand for the Adjustable Block Program for Community Solar. The changes greatly increase the likelihood that projects selected for the Community Solar

Block will include a substantial number of projects with at least 50% small customer subscribers. With that modification, combined with the adders for community solar projects described in Section 6.5.2 of the Plan and the IPA's plans to actively monitor the progress and performance of the Adjustable Block Program (IPA Resp. at 87), EDF no longer objects to the Plan in this regard. EDF Rep. at 15.

2. ELPC

ELPC objects to the IPA's interpretation of legislative requirements in Section 1-75(c)(1)(N) of the IPA Act to "ensure robust participation opportunities for residential and small commercial customers" in the new community solar program. 20 ILCS 3855/1-75(c)(1)(N). The IPA has interpreted this language to require only a theoretical opportunity for small customers to participate in the community solar program, rather than requiring actual robust participation. *See* Plan at 138. Contrary to the IPA's interpretation, there is ample indication in the statute that the legislature specifically intended actual participation of small customers in community solar projects. The Commission should clarify that this statutory language requires actual "robust" participation of small customers in the community solar program, not just the theoretical opportunity to participate. ELPC Obj. at 13.

The new Illinois community solar program is one of the most important new programs created by PA 99-0906. *See* 20 ILCS 3855/1-75(c)(1)(N). A community solar project allows multiple community members to share in the benefits of a single solar installation – regardless of where it is installed. Community Solar subscribers purchase or lease solar panels in an off-site solar installation and receive a credit on their monthly electric bill for the energy produced by their share of the installation. This allows renters and energy consumers who do not have a good roof to access the benefits of solar energy. ELPC Obj. at 13-14.

PA 99-0906 did not require the IPA to adopt a specific approach to mandating residential and small customer participation in the community solar program, but it did require the IPA to ensure that these small customers have robust access to the program. *See* 20 ILCS 3855/1-75 (c)(1)(N). Similarly, the legislative findings and declarations of PA 99-0906 express the legislature's intent that: "[d]eveloping community solar projects in Illinois will help to expand access to renewable energy resources to more Illinois *residents*." 20 ILCS 3855/1-5(7) (emphasis added). The Solar For All Program in Section 1-56 also creates a Low-Income Community Solar Project Initiative that is intended to serve low-income customers (i.e. residents) and environmental justice communities (presumably mostly residents, but also potentially small businesses). *See* 20 ILCS 3855/1-56(2)(B); ELPC Obj. at 14-15.

Despite the clear legislative intent to ensure small customer participation in the new Illinois community solar program, the Plan states: "The … language of the Act refers to 'robust participation opportunities' for small customers, and does not mandate robust participation." Plan at 138. In other words, the IPA appears to interpret the statute to mean that so long as community solar companies can choose to serve small customers (i.e. they provide customers with the opportunity to participate), then the overall program will meet legal obligations regardless of the number of small customers that actually participate in the program. To draw this assertion to its logical conclusion would mean

that the legislature specifically and repeatedly emphasized the importance of serving residents and other small customers but did not require any particular safeguards to ensure that this actually occurs. This cannot have been the legislature's intent. The legislature must have had some interest in ensuring actual participation for small customers when it required the IPA to "ensure robust participation opportunities" for those customers in the law. 20 ILCS 3855/1-75 (c)(1)(N); ELPC Obj. at 15.

Furthermore, there is real cause for concern that residential and small commercial customers will get left behind by a program that only enables rather than mandates their access. This is what has happened in Minnesota, which does not mandate residential or small customer participation. Minnesota has had a community solar program for a few years that allows both residential and large commercial participation in community solar and even has higher bill credits for residential customers. The most recent report on the program suggests that only 9% of program capacity is subscribed by residential customers and 1% by other small customers (small general service). In short, while solar providers were able to serve small customers (as they will be in Illinois), they chose not to, making the opportunity to access clean energy by these consumers quite ephemeral. As a result the Minnesota Public Utilities Commission issued an order on December 14th requiring Xcel Energy, which runs the program, to analyze additional options for increasing residential participation. ELPC Obj. at 16.

To its credit, the IPA is aware that it is harder and more expensive for community solar companies to serve small customers, and the Plan proposes to address this challenge by providing a higher incentive (known as an "adder") to Illinois community solar projects that serve small customers. However there is neither evidence nor a guarantee that higher incentives will lead to accessible outcomes. Higher incentives are an unproven mechanism for ensuring small customer participation in community solar – they may be able to work, but they have not been tested elsewhere and it is possible that the adders will not work as planned. ELPC Obj. at 16.

Therefore, ELPC asserts it is essential that the Commission clarify the statute's clear requirement to "ensure robust participation opportunities for residential and small commercial customers" means actual participation, not just a theoretical opportunity to participate. The Commission should direct the IPA to modify its Plan to reflect this requirement. At a minimum this must involve ensuring that, if an incentive-only approach is utilized, there is a clear plan of action in place to check in on its efficacy, early-on, and, if necessary, make changes to ensure participation of residential and small commercial customers before a significant portion of available incentives are used. ELPC Obj. at 17-18.

ELPC would like to highlight an important point made by CCSA: that the IPA's 25% goal for residential participation (Plan at 138) is significantly less than the proportional load of small customers in Illinois. ELPC does not object to the IPA having a separate goal for residential participation from other small customer participation – in fact, there are reasons this would make sense – however, ELPC agrees with CCSA that the selection of 25% as a goal seems arbitrary and that a reasonable small customer participation goal would be more commensurate with the actual load of small customers in Illinois, which as CCSA points out, is nearly 45% of the combined load for ComEd and Ameren and over 95% of the actual customers. CCSA Obj. at 9-10; ELPC Resp. at 4.

ELPC appreciates that the IPA has tried to partially address this concern in its proposal on Section 6.3.1: Managing Initial Demand for the Adjustable Block Program. The IPA proposes to provide preferential approval to community solar projects that serve small customers in the event a rush of demand at the opening of the program results in more applications than there is capacity available to approve. IPA Resp. at 45-47. However, and unfortunately, ELPC believes this proposal fails to address the actual concerns raised by Objectors and, in fact, may complicate the opening of the Adjustable Block Program without achieving any meaningful gains from the standpoint of small customer participation in community solar. ELPC continues to believe that the Plan's approach to small customer participation in community solar is inadequate to "ensure [the] robust participation opportunities for residential and small commercial customers" required by law. 20 ILCS 3855/1-75(c)(1)(N). Therefore ELPC urges the Commission to clarify that the IPA has an obligation to ensure actual participation of residential and small commercial customers in community solar projects and to direct the IPA to create a backstop that ensures small customer participation in the event that the filed Plan's proposed approach proves inadequate. ELPC Rep. at 10-11.

ELPC notes that the IPA expresses concern that taking steps to ensure robust small customer participation could choke the community solar market and/or limit the participation of certain business models. IPA Resp. at 85-86. ELPC agrees that such an outcome would be negative; luckily, however, program design options exist that would avoid this risk. For instance, ELPC's suggestion to institute a portfolio- rather than project-level requirement for small customer participation would allow multiple business models to join into a portfolio of projects that together meet minimum small customer participation requirements. ELPC Obj. at 18. Likewise, one of the alternatives forwarded by CCSA involves a separate block for community solar projects serving small customers, allowing the rest of the community solar market to move forward regardless of how quickly the small customer market segment moves. CCSA Obj. at 9. Both ELPC and CCSA also suggest that these program design modifications should not be introduced up front, but rather in the event that small customers actually seem to be left behind. None of these solutions may be the best for Illinois, but, ultimately, ensuring the market moves is a program design challenge, not a reason to avoid taking steps to ensure small customer participation in community solar. Furthermore, the IPA can assess whether these risks are creating real market barriers in Illinois when reviewing and updating the Plan. ELPC Rep. at 13-14.

Furthermore, the IPA commits to checking in on the progress made toward serving small customers through community solar in its 2019 Plan update, but takes a hard stance against the possibility of earlier check-ins. ELPC agrees with the IPA's reasoning in planning to make no changes to the Adjustable Block Program for the first six months the program is open. IPA Resp.at 87. ELPC is only urging earlier check-ins in the event that the community solar portion of the Adjustable Block Program moves much more quickly than the expected one block per category per year (Plan at 94), creating the risk that if small customers are not being served by the program, they will get left behind. ELPC Rep. at 15.

ELPC recommends that the Commission direct the IPA to strike language in the Plan that indicates that the IPA Act requires robust participation opportunities but does

not mandate actual participation and replace with language affirming that the IPA is required to ensure its community solar program features robust participation of residential and small commercial customers. Plan at 138-39. This is the most important change needed and the minimum change the Commission must require to ensure the Plan accurately reflects IPA Act requirements to "ensure robust participation opportunities" for small customers in the community solar program. Additionally, the Commission may choose to require the IPA to make the following additional changes to the same section of its Plan:

- Clearly define what constitutes "robust" participation and set benchmarks describing the necessary level of small customer participation to ensure that "robust" participation is achieved at various stages of market development.
- Explicitly commit to checking in on whether the incentive-only approach to ensuring small customer participation is working to drive small customer participation as part of the 2019 Plan Update, including taking stakeholder input.
- Create a contingency plan to automatically change the program's approach to ensuring small customer participation is working only in the event that:

  Block 1 of the Community Solar Block Category of the Adjustable Block Program becomes fully subscribed before the 2019 Plan Update is approved

  and

  Small customer participation in the community solar program to-date is below the benchmark identified as appropriate for the current stage of market development.

If further direction is necessary as to the change made through the contingency plan, ELPC would recommend adopting one of the two mechanisms suggested by CCSA in its Objections: the "creation of an adjustment and mandate in subsequent blocks" or the "use of IPA's discretionary capacity." CCSA Obj. at 8-9. ELPC believes CCSA's example mechanisms to be two reasonable and prudent approaches to ensuring small customer participation and the most fully developed proposal forwarded by any party. Changes made in the event the contingency plan is triggered should only remain in effect until the 2019 Plan Update is approved, limiting the risk concerning the IPA that requiring small customer participation could "choke" the market. IPA Resp. at 86; ELPC Rep. at 16-18.

3. CCSA

PA 99-0906 specifically calls for the IPA to establish a "community renewable generation program" that expands access and ensures "robust" participation opportunities for residential and small commercial customers. PA 99-0906, Sec. 1-75(c)(1)(N), at 101-102. CCSA anticipates community solar to be the primary type of "community renewable generation project" in the state and that the Adjustable Block Program will drive much of that development. Therefore, the Adjustable Block Program

should serve as the primary vehicle for ensuring residential and small commercial customers are provided robust opportunities to participate in community renewable generation projects (i.e., community solar). CCSA Obj. at 2-3.

CCSA considers it to be good policy design and an important issue of equity for the State's residents to ensure that all customer types participate in the program. Most residential and small commercial customers cannot install solar on their property even if they wanted to, so it is critical that these customer classes have the opportunity to participate in the renewable energy market in other ways. Stakeholders who have participated in the IPA process to date seem to be largely aligned in emphasizing the importance of small subscriber participation in the Adjustable Block Program, though the means by which stakeholders recommend achieving that participation has varied. In addressing CCSA's position on this topic, the IPA's discussion in the Petition includes at least two inaccurate and misleading assertions. CCSA Obj. at 3-4.

First, the IPA suggests that CCSA "stopped short of endorsing" a per-project small customer requirement. Pet. at 34. CCSA submitted informal and formal comments to the IPA during the Plan development process. In both sets of comments, CCSA noted that the only way to truly ensure participation opportunities for residential and small commercial customers is to include a per-project small customer requirement. Other groups such as Elevate and EDF/CUB submitted similar recommendations to the IPA in response to the September 29, 2017 Draft Plan. A small subscriber mandate is not a new concept and has been demonstrated to work in other markets, such as Massachusetts, where there are now well over 100 megawatts of "community shared solar," defined as projects with at least 50% of their capacity allocated to subscriptions of 25 kW or less with over 100 additional MW in the queue. CCSA did concede, however, that an adder approach *could* work if it was designed appropriately, with a goal to incentivize and motivate developer engagement of residential and small commercial customers. CCSA commends the IPA for making significant revisions to its residential/small commercial adder levels. Depending on a number of as-yet-undetermined factors, CCSA members generally believe these amended rates could be sufficient to drive market participation from developers serving residential customers. Again, however, there are no guarantees of small customer participation without a mandate, whether it is at the project or program level. CCSA Obj. at 4-5.

Second, the IPA has consistently downplayed the potential interest and demand that residential and small commercial customers may have in community solar, which is misleading and potentially undermining to the policy motivations for the program design. The Petition states that the "Agency has determined that it will not adopt a specific minimum carve-out for subscriptions by small customers, as it is not clear whether any particular level of small subscriber participation is attainable at this time." Pet. at 34. Given the legislative direction to ensure participation opportunities for small customers, and the national experience and evidence to date suggesting residential customer demand for community solar far exceeds supply, CCSA respectfully submits that this statement by the IPA is unjustified. Many national studies have shown that residential customers are interested in participating in rooftop and community solar. For example, a survey by the Smart Electric Power Alliance found that 59% of customers are interested in solar prior to receiving education on benefits, with a dramatic increase in interest in

community solar in particular after education. Around the country, programs that have offered residential customers a positive value proposition have sold out quickly, often in a matter of days to weeks, and providers have waiting lists of residential customers hoping for an opportunity to participate if a current subscriber moves out of their utility territory or if new capacity becomes available in the program. For ComEd and Ameren, residential and small commercial customers make up over 95% of the actual customers, and 45% of the load. CCSA Obj. at 5-6.

In Section 7.6.1, the IPA sets a small subscriber program target of 25%, and a review process that would trigger if small subscriber participation were below that threshold. CCSA supports setting a goal for small subscriber participation within the community solar program. Given the legislative directive to guarantee "robust participation opportunities" for residential and small commercial customers, and the importance of ensuring these customers benefit from state energy programs, it is important that the IPA define what "robust participation opportunities" actually means and set a participation goal accordingly, then implement mechanisms to achieve the goal. CCSA Obj. at 9.

CCSA recommends establishing a goal of achieving at least 40% small subscriber participation within the entire community solar program and recommends using a minimum 25% per-project carve-out for small subscribers as the mechanism to achieve the goal, assuming a number of projects would exceed 25% if the adder level were set appropriately. The minimum 40% target is supported by the fact that residential and small commercial customers account for nearly 45% of the combined load for ComEd and Ameren, and over 95% of the actual customers. Such a target provides a fair and objective basis from which the IPA can evaluate the program in meeting the legislative requirements. CCSA Obj. at 9-10.

4. Elevate/GRID

Elevate/GRID believe that a specific carve-out for small community solar subscribers is the best way to achieve robust opportunities for residential and small commercial participation. The solar industry has varying community solar business models, some focused on residential participation and some focused on small business or small commercial participation. Without a carve-out, community solar developers may not provide services to residential or small subscribers because the additional cost, added work, and risk will be deterrents. Even with full cost recovery through adders, community solar developers are not likely to choose to include residential community solar because of the real or perceived risks from having many small contracts. Initial years of the Colorado Community Solar Gardens program demonstrate this issue, in which only 3% of bill credits were going to residential customers. Colorado stakeholders have since taken actions to correct this issue by incentivizing residential participation. Elevate Obj. at 16.

According to Elevate/GRID, "robust participation opportunities for residential and small commercial customers" (20 ILCS 3855/1-75(c)(1)(N)) means more than simply making subscriptions available to residential market segments. Instead, the program must be designed in a way that incents developers to build projects that include residential subscription services; delivers these services to broad segments of residential markets;

and provides the necessary cost recovery framework that ensures the additional costs to do so are not just competitive with commercial projects, but compelling. Elevate Obj. at 16-17.

Elevate/GRID recommend achieving this one of several ways: 1) create a distinct block within the Adjustable Block Program that specifically requires community solar projects with a minimum of 40% residential or small subscribers, including appropriate size categories as the community solar block does currently; or 2) include a requirement in the current plan structure mandating a minimum of 40% small subscribers by capacity volume for every community solar project. The REC values must be adjusted in both scenarios to include the Small Subscriber Adder values already determined by the IPA. A 40% minimum is in line with the CCSA recommendations for minimum small subscriber participation in the current plan. Elevate Obj. at 17.

With no carve-out for small subscribers, the IPA must, at a minimum have a hard target for a minimum percentage of small subscribers annually, rather than waiting for the end of the first two-year plan to assess. Elevate Obj. at 17.

Elevate/GRID do not believe there is one single way to achieve good small subscriber market penetration. However, a framework with no specific requirement, and an incentive value that simply recovers cost, is not an adequate way to ensure small subscriber participation. Further, without specific requirements, there is a risk that the IPA and stakeholders will view a lack of small subscriber participation as an indication that this market segment has no interest in participating, rather than as a function of program design. From an Approved Vendor's perspective, if an all commercial community solar project and a project that includes small subscribers both recover costs equally, the path of least resistance and of least risk will be the all commercial project, with significantly fewer customers to acquire and manage, and less customer turnover to mitigate. Elevate/GRID Rep. at 4-5.

5. Joint Solar Parties

The Joint Solar Parties explain that the purpose of the small subscriber adder is to represent the difference between the costs of acquiring and administering contracts for small subscribers and large subscribers. The Joint Solar Parties believe that the incentive structure should leave Approved Vendors neutral as to the best customer segment to market, with the adder serving to ensure that there is no financial penalty associated with serving small subscribers. The Joint Solar Parties agree with the Plan that at least initially the small subscriber adder should be the exclusive incentive to small customer participation. JSP Resp. at 5-6.

That said, the Joint Solar Parties do not necessarily believe that if small subscriber participation is below the 25% level identified by the Plan that the sole mitigation should be through the small subscriber adder. While the Joint Solar Parties believe the IPA's proposed adder is sufficient to spur Approved Vendors to seek and achieve robust residential and small commercial customer participation, there is no guarantee that this will occur, and as such, the Joint Solar Parties are open to potential solutions. The Joint Solar Parties in particular agree with ELPC's statement of the problem and potential solutions: establish an early check-in date, decide on a measurement for whether small customer participation is on track, evaluate the facts, and then execute contingency plans.

See ELPC Obj. at 18. ELPC expressed openness to any viable contingency plan. *See id*.; JSP Resp. at 12.

The Joint Solar Parties further agree with ELPC that contingency plans should be considered now, although the Joint Solar Parties emphasize that any contingency plans should be responsive to the actual experience of Approved Vendors in Illinois. For example, if any party—including but not limited to the IPA, the Program Administrator, and Approved Vendors—identifies one or more barriers to entry into the small subscriber market, the IPA should be able to propose (and promptly execute) a contingency plan addressed to those barriers. The Joint Solar Parties note that if there are substantial barriers to small subscriber acquisition or contract administration, mechanisms such as weighted lotteries would be insufficient to ensure small subscriber participation and may have other unintended consequences that could hinder overall program success. The Joint Solar Parties emphasize that identifying and eliminating barriers to small subscriber participation is not necessarily mutually exclusive to a concurrent or sequential predetermined increase in the small subscriber adder, such as the adder increase proposed by CCSA. JSP Resp. at 12-13.

Although the Joint Solar Parties recommend that the small subscriber incentives be given an opportunity to work, the Joint Solar Parties agree with ELPC that check-ins that measure whether small subscriber participation is on track (and contingency plans in case they are not) are beneficial. The Joint Solar Parties hope that the IPA and/or the Commission have an opportunity to identify any barriers to small subscriber participation if participation is not on track and to specifically address those barriers rather than forcing participation despite those barriers. JSP Resp. at 13.

No matter what approach the Commission approves in the final Plan, the value of advance notice and predictability cannot be understated. All developers, installers, aggregators, and other key market players make business and investment decisions months or years in advance based on anticipated incentive structure and availability. While the Joint Solar Parties fully acknowledge the conditionality and if-then nature of ELPC's recommendation as modified above, having a clear pathway helps solar market participants plan and efficiently allocate resources. The Joint Solar Parties believe that defining, or at least outlining, timing and contingency considerations will lead to better investment of scarce resources and delivery of customer value. JSP Resp. at 13-14.

The Joint Solar Parties wish to emphasize that they do not support a per-project or per-Approved Vendor portfolio small subscriber requirement from the outset. EDF recommends that from the moment the Adjustable Block program opens, all community solar projects must have at least 25% small subscribers. *See* EDF Obj. at 16. Rather than a per-project requirement, the Joint Solar Parties support ELPC's recommendation to have check-ins and concrete steps to ensure that the goals of the program are being met, including the target for small subscriber participation. EDF's proposal is overly prescriptive, as it does not leave room for developers to focus on larger subscriptions if they so choose. While the Joint Solar Parties' support of ELPC's approach fully acknowledges that increasing levels of intervention may be necessary (from identifying and removing barriers to small subscriber incentive increases to more stringent steps) to achieve actual competitive parity between customer segments, EDF's proposal is too much, too soon. JSP Resp. at 14.

After reviewing the Responses of other parties, the Joint Solar Parties now recommend that the Commission adopt a combination of CCSA's approaches from Objections, with the addition that the IPA and stakeholders should identify and attempt to eliminate any barriers to small subscriber participation. The Joint Solar Parties do not agree with the IPA that CCSA's approach is overly prescriptive. While the Joint Solar Parties do appreciate the value of giving the IPA flexibility, the value of a stable and predictable plan to approach small subscriber participation opportunity shortfalls will allow developers to plan in advance for foreseeable contingencies. JSP Rep. at 22.

The Joint Solar Parties also propose changes and contingent changes to the Adjustable Block pricing model. The contingent changes are based on the Commission adopting (or not) proposals set out by the Joint Solar Parties, or other future decisions such as the IPA's final consumer protections. These adjustments primarily fall into three categories: 1) Small Subscriber Compliance Costs; 2) REC Forfeiture Lost Revenue; 3) Financing Costs; and 4) Property Taxes. JSP Rep. at 25-26.

6. IPA

At issue in parties' Objections is the IPA's proposed approach to "ensure" that small customers have sufficiently "robust participation opportunities." The IPA explains that the Plan's approach contains three key pillars to ensuring that such opportunities are indeed available in the marketplace. IPA Resp. at 82.

First, as described in Sections 6.5 and 7.6 of the Plan, the IPA proposes a REC price "adder" for small customer participation such that achieving small customer participation in a community solar project allows a community solar facility to receive the benefit of higher REC prices. Recognizing that small customer identification and acquisition may be more capital intensive than acquiring larger customers, the REC price adders provide an additional incentive above the Adjustable Block Program's standard community solar project REC price for a given size project. These adders are established at levels taken from comments on the IPA's Draft Plan, and no party appears to contest the magnitude of the adders. IPA Resp. at 82.

Second, the IPA proposes an approach under which that REC price "adder" increases based on an increased percentage of small customer participation. The effect of this approach is to ensure that projects do not merely benefit only from some token level of small customer participation, but may also further benefit from more significant small customer participation. When taken in combination with the proposed Block 1 REC prices for community solar projects in the IPA's Adjustable Block Program (found in Table 6.2 of the Plan), the effect on project economics of successfully recruiting small customer participation is significant: for a 1 MW community solar facility achieving 50% small customer participation would benefit from a REC price 39% higher than a facility with little or no small customer participation. Should that facility achieve 75% small subscribers, that total climbs to 59% higher. The effect of this approach is not only to ensure opportunities for small customer participation, but ensuring the viability of community solar projects built primarily or even exclusively on small customer subscriptions—something that a mere "minimum participation" mandate, in isolation, would not incentivize. IPA Resp. at 83.

Third, the IPA has committed to tracking this approach for determining whether such opportunities are indeed being realized. Specifically, as described in Section 7.6.1 of the Plan, "[t]he Agency will review the actual level of small subscribers achieved by initial community renewable generation projects and will use that review and any other available information as part of the Plan Update conducted in 2019" and will consider revising its approach of using only REC adders "if residential participation rates (measured in capacity) are in aggregate under 25%." Notably, the IPA expects its Plan Update to occur after approximately only one year of operation of its Adjustable Block Program. IPA Resp. at 83-84.

Lastly, separate from the Plan, the IPA has agreed through this filing to adopt an approach whereby should the IPA receive unexpectedly strong interest in the opening of its initial community solar block (i.e., a sudden crush of project applications, as has occurred in other jurisdictions), the IPA will use small customer subscriptions to community solar projects as a "tiebreaker" in project selection. This should help address a worry cited by CCSA and others that community solar project interest may be so strong that the State will achieve significant amounts of project allocation prior to next summer's Plan update process, as this approach helps ensure that if interest is indeed significantly greater than expected, small customer subscriptions will be valued at a premium. IPA Resp. at 84.

Through these steps, the IPA strongly believes it is taking a sound, effective approach to "ensure robust participation opportunities for residential and small commercial customers." Should that approach prove ineffective after a year's worth of information about its operation, the IPA has committed to revisiting it. IPA Resp. at 84.

ELPC, CCSA, EDF, and Elevate/GRID, however, seek stronger—and more prescriptive—approaches. ELPC points to the statute and claims that "the IPA has interpreted this language to require only a theoretical opportunity for small customers to participate in the community solar program, rather than requiring actual robust participation." But "opportunities" is the Illinois General Assembly's word choice. Statutory language must be given its plain and ordinary meaning. *Murray v. Chicago Youth Center*, 224 Ill.2d 213, 235 (2007). The IPA notes that Merriam-Webster defines an "opportunity" as either "a favorable juncture of circumstances" or "a good chance for advancement or progress"; neither definition dictates an "actual" outcome. IPA Resp. at 84-85.

Further, had the Illinois General Assembly required specific levels of "actual robust participation" through the establishment of a carve-out or a mandate, it knew full well how to do so. PA 99-0906 generally, and Section 1-75(c) specifically, are filled with numerous mandates, percentage requirements, carve-outs, and other prescriptive requirements. For example, the Adjustable Block Program is to be allocated, under Section 1-75(c)(1)(K), 25%-25%-25% (with a remaining discretionary 25%) among three types of projects. Forward procurements under Section 1-75(c)(1)(G) are to be for at least 1,000,000 RECs (or exactly 1,000,000 RECs in the case of the Initial Forward Procurement) and must precisely match new wind RECs against new PV RECs within 200,000 annually. By contrast, Section 1-75(c)(1)(N) provides no such mandates or strict requirements. As such, the need to respect its choice to call for "opportunities," rather than a mandate, is clear. IPA Resp. at 85-86.

As no party confronts or even recognizes, the ultimate consequence of requiring actual small customer participation is to effectively choke off the development of further community solar development unless or until that mandated level of small customer participation is achieved. Under Illinois law, small customers cannot be required to subscribe to community solar projects; they must choose to do so. But if they choose not to do so—whether due to preference for hosting a distributed generation system on their home or business, a lack of confidence in the value proposition of community solar, a desire to participate in the clean energy economy in some other way, or any other perfectly legitimate reason—then community solar should still be afforded the opportunity to proceed as a viable model with larger subscribers who choose to participate. The IPA is very reluctant to dictate a specific community solar business model to the marketplace, especially lacking any experience of having administered programs testing the viability of a more flexible, incentive-based approach. IPA Resp. at 86.

Additional objections focus on two categories: first, some parties believe that the IPA's commitment to revisit these next year is simply not soon enough, seeking that the IPA create interim "check-in" points or on-the-fly adjustments. ELPC Obj. at 18; CCSA Obj. at 6-7. Regardless of the schedule for adjustments, the IPA and its Program Administrator will be actively monitoring and evaluating the progress and performance of the Adjustable Block Program. In Section 6.8 of the Plan, the IPA states that it "intends to wait at least six months after program launch before considering making significant changes" to block sizes and REC prices "to help encourage program stability." As the IPA is reluctant to rely on limited or potentially misleading early information in making structural program changes, for more structural issues, such as those that are the subject of parties' objections, the IPA believes a full year of performance before proposing adjustments is more appropriate. Thus, the IPA views its 2019 Plan revision process as providing the best avenue for revisiting decisions such as the propriety of small customer participation adders. IPA Resp. at 87.

Second, some parties object to the IPA's proposed 25% participation tracking level, advocating that a higher level be applied. ELPC Obj. at 17-18; CCSA Obj. at 9-10, Elevate Obj. at 16-17. The IPA believes that the Plan's proposed 25% level is reasonable and should not be revised. Notably, 25% participation is measured by system capacity, and not subscribers. Thus, a 1 MW community solar system could feature two 400 kW subscribers and fifty 4 kW subscribers, achieving an over 96% small customer subscription rate but only 20% small customer participation for purposes of the IPA's benchmark—meaningful participation, but still below the IPA's proposal. IPA Resp. at 87-88.

Ultimately, the IPA views this 25% number as merely a benchmark to track progress, but not an ultimate determinant of success or failure—or, more importantly, of whether structural revisions are required as part of its next plan update. Higher small customer subscription levels might get achieved, but potentially due to undesirable marketing practices that need to be curtailed. Lower small customer subscription levels may result, but due to structural marketplace issues that incentive levels or prescriptive participation mandates should or could not adequately remedy. The most important factor informing the need for any structural revisions to small customer participation will not be a specific participation number; it will be the broader story of the marketplace's

development over a meaningful period. For that, the IPA looks forward to the summer of 2019 before making significant changes. IPA Resp. at 88.

With respect to the statement that "the Joint Solar Parties do not necessarily believe that if small subscriber participation is below the 25% level identified by the LTRRPP that the sole mitigation should be through the small subscriber adder," the IPA generally agrees; as indicated in Response, the IPA may be "open to potential solutions" as well, but only after allowing sufficient time to test the merits of the adder approach. Also, as the Joint Solar Parties point out, "the value of advance notice and predictability cannot be understated"; the IPA agrees with the importance of these principles, and thus utilization of the 2019 Plan update process (which features a comment process and Commission approval of underlying changes) for structural changes to small customer participation would be preferable to changes after only a few months or through shorter notice and comment period.

7. Commission Analysis and Conclusion

The Commission has already agreed in Section VII.B.7 above (discussing Section 6.3.1 of the Plan) that the IPA's revised proposal for ensuring that there will be adequate small subscriber participation in the Community Solar Program is reasonable. Indeed, the Commission notes that EDF states that based on this modification it no longer has an issue with this Section of the Plan.

Without this modification, however, the Commission would not have approved the Plan as written. The Commission does not agree that ensuring small subscriber participation through a carve-out would be contrary to the statutory requirement that these customers merely be given an opportunity to participate. The Commission finds that the Plan as filed was structured such that the programs could be immediately filled by larger customers, which is not truly giving an opportunity to small customers to participate.

Also, although the Commission will not require any changes with respect to this issue, the Commission does agree with parties that the 2019 Plan may be too late and encourages the IPA to closely monitor participation in this program.

C. Section 7.6.2 Marketing to Small Subscribers

1. Ameren

In Section 7.6.2, item (u), the Plan mentions both the Project Developer and utility when referencing representations regarding tax implications on customers' bills. Plan at 141. Ameren will not be a party to the contract between the Approved Vendors and Subscribers and accordingly recommends the following edit to Section 7.6.2 (u) to remove the mention of the utility:

> (u) A statement that the Project Developer ~~and utility~~ does not make representations or warranties concerning the tax implications of any bill credits provided to the subscriber;…

AIC Obj. at 3-4.

The Joint Solar Parties take issue with this recommendation and incorrectly suggest that such reference somehow impacts consumer protections. Ameren has

supported and will continue to support the establishment (and eventual enforcement) of consumer protections for these customers. No consumer protections are being lessened by excluding a reference to a non-party utility. AIC Rep. at 4.

2. Joint Solar Parties

The Joint Solar Parties believe the Plan language Ameren seeks to delete is consumer-protective, because it prevents a salesperson from making an incorrect representation about Ameren's statements. The Joint Solar Parties believe this is perhaps more important because Ameren is not party to the contract. JSP Resp. at 20.

3. IPA

Ameren proposes a minor edit to Section 7.6.2 of the Plan, seeking that "the utility" not be mentioned when referencing representations regarding tax implications on the customer's bills. This edit appears reasonable and the IPA supports its adoption. IPA Resp. at 89.

4. Commission Analysis and Conclusion

The Commission agrees with Ameren that this language should be deleted. This Section of the Plan lists requirements for contracts between Approved Vendors and subscribers. The utility is not a party to these contracts.

D. Section 7.7 Utility Responsibilities

1. Ameren

Section 7.7 of the Plan states that the IPA will coordinate with the utilities regarding the generator project and subscription data that is collected. Ameren suggests that the phrasing is ambiguous and recommends edits. AIC Obj. at 4.

2. ComEd

Section 7.7 of the Plan summarizes the utilities' recent tariff filings regarding their community renewable generation net metering tariffs. The Commission approved ComEd's proposed Rider POGCS – Parallel Operation of Retail Customer Generation Facilities Community Supply ("Rider POGCS") in Docket No. 17-0350. As the Plan notes, the Commission's Order resolved the contested issues, including an issue regarding indemnification. Plan at 143. To ensure that the Plan's summary of the indemnification issue accurately reflects the record in Docket No. 17-0350, ComEd offers clarifying language. ComEd Obj. at 13.

3. IPA

Ameren proposes minor changes to language found in Section 7.7 related to utility responsibilities around coordination with the utilities regarding project and subscription data. The IPA supports adoption of Ameren's proposal. IPA Resp. at 89.

In response ComEd's objection, the IPA states that it has reviewed the Commission's September 27, 2017 Final Order in Docket No. 17-0350 and notes that the contested issue was whether ComEd should be required to provide reciprocal indemnifications to a "CS Project" (e.g., a community solar project) if ComEd made an error related to usage data, subscriber shares, or billing. The Commission declined to

adopt the proposal of the Coalition for Community Solar Access to impose such reciprocal indemnification, but instead cited existing Commission Rules around a utility's obligations in case of errors or corrections to billing and usage data – presumably Section 280.110 ("Refunds and Credits") of the Commission's Administrative Rules. 83 Ill. Adm. Code § 280.110. Section 280.110 does not quite address the recourse of a project developer should ComEd wrongly provide bill credits to project subscribers in a way that imposes possible liability on the developer – and so it is fair to say that the Commission's decision was a rejection of reciprocal indemnification. With that in mind, the Agency proposes an amendment Section 7.7. IPA Resp. at 89-90.

4. Commission Analysis and Conclusion

Ameren's proposed edits are unopposed and they are adopted by the Commission.

The Commission notes that ComEd addressed this issue in its Reply and accepted the IPA's amended proposed language. The Commission has reviewed the language and agrees that it should be included in the Plan.

IX. CHAPTER 8 ILLINOIS SOLAR FOR ALL PROGRAM

A. Section 8.2.2 Economic Benefits

1. Elevate/GRID

Elevate/GRID argue that the incentive levels under the Illinois Solar for All Program should be set in such a way that ensures no cost to low-income households. As indicated in the Plan, PA 99-0906 stipulates that "[e]ach contract that provides for the installation of solar facilities shall provide that the solar facilities will produce energy and economic benefits, at a level determined by the Agency to be reasonable, for the participating low-income customers." 20 ILCS 3855/1-56(b)(2). Elevate/GRID note that the Plan takes steps to ensure there are no upfront costs to low-income participants. Elevate Obj. at 2.

Referring to all Illinois Solar for All programs, the IPA Act specifically states: "The payment shall be in exchange for an assignment of all renewable energy credits generated by the system during the first 15 years of operation and shall be structured to overcome barriers to participation in the solar market by the low-income community." 20 ILCS 3855/1-56(b)(3); Elevate Obj. at 2. Elevate/GRID argue that any cost to a low-income household would present barriers to participation and hinder the successful implementation of the Solar for All program. These barriers include: 1) credit requirements for contracts; 2) risk of default to system owners; 3) increased cost of capital because of credit risk; 4) initial contract payment concurrent to current electricity bill will "feel" like an upfront cost; and 5) marketing barriers and consumer protection issues presented by having two electricity bills. Elevate Obj. at 2. Elevate/GRID state that a number of low-income solar advocates, agencies and program developers in Illinois and across the country have come to this conclusion. Elevate Obj. at 3-4.

Regardless of the amount of savings deemed reasonable by the IPA in the Plan, Elevate/GRID stress that it is critical that the value of those savings be passed on to program participants. Currently, the IPA has included a 50% savings level in the

calculations within the Crest models to determine REC prices. However, the Plan does not contain an expressly stated requirement that this same level of savings actually be passed onto participants. Instead, the Plan states that "participation in the program should result in immediate, reliable reductions in energy costs for those residents or subscribers. This means that any ongoing payments would be smaller than the expected energy savings." Plan at 146. The Plan language provides for no-cost participation in the program, but does not set a minimum threshold for the cost savings to be experienced by the subscribers. Under this framework, an insubstantial $1 per month would satisfy the requirement in the Plan, but not the intention of the Illinois Solar for All program as created by the legislation. Elevate Obj. at 5.

As currently written, the Plan would allow the value of participant savings to profit the system owner, as long as there is a "reliable reduction" in energy costs. Elevate/GRID believe that the full value of intended savings included in the calculation of REC prices should be passed on to the participants. Elevate Obj. at 5.

In response to the IPA's concern regarding its ability to police whether participants are actually incurring no cost, Elevate/GRID reason that there is no practical difference in policing a "no cost" experience for a low-income customer or a "no upfront cost and cash-flow positive" experience, as currently required in the Plan. Plan at 171. In either instance, Approved Vendors have to provide documentation and verification they are meeting the requirements of the Plan. The Program Administrator will provide contract templates and disclosure forms specific to either framework. While the IPA did incorporate thoughtful consumer protection requirements in their design of the Solar for All Program, these alone to do not ensure the realization of tangible economic benefits or that the intended value of savings embedded into the RECs are actually being delivered to the low-income participants. Importantly, Elevate/GRID believe that requiring the intended value of savings be passed onto participants also significantly reduces the complexity of the consumer transaction by making contracts, disclosures, and forms easier to standardize and review, while also minimizing the risk of bad actors taking advantage of low-income households with financially burdensome contracts. Elevate Rep at 3-4.

2. ELPC

The Commission should clarify that the IPA is obligated to ensure Illinois Solar for All Program low-income and environmental justice community participants receive "tangible economic benefits." Section 1-56 of the IPA Act requires the IPA to design the Illinois Solar for All Program to provide real financial benefits to its low-income and environmental justice community participants. ELPC does not believe the steps outlined in the Plan, alone, will guarantee that tangible economic benefits flow to low-income participants. Thus, ELPC urges the Commission to modify the Plan by requiring Solar for All projects to guarantee minimum energy savings to qualified program participants. ELPC Obj. at 25.

Section 1-56 of the IPA Act makes it very clear that the Illinois Solar for All Program must provide tangible economic benefits to low-income participants. *See* 20 ILCS 3855/1-56(2). In other words, program participants must see financial benefit from the Illinois Solar for All Program in order to meet the basic requirements of Section 1-56 of

the IPA Act. The IPA recognizes this requirement and plans to ensure low-income subscribers receive tangible economic benefits by requiring: (1) no-upfront costs and (2) that ongoing costs are smaller than energy savings. ELPC appreciates the IPA's commitment to "immediate, reliable reductions in energy costs" and agrees that the IPA's proposed approaches will help enable those reductions. However ELPC respectfully disagrees that they go far enough to actually ensure reductions, as required by the statute. ELPC Obj. at 26.

ELPC notes that under the filed Plan a customer could theoretically see energy savings of just one cent over the course of the year and the project would still be eligible for the Illinois Solar for All Program. Furthermore, the IPA actually makes specific assumptions in its REC price modeling regarding the energy savings passed on to program participants, but the filed Plan contains no requirement that these modeled savings will actually be passed on to participants. Specifically, the IPA models that Solar for All participants keep 50% of the energy savings achieved through net metering after accounting for any charges to participants from the Solar for All project provider. *See* Appendices E-3, E-4, and E-5. The Plan contains no requirement for Solar for All projects to keep charges low enough that participants actually receive this 50% savings. ELPC Obj. at 26-27.

Ultimately, given the strong statutory language mandating that tangible economic benefits flow to program participants, the Commission should clarify that the IPA is obligated to guarantee that low-income Illinois Solar for All Program participants receive tangible economic benefits by setting a minimum bill savings threshold on the amount of financial benefits that must flow to low-income program participants. Setting such a floor is also a positive from a consumer protection standpoint because it ensures that community solar companies pass along economic benefits to low-income consumers as the legislature intended. As the IPA already assumes that 50% of energy savings from Solar for All projects stay with program participants in its REC price modeling, 50% of energy savings may be an appropriate floor.

ELPC notes that the IPA also asserts that ELPC's suggested requirement of a floor on energy savings is impractical, citing the potential need to review dozens or hundreds of contracts and interview thousands of program participants. IPA Resp. at 9. First, ELPC notes that it is the IPA's job to develop practical solutions to the requirements laid forth by the General Assembly in PA 99-0906. ELPC argues that the supposed additional burden the IPA asserts makes no sense given that the IPA, as part of its consumer protections around tangible economic benefits, already plans to require Approved Vendors to document energy savings: "Illinois Solar for All Approved Vendors must also *provide documentation* to both the program participant(s), and to the Program Administrator *explaining how the project or community solar subscription will result in a cash-flow positive experience* for the participant(s) (*including an estimate of the monthly savings*)," (emphasis added) (Plan at 171). Surely this is the consumer protection that could be used to ensure solar providers are passing any required minimum for energy savings onto consumers. ELPC Rep. at 19-20.

For these reasons, ELPC continues to urge the Commission to clarify that the IPA is obligated to guarantee that low-income Illinois Solar for All Program participants receive tangible economic benefits by setting a minimum energy savings requirement. With this

clarification, ELPC believes the IPA is best positioned to determine the most practical approach to setting this minimum: either that the 50% of energy savings assumed to be passed onto program participants in the IPA's methodology setting incentive levels, some band around that 50% level, or some other amount entirely. ELPC Rep. at 20.

3. LVEJO

LVEJO notes that the IPA made its cost estimates for the Illinois Solar for All Program based on an estimated 50% bill savings. In part, this estimate is necessary to demonstrate that economic and energy benefits are available to pass through to participants. However, as pointed by Elevate/GRID, this estimate is not coupled with a requirement that a similar level of savings must be passed through to participants. Elevate Obj. at 4-5. Instead, the IPA substitutes a vague standard for participant savings based on "reliable reductions". LVEJO concurs with Elevate/GRID that the full value of the savings should be passed on to the participants. Elevate Obj. at 4-5. Moreover, for the reasons put forward by the ELPC, LVEJO believes the "floor" estimate of the IPA should become the mandatory savings floor that is guaranteed to participants as part of becoming participating residents or subscribers. ELPC Obj. at 22-27; LVEJO Resp. at 12-13.

4. AG

The AG agrees with the Objections of Elevate/GRID and ELPC. The AG notes that, in the alternative, ELPC advocates for a "minimum bill savings threshold," which it suggests could be set at 50% of the energy savings. ELPC Obj. at 27. Without these minimum savings levels, the main point for ensuring solar development in low-income communities—providing access to solar power without a financial outlay and with the benefit of lower electricity bills—could be lost. AG Resp. at 11.

5. IPA

To implement the IPA Act's directive that "tangible economic benefits flow directly to program participants" (20 ILCS 3855/1-56(b)(2)), the Plan states:

> [E]ligible low-income residential participants in the Illinois Solar for All Program should not have to pay up-front costs for on-site distributed generation, or pay an up-front fee to subscribe to a community solar project. Further, participation in the program should result in immediate, reliable reductions in energy costs for those residents or subscribers. This means that for projects that are financed or leased, any ongoing payments would be smaller than the expected energy savings.

Plan at 146. The IPA does not support ELPC's and Elevate/GRID's proposals on this issue. First, the IPA will have little to no practical ability to police whether Illinois Solar for All Program participants are actually incurring "no cost" throughout the length of their participation in a project; this could entail reviewing dozens or hundreds of sample contracts and potentially interviewing thousands of program participants. Second, the Plan already includes numerous reasonable and robust consumer protection conditions (*see* Plan at 171-72) related to financing in the Illinois Solar for All subprograms; these

will assure the realization of tangible economic benefits for Program participants. IPA Resp. at 91-92.

The issue of savings or costs for participants assumed in the REC Pricing Model is distinct from what savings or costs are actually realized in the market. The AG and LVEJO, as well as Elevate/GRID echoing itself, support a recommendation made by Elevate/GRID that "the full value of intended savings included in the calculation of REC prices should be passed on to the [Illinois Solar for All] participants." AG Resp. at 11; LVEJO Resp. at 12; Elevate Obj. at 5; Elevate Resp. at 3-4. ELPC recites problems that might ensue if there are "any participation costs required of [low-income] households" to participate in Illinois Solar for All programs, and supports Elevate-GRID's proposal. ELPC Resp. at 22-23. As an alternative, ELPC suggests monitoring the impact of participation costs on the Illinois Solar for All Program participation and the distribution of tangible economic benefits therefrom. ELPC Resp. at 23; IPA Rep. at 42.

LVEJO argues that "the 'floor' estimate of the IPA should become the mandatory savings floor that is guaranteed to participants as part of becoming participating residents or subscribers." LVEJO appears to be referring to a recommendation previously made by ELPC that the IPA be required to "guarantee that low-income Solar for All program participants receive tangible economic benefits by setting a minimum bill savings threshold on the amount of financial benefits that must flow to low-income program participants." LVEJO Resp. at 12-13; ELPC Obj. at 27. The AG also appears to support ELPC's "floor" proposal as an "alternative" to the Elevate/GRID recommendation. AG Resp. at 11; IPA Rep. at 42.

While the IPA does not disagree with the principle underlying their comments, the IPA opposes ELPC and Elevate/GRID on this issue. As no party has proposed a pragmatic solution for monitoring and verifying actual bill-level savings levels realized by each and every household, the IPA maintains its position, although it does not necessarily oppose ELPC's secondary proposal to generally monitor Illinois Solar for All Program participation costs prior to updating the Plan in 2019. IPA Rep. at 42-43.

6. Commission Analysis and Conclusion

The Commission is troubled that as currently written the Plan would allow the value of participant savings to profit the system owner, as long as there is a "reliable reduction" in energy costs. If one cent of savings is enough to qualify for this program, this is more work than it is worth for potential subscribers. It is also contrary to the requirement of the IPA Act:

> Contracts under the Illinois Solar for All Program shall include an approach, as set forth in the long-term renewable resources procurement plans, to ensure the wholesale market value of the energy is credited to participating low-income customers or organizations and to ensure tangible economic benefits flow directly to program participants…

20 ILCS 3855/1-56(2).

Although the Commission agrees that it would be difficult to monitor participants' actual savings, it is reasonable to require that contract templates be used and that the

Approved Vendors must provide documentation and verification that they are meeting the requirements of the Plan. Elevate/GRID and ELPC point out a disconnect between the savings that participants are required to receive under the Plan and the savings that the REC pricing model assumes. The IPA appears to agree. The Plan should be amended to reflect a requirement that 50% of energy savings (as determined by a calculation of the estimated first-year production and/or utility default service net metering value, to be disclosed to the customer and reviewed and approved by the Agency) should flow through to customers. In other words, ongoing annualized payments by the customer (if any) must be less than 50% of the annual first year estimated production and/or utility default service net metering value to be received by the customer.

B. Section 8.4.5 Payment Structure

1. Ameren

Ameren notes that Section 8.4.5 of the Plan states: "Contracts with the Agency (that utilize funds from the RERF) will be standard contracts that include all required state contract provisions including that they are subject to appropriation. Contracts with utilities will be similar, to the extent practicable, to the contracts with the Agency." Plan at 153.

Ameren cautions this statement may overly generalize the similarities since IPA contracts contain language applicable to specific State of Illinois regulations and those regulations would not apply to the utilities' transactions. Ameren recommends striking this language in order to temper expectations until such time as more detailed contract discussions commence. Ameren recommends the following edits:

> Contracts with the Agency (that utilize funds from the RERF) will be standard contracts that include all required state contract provisions including that they are subject to appropriation. Contracts with the utilities <u>may have some similarities but could vary drastically given the different sets of regulations to which the Agency and utilities must abide.</u> ~~will be similar, to the extent practicable, to the contracts with the Agency.~~

AIC Obj. at 4-5.

2. IPA

The IPA is supportive of Ameren's proposed changes, but believes the phrase "could vary drastically" is perhaps overly dramatic and should be replaced with the phrase "will vary" (as it is inevitable that such contracts will have differences in terms due to state law requirements, but the variance's magnitude is currently unknown). IPA Resp. at 92.

3. Commission Analysis and Conclusion

The Commission agrees that the language proposed by Ameren and amended by the IPA is reasonable. The language in the Plan failed to adequately capture the differences between state and utility contracts. Accordingly, the proposed language is adopted.

C. Section 8.5 Programs

1. Elevate/GRID

Elevate/GRID state that according to their analysis of the American Community Survey 2015 5-Year estimates, the National Housing Preservation Database, and the Platts utility service territories, multi-family properties (5+ units) make up a significant portion of the Illinois affordable housing stock, with 50% of all multi-family units being affordable. Elevate Obj. at 6.

Elevate/GRID opine that multi-family affordable housing owners have distinct needs from owners of other property types, including the way they use energy and the barriers they face to accessing cleaner, more efficient energy. The approach to marketing and outreach, energy assessments, as well as the average system size and solar installation will require very different skills and experience. Elevate Obj. at 6.

Additionally, Elevate/GRID attest that the level of incentives needed is very different. They recommend that 1 to 4 unit property owners receive no cost solar, while multi-family affordable property owners can likely tolerate an incentive level that provides 50% or even 30% savings. Elevate Obj. at 6.

Finally, under the current Plan, single family and multi-family distributed generation participants will share a common program budget of 22% of the overall Illinois Solar for All budget. By creating a distinct multi-family program, budgets can be set in such a way to more equitably share funds across each segment of property type. Elevate Obj. at 6-7. Elevate/GRID note that the IPA Act clearly states that a party can propose a new program. *See* Section 20 ILCS 3855/1-56 (b) (4); Elevate Obj. at 7.

As such, Elevate/GRID believe that multi-family properties warrant a dedicated program within the Illinois Solar for All Program. With a separate multi-family program, a smaller amount of funds can be pulled proportionately from each of the four existing sub-programs, rather than entirely from the distributed generation sub-program. Elevate Obj. at 8.

2. IPA

The IPA highlights that the portion of the IPA Act authorizing creation of the Illinois Solar for All Program outlines four specific sub-programs: 1) Low-Income Distributed Generation Incentive, 2) Low-Income Community Solar Project Initiative, 3) Incentives for Non-Profits and Public Facilities, and 4) Low-Income Community Solar Pilot Projects (20 ILCS 3855/1-56(b)(2)(A) - (D)), but it also allows the Commission to approve the creation of “an additional low-income solar or solar incentive program” if it would “more effectively maximize[] the benefits to low-income customers after taking into account all relevant factors.” (20 ILCS 3855/1-56(b)(4)). After review and analysis, the IPA declined to propose a separate multi-family subprogram within the Plan, instead including funding for multi-family buildings within the Low-Income Distributed Generation Incentive subprogram, which by law is to take up 22.5% of the annual Program budget. However, the Plan does describe (Plan at 155-56) how an owner or manager of a multi-family building will be expected to deliver tangible economic benefits to residents, as required by the Act (20 ILCS 3855/1-56(b)(4)); it also indicates that the IPA’s Request for Qualifications/Request for Proposals seeking a Program Administrator for the Illinois

Solar for All Program will screen for "the ability to differentiate the needs of single-family and multi-family housing and provide the appropriate support and technical assistance to each sector." Plan at 162; IPA Resp. at 92-93.

The IPA stands by the position that there is not enough information at this time to adopt a fifth sub-program under the Illinois Solar for All Program, but it will monitor the treatment of multi-family buildings under the Low-Income Distributed Generation Incentive sub-program and reserves the right to propose new sub-programs when the Plan is revised in 2019. The distinct needs of multi-family building owners can be addressed through the selection of qualified Program Administrators(s) who will work with them. Thus, the IPA recommends that the Commission reject Elevate/GRID's proposal on this issue. IPA Resp. at 93-94.

3. Commission Analysis and Conclusion

The Commission finds that the IPA has complied with the requirements of the IPA Act. Although the Commission recognizes that the IPA Act encourages interested parties to propose modifications or additions to the Illinois Solar for All Program, the Commission agrees with the IPA that its proposal is sufficient for the time being. It is appropriate at this time, as suggested by the IPA, to monitor the treatment of multi-family buildings under the Low-Income Distributed Generation Incentive sub-program. In 2019, when the IPA returns to the Commission for its review of the Plan, the IPA should include the results of that monitoring for the Commission and explain its decision regarding whether to propose a program for this market segment.

D. Section 8.6 Setting Incentive Levels and Section 8.6.2 Low-Income Community Solar Project Initiative

1. Elevate/GRID

Elevate/GRID note that the IPA has stated that the intention of the Illinois Solar for All Program incentives is that they will serve as an adder on top of the Adjustable Block Program REC values. In other words, the incentives must be higher to allow for the increased costs associated with the Illinois Solar for All Program. For the Illinois Solar for All Low-Income Community Solar Project Initiative, this means that the REC value should include the additional costs of: 1) more savings being passed to low-income participants; 2) the additional costs associated with acquiring and managing low-income subscribers; and 3) the additional costs of financing projects for low-income customers. Elevate Obj. at 8.

Elevate/GRID opine, however, that the REC values indicated in the Plan do not adequately account for these additional costs. This issue is exacerbated for smaller projects, even when the residential adder is included. It is unclear from the language of the Plan whether or not the IPA intended that the Small Subscriber Adder be applied to the REC value for qualifying projects under the Illinois Solar for All Community Solar sub-program, as it is in the Adjustable Block Program. Elevate Obj. at 8. Elevate/GRID modeled the costs for a 2 MW low-income community solar project, assuming an anchor subscriber accounts for 40% and compared the subsequent REC values to the IPA's Illinois Solar for All REC value. The modeling shows that without the layering of the Small Subscriber Adder, the REC values simply are not enough to account for the additional

Illinois Solar for All Program costs - $92.19 is required for Ameren and only $81.37 is provided. However, when the Small Subscriber Adder is included, that same value is $103.71, which falls within the expected range. Elevate Obj. at 9.

Elevate/GRID object that any cost to a low-income household would present barriers to participation and hinder the successful implementation of the Solar for All Program and recommended adjusting the Crest models to include 100% savings for Residential (1-4 unit property owners) participants in Illinois Solar for All Distributed Generation and Low-income Community Solar sub-programs. Elevate Rep. at 2

The IPA agrees with making this change to the REC pricing model for residential (1-4 unit) participation in the Low-Income Distributed Generation Incentive subprogram, but not for residents of 1-4 unit buildings who participate in the Low-Income Community Solar Project Initiative. IPA Resp. at 96. Elevate/GRID emphasize that a low-income customer faces a similar energy burden, regardless of whether their homes are owned, rented, suitable for solar or not suitable for solar. Adjusting the Crest models to include 100% savings is intended to ensure that barriers are removed when developing programs designed to pass on savings to all residential low-income participants. Allowing for 100% savings, and ensuring these savings are passed on in full to participants, will also minimize consumer protections issues by simplifying contracts as no-cost subscriptions. It also eliminates much of the risk associated with default of low-income households, whether perceived or real, from lending institutions. Elevate/GRID urge the Commission to require adjusting the Crest models to include 100% savings for Residential (1-4 unit property owners) participants in Illinois Solar for All Distributed Generation and Low-income Community Solar sub-programs. Elevate Rep. at 2-3.

2. ELPC

ELPC initially objected to the proposed Illinois Solar for All Community Solar incentive levels on the basis that the incentive would be inadequate for projects developed under the program to serve small customers. The IPA agrees in its Response and endorses Elevate/GRID's proposal to incorporate the Small Subscriber Adders proposed for the general market into the incentive pricing for the Low-Income Community Solar Project Initiative. This proposal also satisfies ELPC's concerns. ELPC Rep. at 26.

3. IPA

The IPA agrees with Elevate/GRID and ELPC that, although the enabling statute (20 ILCS 3855/1-56(b)(2)(B)) for the Low-Income Community Solar Project Initiative subprogram does not include the same charge to promote small subscriber participation as does the enabling statute (20 ILCS 3855/1-75(c)(1)(N)) for the Community Renewable Generation Program, the same logic regarding the increased cost for small subscribers still applies in the low-income context, and that this change to the Plan would provide appropriate incentives for subscription to Low-Income Community Solar Project Initiative projects. In fact, the Plan intended to incorporate Small Subscriber Adders into the REC pricing for the Low-Income Community Solar Project Initiative when updating the Draft Plan and developing the Plan for filing in early December, but inadvertently omitted this element. The IPA thus supports Elevate/GRID's proposal on this issue. IPA Resp. at 94-95.

The three Illinois Solar for All Program pricing models in the Plan assume that customers with distributed generation or community solar subscribers would receive 50% of the resulting net metering savings. Elevate/GRID propose increasing this assumption to 100% for residential participants (1-4 unit property owners) in the Illinois Solar for All Low-Income Distributed Generation Incentive subprogram and Low-Income Community Solar Project Initiative subprogram, to overcome barriers to access that inhere in low liquid cash, poor access to financing, and default risk. Elevate/GRID Obj. at 4. The IPA agrees with making this change to the REC pricing model for residential (1-4 unit) participation in the Low-Income Distributed Generation Incentive subprogram. IPA Resp. at 96.

The IPA does not, however, agree that this change would be appropriate (or even sensible) for residents of 1-4 unit buildings who participate in the Low-Income Community Solar Project Initiative. Because a community solar project is not at the same location as the subscriber, the size of the building where the subscriber lives is irrelevant to their participation in community solar. The REC pricing for low-income community solar should reflect the dynamics and costs associated with the development of the project—and, as addressed elsewhere in this response, the level of small subscriber participation. The value to subscribers will flow from the amount of electricity consumption they can offset through their subscription. The size of the building they live in does not impact that in any significant manner. The IPA believes that REC prices modeled using the 50% savings from net metering appropriately recognizes the value of community solar for participants (who do not have the added complexity and costs associated with installation of PV directly on their home). IPA Resp. at 96-97.

4. Commission Analysis and Conclusion

It appears that for the most part this issue is settled. The IPA has agreed to the proposal to incorporate the Small Subscriber Adders proposed for the general market into the incentive pricing for the Low-Income Community Solar Project Initiative. In addition, for the Low-Income Distributed Generation Incentive subprogram, the IPA has agreed to increase the assumption to 100% of the resulting net metering savings for 1-4 unit residential participants. IPA Resp. at 96. These changes are adopted by the Commission.

With respect to the REC prices for residents of 1-4 unit buildings who participate in the Low-Income Community Solar Project Initiative, the Commission agrees with the IPA that because a community solar project is not at the same location as the subscriber, the size of the building where the subscriber lives is irrelevant to their participation in community solar. The Commission does not find that any change to the Plan is warranted.

E. Section 8.6.4 Low-Income Community Solar Pilot Projects

1. Elevate/GRID

Elevate/GRID assert that the Illinois Solar for All Low-Income Community Solar Pilot Projects should not be evaluated solely on the basis of price. Low-income customers, especially low-income residential customers, have a higher cost to serve for community solar developers due to factors such as increased cost of customer acquisition

and financing barriers unique to low-income customers that require developers to offer subscriptions at very low, or no cost. Low-income customers typically will not respond to market rate value propositions for solar, and need to see much higher bill savings to motivate participation. In GRID Alternatives' experience, most customers do not actually have the ability to offer ongoing revenue to the project at all. Additionally, due to financing barriers for credit scores with low-income customers, even if they can offer ongoing revenue, the cost of financing for including these high-risk customers is much higher - or not possible. Elevate Obj. at 18.

All of these factors increase the cost of including low-income customers in projects. Therefore, if a Community Solar Pilot Project contract is awarded on price alone, developers will be incentivized to reduce the amount of low-income customers directly participating in the project, instead focusing only on multi-family customers, nonprofits, or other large low-income service providers that can be financeable off-takers for the project capacity and keep costs low. Developers will be pressured to provide the lowest value proposition (i.e. bill savings) possible for customers in order to reduce costs, which will lead to participating customers being those in the 'higher' income level of the low-income demographic. This will all but guarantee that low-income customers experience little to no direct economic benefit from the pilot projects, which would be a disappointing result for such a large investment of ratepayer money that is intended to benefit low-income customers. Elevate Obj. at 18-19.

The IPA is experienced with running processes and programs based on a "least cost" approach. While the IPA does adopt minimum criteria for bidding, including community-based organization partnership, demonstrating measures above and beyond the minimum requirements would align with this program's "pilot" title. As such, it is essential that the procurement for projects under the pilot program include additional factors for bid evaluation. Elevate Obj. at 19.

Elevate/GRID recommend the following criteria to incorporate the additional, necessary evaluation components: 1) the percent of savings / energy burden reduction that low-income customers will experience under the pilot project; 2) the percent of low-income residential customers that will participate in the pilot project; 3) workforce development opportunities during pilot project installation; and 4) coordination with energy efficiency measures for participating low-income customers, especially towards the goal of achieving comprehensive energy burden reduction. Elevate Obj. at 19-20.

Elevate/GRID note that the IPA made an important point in its Response to Elevate/GRID's evaluation criteria, suggesting that they instead be used as additional criteria for determining eligibility to bid. This approach would help satisfy Elevate/GRID's concerns that evaluation on cost alone is a race to the bottom for the low-income benefit, and the IPA's concerns with executing a "fair and equitable" bidding process. The Plan should be modified by the Commission to require the IPA to work with the Solar for All Program Administrator(s) to determine appropriate minimum requirements to be included in the solicitation regarding level of savings, residential participation, workforce development, and energy efficiency. Qualifying projects can then be selected on the basis of a competitive bid. Elevate/GRID Rep. at 8.

2. ELPC

Section 1-56 of the IPA Act requires the establishment of Low-Income Community Solar Pilot Projects as part of the overall Illinois Solar for All Program. (20 ILCS 3855/1-56(2)(D)). Section 1-56 stipulates that "[a]pproved pilot projects shall be competitively bid by the Agency, subject to fair and equitable guidelines developed by the Agency." 20 ILCS 3855/1-56(2)(D). ELPC notes that the IPA interprets this as follows: "[t]o ensure that the procurement follows 'fair and equitable guidelines,' the Agency proposes that bids be evaluated only on the basis of price, as this is the most objective way to consider bid evaluation." Plan at 160. ELPC disagrees with the IPA's interpretation that price should be the only factor that the IPA can consider when selecting between program bids that meet minimum requirements. The pilot projects have an array of clearly enumerated goals (none of which include the lowest possible price), and failing to consider any of these goals in evaluating bids would frustrate rather than fulfill program requirements. ELPC therefore urges the Commission to clarify that not only may the IPA consider more than price when comparing bids, but that to actually fulfill program requirements, the IPA should consider additional factors such as low-income customers served, economic benefits to project participants, partnerships with community organizations, potential for community ownership, job training opportunities, and innovation in overcoming barriers to low-income participation in the solar market. ELPC Obj. at 27-28.

ELPC states that Section 1-56 is clear that, in addition to serving low-income customers, the Low-Income Community Solar Pilot Projects must: 1) "result in economic benefits for the members of the community in which the project will be located;" 2) "include a partnership with at least one community-based organization;" and 3) "include a project partnership that includes community ownership by the project subscribers," at least for some subset of the funds. 20 ILCS 3855/1-56(2)(D); ELPC Obj. at 28.

Additionally, ELPC notes that the Low-Income Community Solar Pilot Projects are subject to the requirements on the overall program, including that "[p]rojects must include job training opportunities if available, and shall endeavor to coordinate with the job training programs described in paragraph (1) of subsection (a) of Section 16-108.12 of the Public Utilities Act." 20 ILCS 3855/1-56(2). The pilots are also subject to the requirement that payment be "structured to overcome barriers to participation in the solar market by the low-income community." 20 ILCS 3855/1-56(3); ELPC Obj. at 28-29.

ELPC opines that these and other criteria could then be combined using a weighted scoring system, as the IPA has developed to evaluate adjacent state eligibility, standard scores, or some other means. Some of the other factors ELPC named are less readily quantifiable and – while ELPC believes cost benefit analyses or other rubrics to create objective and easily comparable criteria related to these factors are fully within the IPA's ability to create – ELPC recognizes that the IPA has expressed a strong preference against such approaches and some of these factors may be incorporated into eligibility criteria as the IPA proposes. However, there are also some program goals – for instance around innovation or coordination with energy efficiency – that may be too situation-specific to necessarily be desirable as eligibility criteria. ELPC would urge the IPA to find a way to factor the presence of significant progress toward such goals into the ultimate scoring system to combine various criteria and evaluate bids. This would avoid undesirable outcomes whereby a proposal that costs slightly more than other proposals

but delivers significant benefits toward program goals not required by eligibility criteria loses out despite an overall benefit to cost ratio that far exceeds other bidders. ELPC Rep. at 22-24.

ELPC argues that the IPA's decision to evaluate bids "only on the basis of price" is divorced from the context in which this directive is made. The full directive reads: "[a]pproved pilot projects shall be competitively bid by the Agency, subject to fair and equitable guidelines developed by the Agency." 20 ILCS 3855/1-56(2)(D). Competitive bidding is a normal way for the statute to mandate least cost project bidding. However in this case, the directive to hold a competitive bid is modified by, and indeed made subject to "fair and equitable guidelines." Read this way, the considerations of fairness and equity temper the requirement for least cost procurement and clearly give the Agency discretion to consider factors beyond cost. Furthermore both "fairness" and "equity" are important concepts in the description of the Low-Income Community Solar Pilot Program. Fairness comes up repeatedly in the consideration of who may participate in the pilot program: utilities may participate, but they may not be the sole winner and any pilot projects they develop may not be included in their rate base; likewise entities that develop and administer the program may also participate. 20 ILCS 3855/1-56(2)(D). Equity, in the context of a program focused on benefits to low-income participants is much more readily understood as relating to the various program requirements that promote equity (ensuring economic benefits, community partnerships, community ownership, jobs training, and overcoming participation barriers) than relating to price. 20 ILCS 3855/1-56(2), (2)(D), (3). Finally the inclusion of "guidelines" (plural) rather than "guideline" indicates that the statute contemplates more than one metric against which pilot projects should be judged. ELPC Obj. at 29.

The IPA contends that its planned use of eligibility criteria will ensure minimum required benefits are achieved. IPA Resp. at 98. It even proposes setting some of those minimums at "high standards" to ensure real benefits. IPA Resp. at 98. However, regardless of how high a standard is set, if bids are "evaluated on the basis of price alone" (Plan at 160), without any evaluation of the relative benefits of each proposal, the procurement will force a race to the bottom – bidders that do the bare minimum to meet eligibility criteria (however high the criteria are set) will be most cost effective and therefore win the bid. This runs counter to the clear intent of the program to achieve a variety of goals unrelated to cost. ELPC Rep. at 22.

Thus, there is no practical or legal obstacle to considering benefits in fairly evaluating community solar pilot project bids, and, in fact, there is a compelling legal argument to doing so given the clearly enumerated goals of the Illinois Solar for All Program generally and the Community Solar Pilot Project sub-program, in particular. All this being said, ELPC is not asking the Commission to direct the IPA to follow any specific approach in evaluating pilot projects. Rather, ELPC is asking the Commission to clarify that the IPA has not only the discretion, but the obligation to evaluate bids for Low-Income Community Solar Pilot Projects on the basis of benefits they bring in addition to costs in order to best serve potential low-income participants and meet the clear goals of Section 1-56. IPA can work on its own or with stakeholders to develop fair and equitable criteria for this evaluation. ELPC Rep. at 25.

3. LVEJO

LVEJO notes that the IPA recommends that the competitive community solar pilot program bids will be evaluated on cost alone. IPA Plan at 160. ELPC points out that Section 1-56 is designed to contribute a range of benefits in low-income communities beyond cost alone. ELPC Obj. at 27-30. These benefits are identified as economic benefits for the members of a host community, partnerships with community-based organizations, community ownership by project subscribers for at least some subset of funds, job training initiatives, and affirmative measures to overcome barriers to low-income community participation in the solar market. ELPC Obj. at 28-29. LVEJO asserts that project bids must be evaluated based on their ability to achieve this broad range of benefits, not merely cost alone. For LVEJO, this is the only way to accurately evaluate the complete value of a project for the specific community in which it proposes to operate. LVEJO Resp. at 13.

4. NRDC

NRDC asserts that the Low-Income Community Solar Pilot Projects should be assessed on more than just cost. The Low-Income Community Solar Pilot Projects are established under Section 1-56. The projects are required to be competitively bid. 20 ILCS 3855/1-56(2)(D). However, the IPA has inaccurately interpreted price alone as the only requirement on which to evaluate proposals. ELPC Obj. at 27-28; NRDC Resp. at 4-5.

This interpretation ignores the other goals of the Low-Income Community Solar Pilot Program. While the projects must be competitively bid considering price, they are also subject to fair and equitable guidelines developed by the IPA. 20 ILCS 3855/1-56(2)(D). Section 1-56 requires the Low-Income Pilot Projects to "result in economic benefit for members of the community where the project is located," "include a partnership with at least one community organization," and include "a project partnership that includes community ownership by the project subscribers." *Id*. Further, this pilot must comport with the overall program which requires programs to include job training opportunities. 20 ILCS 3855/1-56(2); NRDC Resp. at 5.

NRDC asks the Commission to clarify that the IPA has the obligation to evaluate bids for the Low-Income Community Solar Pilot Projects on more than price alone to best serve low-income customers, including economic benefits to participants, partnerships with community organizations, job training opportunities, and opportunities to find innovations to overcome barriers to low income customer participation. NRDC Resp. at 5.

5. IPA

Both Elevate/GRID and ELPC object to the Plan's approach for the evaluation of bids for Low-Income Community Solar Pilot Projects. While the IPA appreciates that a substantial amount of funding is at issue through community solar pilot projects, and the IPA shares the desire to ensure that those funds serve low-income customers well, it does not believe that these objections are warranted. IPA Resp. at 97.

Unlike the Adjustable Block Program's provisions for community solar or the Illinois Solar for All Program's Low-Income Community Solar Project Initiative (for which REC

prices are administratively determined and which feature an ongoing application model), the Low-Income Community Solar Pilot Projects are selected and RECs priced through a competitive procurement process. Section 1-56(b)(2)(D) of the IPA Act also imposes additional requirements for projects being eligible to participate in the procurement (e.g., a requirement for partnerships with community-based organizations) while providing additional flexibility compared to other community solar program offerings (e.g., allowing utility ownership, or sizing greater than 2 MW). IPA Resp. at 97-98.

The Plan proposes that bids be evaluated on the basis of price following the precedent set through previous IPA-administered procurements. However, to even be eligible to bid, projects must meet a number of preconditions related to ensuring economic benefits for the members of the community in which the project is located as well as the partnerships with community-based organizations. Setting a high standard for eligibility to bid, then using a price-based bid evaluation approach ensures that the procurement will be conducted using "fair and equitable guidelines" as required by Section 1-56(b)(2)(D). In this way, the evaluation of bids is purely objective, which is the epitome of being "fair." IPA Resp. at 98.

In contrast, Elevate/GRID express concern that a variety of issues face low-income customers and to attempt to remedy this, they propose that the bid evaluation not be solely based on price but propose that additional criteria be added. IPA Resp. at 98-99. It is not clear to the IPA how adding these criteria to the bid evaluation would in fact address Elevate/GRID's concern. These four criteria appear to be aspirational goals not well suited to a "fair and equitable" bid evaluation process. These are policy objectives, and no details are proposed for how they could be reduced to bid scoring. To be clear, the IPA believes these are all worthy ideas, but they are not proposed in a manner that would lend itself to the development of a competitive procurement process. If anything, they could be considered as additional criteria for eligibility to bid. IPA Resp. at 99.

If a concern indeed exists that serving low-income customers is more expensive than serving non-low-income customers, then it should be reasonable to attempt to find means to minimize that price premium. Setting robust requirements for participation is the best way to screen for strong projects, then a competitive bidding process based on price is the most efficient way to reduce costs. IPA Resp. at 99.

ELPC also expresses concerns about the evaluation of bids solely on price, stating that, "pilot projects have an array of clearly enumerated goals (none of which includes the lowest possible price), and failing to consider any of those goals in evaluating bids would frustrate rather than fulfill program requirements." ELPC Obj. at 28. But ELPC has actually articulated standards for considering project eligibility, not relative scoring between bids. They are requirements that lend themselves to pass/fail consideration—which, logically, would be part of the consideration of eligibility to participate in the procurement. IPA Resp. at 99-100.

The IPA notes that ELPC errs when they state that projects would be chosen based on price alone under the Plan's proposed selection scheme. Price is the final hurdle, but only after projects initially demonstrate that they meet various criteria such as creating economic benefits to the community in which they are located. Those criteria are an integral part of the process; the selection of bids based on price is the final piece to

encourage efficiency and responsible use of the RERF. While ELPC claims that the Plan's approach frustrates the statutory intent of the program, the Agency disagrees. The Plan's proposed approach is intended to ensure that projects meet the requirements outlined in Section 1-56(b)(2)(D) of the Act in an efficient and responsible manner. IPA Resp. at 100.

For these reasons, the IPA opposes the proposals of Elevate/GRID and ELPC on this issue.

6. Commission Analysis and Conclusion

Although ELPC recommends that the statutory criteria be used to create a weighted bidding process, the Commission finds that the process outlined by the IPA that will use the statutory criteria to determine eligibility to participate in the bid is reasonable. The Commission finds that only allowing eligible bids to participate in a competitive procurement that will be based on price alone complies with the statutory requirement. The relevant statutory language states:

> Pilot projects must result in economic benefits for the members of the community in which the project will be located. The proposed pilot project must include a partnership with at least one community-based organization. Approved pilot projects shall be competitively bid by the Agency, subject to fair and equitable guidelines developed by the Agency.

20 ILCS 3855/1-56(b)(2)(D). Setting a high standard for eligibility to bid, then using a price-based bid evaluation approach ensures that the procurement will be conducted using "fair and equitable guidelines" as required by Section 1-56(b)(2)(D).

The Commission notes that Elevate/GRID have proposed additional guidelines that should be considered when determining whether a proposal should be eligible to bid. The Commission agrees that these are important considerations and the IPA should consider incorporating them into its evaluation process.

F. Section 8.8 Illinois Solar for All Program Administrator

1. Elevate/GRID

Elevate/GRID recommend that the Adjustable Block Program and Solar for All Program have separate Program Administrators. They state that both these programs are robust, complex endeavors that require significant coordination and adherence to several layers of parallel timelines. In addition, many of the components of these two programs are new, leaving the Administrator(s) without established processes or precedents to rely on in order to effectively execute. Elevate/GRID argue that managing the certification of Adjustable Block Program-eligible facilities and associated procurement processes is quite different than managing low-income energy programs and ensuring programs are designed to provide benefits to diverse groups of low-income stakeholders. Consequently, Elevate/GRID believe that the programs would benefit from each having their own administrator. Elevate Obj. at 12-13.

According to Elevate/GRID, programs designed for low-income households require a different approach than those for the general population. Marketing and

communication need to be standardized, but flexible enough to allow for diverse strategies that meet individual community needs. The organizations delivering the message need to be trusted by members of the community, requiring strategic partnerships and coordination with community-based organizations in a number of geographies across the State. The Illinois Solar for All Program includes layers of complexity with a number of diverse audiences, like low-income homeowners, renters, affordable housing owners, nonprofits and solar developers. Administrators need to understand these complexities and have direct experience providing services to these communities in order to develop effective programs that pass benefits on to the intended audiences. Elevate/GRID maintain that mission-based organizations are more likely to have these skills and will ensure the intended results are achieved. Therefore, Elevate/GRID recommend only non-profit organizations be considered for Illinois Solar for All Program administrative roles. Elevate Obj. at 13.

Using multiple Administrators who have greater specialization in the diverse program areas will provide for dedicated expertise and experience in program design, management and optimization. It will also ensure that sufficient attention is given to outreach, participant services, and consumer protections. Non-profit Program Administrators will function as consumer advocates and provide mission-based guidance and services to guarantee consistent statewide messaging and delivery of service. This includes the potential full range of services that should be integrated into the solar assessment and installation process, such as energy efficiency, job training and education. Elevate Obj. at 14.

Through the bidding process, the IPA may view a single Illinois Solar for All Program Administrator as more desirable. If that is the case, it is extremely important the Program Administrator be allowed to hire dedicated nonprofit sub-contractors to implement the diverse array of programs offered under Illinois Solar for All Program. Elevate/GRID provide proposed language in order to accommodate their recommendations. Elevate Obj. at 14-15.

2. IPA

Elevate/GRID recommend against the same entity serving as the Program Administrator for the Adjustable Block Program and the Illinois Solar for All Program. The Plan states that there will be separate Requests for Proposals for the two roles, but that there will be no prohibition against the same entity serving in both roles. Plan at 162. While the IPA does not disagree that the demands of the two roles have some significant differences, the IPA believes that the Plan should not foreclose the possibility that a single entity with sufficient resources could effectively perform both roles. As the funding sources for the two programs are generally distinct, the IPA does not foresee any structural conflict of interest between the two roles. Any entity wishing to apply to serve in both roles would have to compete with other applicants under the neutral criteria identified in the IPA's Requests for Qualifications and Requests for Proposals. As each Requests for Proposals will be evaluated independently, the mere fact that an entity may apply for both roles does not necessarily mean that they would be selected for both roles. IPA Resp. at 101.

Elevate/GRID also recommend that only non-profit organizations may be considered for the Illinois Solar for All Program Administrator role, arguing that only "mission-based organizations" will have the requisite trust with, and experience providing services to, diverse community stakeholders across the state. Elevate Obj. at 13. The IPA disagrees with these premises and opposes the proposed change to the Plan. The IPA states that it has for years engaged for-profit consultants to provide assistance with its statutory functions, which include advice on stakeholder workshop participation, due diligence on energy projects around the State, assessment of energy efficiency opportunities, and so forth. Based on the IPA's experience, the IPA has no reason to think that for-profit entities would *per se* be systematically disadvantaged in engaging with stakeholders as part of administering the Illinois Solar for All Program. Any type of qualified entity should have an opportunity to present its case under well-tailored selection criteria in the Requests for Qualifications and Requests for Proposals that the IPA will issue. Additionally, the IPA is concerned that either Elevate Energy or GRID Alternatives, Inc., which are both nonprofit organizations, could have an incentive to apply to become the Program Administrator of the Illinois Solar for All Program. It would be inappropriate for the Commission to entertain a proposal from parties where the proposal would have the effect of limiting competition in an RFP selection process that those same parties might intend to participate in. IPA Resp. at 101-102.

Finally, Elevate/GRID recommend that the Program Administrator of the Illinois Solar for All Program be allowed to hire non-profit entities as subcontractors. Elevate Obj. at 14. The IPA sees no prohibition under law against the Program Administrator engaging subcontractors and would not oppose a clarification of that point in the Plan. However, the IPA, again, opposes a restriction that only nonprofit entities are eligible to help run the Program. IPA Resp. at 102.

3. Commission Analysis and Conclusion

The IPA opposes the proposal of Elevate/GRID to require that the Program Administrator for the Adjustable Block Program and the Program Administrator for the Illinois Solar for All Program be two separate entities. The Commission shares the concerns of Elevate/GRID but believes that the bidding process will provide adequate review of any entity applying for both positions. Accordingly, the Commission declines to adopt Elevate/GRID's proposal.

Elevate/GRID and the IPA appear to agree that the Program Administrators should be allowed to hire sub-contractors. The dispute seems to center around whether the Program Administrators and any sub-contractors need to be limited to non-profit organizations. Although the IPA alludes to the possibility that Elevate/GRID's position is self-serving, the Commission rejects it for other reasons. The Commission observes that the IPA has for years employed for-profit entities for similar roles, with no apparent problem. Also, limiting the potential candidates could lead to higher prices. For these reasons, the Elevate/GRID proposal is rejected.

G. Section 8.17 Evaluation

1. LVEJO

LVEJO objects to the IPA's failure to include a provision for a public stakeholder process in the evaluation process as mandated by 20 ILCS 3855/1-56(b)(6). LVEJO explains that Section 1-56(b)(6) of the IPA Act mandates a process for evaluating the Illinois Solar for All Program that must incorporate public stakeholders including representatives of environmental justice and historically underserved communities. By contrast, LVEJO notes that Section 8.17 of the IPA's Plan proposes that an independent evaluator will conduct the evaluation, but makes no provisions for a public stakeholder process. LVEJO Obj. at 1-2.

LVEJO argues that the legislative mandate must be fulfilled because the legislature found the participation of public stakeholders to be a non-discretionary requirement in the execution of the evaluation of the Illinois Solar for All Program. LVEJO further argues that public stakeholder involvement is equal in priority to the role of the independent evaluator in the evaluation process. Also, LVEJO points out that the independent evaluator cannot conduct an evaluation unless and until there are "objective criteria developed through a public stakeholder process." 20 ILCS 3855/1-56(b)(6). Moreover, the evaluation process as a whole "shall include feedback and participation from Illinois Solar for All program stakeholders, including participants and organizations in environmental justice and historically underserved communities." *Id*. Finally, LVEJO notes that an independent evaluator's report cannot be developed without a "summary of the evaluation of the Illinois Solar for All Program based on the stakeholder developed criteria." *Id*; LVEJO Obj. at 3-4.

LVEJO argues that these mandates suggest the public stakeholder group will be a permanent part of an evaluation process that will commence in the near term, generate its first report as early as 2019, and continue indefinitely thereafter. Despite this, LVEJO contends that the IPA Plan makes no provision for assembling, resourcing and permanently sustaining public stakeholder involvement in the evaluation process. LVEJO Obj. at 4.

2. Elevate/GRID

Elevate/GRID support LVEJO's request that the IPA develop a plan to achieve legislatively-mandated public stakeholder involvement in the evaluation process. Elevate Resp. at 4.

3. ELPC

While ELPC recognizes that the IPA may intend for the evaluation to include a public stakeholder process, the IPA does not explain how it intends to fulfill the requirement that the evaluation include such a process. Given the importance of stakeholder input, ELPC maintains that the Plan should be improved by providing detail on how the IPA will ensure the requirement for a public stakeholder process in the Illinois Solar for All Program evaluation will be fulfilled. ELPC Resp. at 22.

4. NRDC

NRDC notes that the IPA Act requires that an independent evaluator must review the program every two years. 20 ILCS 3855/1-5(b)(6). "The evaluation shall be based on objective criteria developed through a stakeholder process." 20 ILCS 3855/1-5(b)(6). The IPA Act goes on to say that the evaluation process shall include feedback and participation from members of environmental justice and historically underserved communities. *Id*. However, the Plan is currently silent on stakeholder input. Plan at 145-79. NRDC urges the Commission to require the IPA to revise its Plan to specifically meet the requirements of the statute – requiring stakeholder input in the evaluation process. This mandate should be reflected in the Plan to ensure this requirement is met. NRDC Resp. at 5-6.

5. IPA

In drafting the Plan, the IPA states that it considered that the hiring of an independent evaluator would be the first step in the evaluation process, and that the IPA and its Illinois Solar for All Program Administrator would work with the evaluator it hires to comply with all aspects of the law regarding the evaluation of the Illinois Solar for All Program - including, but not limited to, the public stakeholder involvement process and the development of the scope and criteria of the evaluation. The IPA concedes that the Plan perhaps was not clear enough on how this evaluation process would proceed. IPA Resp. at 103.

It appears that LVEJO envisions a different process in which public stakeholder involvement would precede the selection of the independent evaluator. Through this process, the scope and nature of the evaluation to be conducted would be developed first, and used in part, for the selection of the independent evaluator. The IPA does not object to that reordering of events, with two caveats. First, while the IPA is willing to involve public stakeholders in developing the evaluation process pursuant to Section 1-56(b)(6) of the IPA Act, the actual selection process for the independent evaluator, while informed by stakeholder input, will be conducted by the IPA, and the selection itself will remain a decision of the IPA (subject to approval by the Commission) and not of any stakeholder group. Second, LVEJO alludes to the resources needed for the stakeholder process. LVEJO Obj. at 3. The IPA wishes to clarify that it will use its internal resources (plus the capabilities provided by the independent evaluator once hired) to manage the stakeholder process, but there will not be dedicated funding available for stakeholders to participate. The IPA does not believe that it has the authority under the IPA Act to spend funds from the RERF (or from utility-allocated funds) to directly fund stakeholder participation. IPA Resp. at 103-104.

6. Commission Analysis and Conclusion

The Commission sees that this issue appears to be settled and no party filed a reply to the IPA's Response. Section 1-56(b)(6) of the IPA Act, which states:

> At least every 2 years, the Agency shall select an independent evaluator to review and report on the Illinois Solar for All Program and the performance of the third-party program administrator of the Illinois Solar for All Program. The

> evaluation shall be based on objective criteria developed through a public stakeholder process. The process shall include feedback and participation from Illinois Solar for All Program stakeholders, including participants and organizations in environmental justice and historically underserved communities.

20 ILCS 3855/1-56(b)(6). The IPA's Response clarifies that it will indeed comply with the statutory requirement to include stakeholder feedback and it is adopted. The Commission appreciates LVEJO highlighting this omission.

X. INCLUSION OF PROJECTS IN MUNICIPAL UTILITY, RURAL ELECTRIC COOPERATIVE, AND MT. CARMEL SERVICE TERRITORIES

1. ComEd

In Chapter 2 of the Plan, ComEd notes that the IPA acknowledges that the RPS goals do not apply to load served by municipal electric utilities, rural electric cooperatives, or Mt. Carmel Public Utility ("Mt. Carmel"), and those entities do not have renewable energy procurement obligations under Illinois law. Plan at 21. This is consistent with the PUA's exclusion of municipally-owned utilities and rural electric cooperatives from the definition of "public utility." 220 ILCS 5/3-105. The customers of these entities thus do not pay any charges or fees to support or fund the programs to be offered under the Plan, including the Adjustable Block Program, Community Renewable Generation Program, and Illinois Solar for All Program. Yet, the Plan proposes to allow projects from these entities' service territories to participate in the Programs. ComEd opines that this approach raises significant legal and policy issues, not least of which is the apparent lack of statutory authorization to require the retail customers of electric utilities to subsidize distributed generation projects within the service territories of entities that are not otherwise subject to the RPS and whose customers are not paying for the benefits. ComEd Obj. at 8.

ComEd first notes that Section 1-75(c)(1)(L)(ii)-(iii) of the IPA Act ties the payment requirement for RECs purchased under the Adjustable Block Program to the time that the project is interconnected to the distribution system of the contracting electric utility. 20 ILCS 3855/1-75(c)(1)(L)(ii)-(iii). Because those projects interconnected to the systems of municipal utilities, rural electric cooperatives, and Mt. Carmel are not interconnected to a contracting electric utility (Ameren, ComEd, or MidAmerican), the utilities bear no obligation to purchase RECs interconnected to these systems. *See also* 20 ILCS 3855/1-56(b)(3) (tying payment of RECs under the Illinois Solar for All Program to the time that "the device is interconnected at the distribution system level of the utility and is energized"). The Plan also states that "[t]he Program Administrator will determine which utility will serve as the counterparty for each contract. While a batch may contain projects in multiple utility service territories, the Program Administrator will strive to assign contracts to the utility where the bulk of the projects are located, but may not always be able to do so …." Plan at 120. In light of the statutory requirement tying the utility's payment obligation to the date of interconnection to the utility's system, ComEd does not understand how the proposed assignment of contracts, including those with projects

interconnected to municipal utilities and rural electric cooperatives, comports with the law. ComEd Obj. at 8-9.

Moreover, ComEd notes that while it is true that Section 1-10 of the IPA Act initially defines "community renewable generation project" and "distributed renewable energy generation device" more broadly to permit interconnection with an electric utility, municipal utility, or rural electric cooperative, these definitions (like all of the definitions in Section 1-10) are subject to any additional qualifications or restrictions that the General Assembly might apply to them in the context of a given statute. 20 ILCS 3855/1-10. For example, Section 1-10 defines these terms to include a project or device "powered by wind, solar thermal energy, PV cells or panels, biodiesel, crops and untreated and unadulterated organic waste biomass, tree waste, and hydropower that does not involve new construction or significant expansion of hydropower dams." *Id*. Yet, when the legislature created the Adjustable Block Program in Section 1-75(c)(1)(K), it severely narrowed these defined terms by restricting the eligible projects and devices to only "new photovoltaic projects." 20 ILCS 3855/1-75(c)(1)(K). As a result, the broader definitions in Section 1-10 did not fully apply in the context of the Adjustable Block Program. ComEd Obj. at 9.

ComEd points out that the same is true regarding projects interconnected to the systems of municipal utilities or rural electric cooperatives. While the initial definitions in Section 1-10 are broad enough to contemplate these interconnections, none of the programs permit interconnection with an entity other than an electric utility. Because the General Assembly tied the payment obligation to the time at which the project is interconnected to the electric utility's system, the legislature did not leave the issue open to interpretation, much less expansion, to include municipal utilities or rural electric cooperatives. The Plan should thus be revised to give effect to the General Assembly's clear intent to limit eligible projects and devices to those interconnected to the contracting utility's system. ComEd Obj. at 10.

The IPA's and the Joint Solar Parties' efforts to interpret Section 1-75(c)(1)(L)'s reference to "utility" as something other than an electric utility inevitably end in proposals that strain credulity. According to Section 1-75(c)(1)(L), payment must be made "by the contracting utilities at the time that the facility producing the [RECs] is interconnected at the distribution system level of the utility and energized." 20 ILCS 3855/1-75(c)(1)(L); 20 ILCS 3855/1-56(b)(3). Although the IPA and the Joint Solar Parties concede that "contracting utilities" refers to the electric utilities, they go on to claim that the subsequent reference to "utility" in the same sentence does not mean an electric utility; rather, in this particular instance "utility" abruptly takes on a new meaning. IPA Resp. at 5-6; JSP Resp. at 20-21; ComEd Rep. at 16-17.

ComEd argues that it is axiomatic of statutory interpretation that specific, qualifying provisions control and supersede more general provisions, and thus the Programs' particular interconnection requirements must be given full effect. *See Knolls Condominium Ass'n v. Harms*, 202 Ill. 2d 450, 459 (2002) ("It is also a fundamental rule of statutory construction that where there exists a general statutory provision and a specific statutory provision, either in the same or in another act, both relating to the same subject, the specific provision controls and should be applied."). In addition, despite parties' claims to the contrary, no ambiguity exists regarding the meaning of the term

"utility" – the IPA Act is replete with examples of "utility" being used to refer to the electric utilities that are the subject of its provisions. ComEd Rep. at 11-12.

Regarding the Community Renewable Generation Program, ComEd notes that the Plan concedes that the definition of "subscribers" (to the community renewable generation projects) requires that they "'take[] delivery service from an electric utility,' which as defined in the IPA Act does not include cooperative and municipal utilities." Plan at 135. Because this requirement ensures that subscribers can take advantage of PA 99-0906's new electric utility net metering provisions available to community renewable generation projects, the Plan's proposed solution is to require "actions be taken by the rural electric cooperative or municipal utility" to offer the kinds of net metering, billing, and crediting services required of electric utilities. Plan at 136. At the same time, however, the Plan acknowledges that these "entities [are] not regulated by the state, [and] are free to choose to take these actions or decline to take these actions." *Id*. While the Plan proposes that the Approved Vendor obtain a certification confirming that the subject municipal utility or cooperative is in compliance with all of these requirements, it is unclear how the IPA or Commission would ensure that a municipality or cooperative continues to abide by all of the net metering, billing, and payment provisions proposed in the Plan. ComEd asserts the Plan does not apply to these entities, and neither the IPA nor Commission has the authority to regulate municipal utilities or rural electric cooperatives with respect to these practices and activities. ComEd Obj. at 10-11.

ComEd notes that, regarding the Illinois Solar for All Program, the Plan states that the law "is silent on how to allocate RECs from projects located in the service territories of municipal utilities, rural electric cooperatives, or Mt. Carmel Public Utility," and goes on to propose to allocate to a utility's RPS goals only those RECs procured through contracts with that utility. Plan at 153. As a result, RECs from projects procured through contracts with the IPA would not be applied to the utility's RPS goals. ComEd argues that this proposal is inconsistent with additional provisions of the law and other Programs, including the following: (i) Section 1-56(b)(3) expressly requires that all of the RECs purchased under the Illinois Solar for All Program – regardless of whether the contract is executed by the utility or IPA – be applied and counted towards the utilities' obligations under Section 1-75(c) (20 ILCS 3855/1-56(b)(3); Plan at 152); (ii) the Adjustable Block Program counts all RECs generated from projects in the service territories of municipal utilities and rural electric cooperatives; and (iii) neither the IPA Act nor PUA provides support for an approach that would use monies collected for the achievement of the State's RPS goals to purchase RECs that do not contribute to those goals. ComEd Obj. at 11.

This problematic result – where funds collected from customers are spent on RECs that never count toward achievement of State RPS goals – further supports the arguments advanced by ComEd that the IPA Act is intended to exclude projects located in the service territories of municipal utilities and rural electric cooperatives. *See DuPage County Election Comm'n v. State Bd. of Elections*, 345 Ill. App. 3d 200, 208 (2d Dist. 2003) ("[A] court should avoid statutory interpretations that lead to absurd results.") (citing In re D.D., 196 Ill. 2d 405, 418-19 (2001)). Given that the IPA and others argue that projects within municipal utilities' and rural electric cooperatives' service territories should be included because they provide benefits throughout the State (ELPC Resp. at 14-15;

IPA Resp. at 3-9; JSP Resp. at 20-21), it is unclear why the RECs associated with the Statewide benefits should go unrecognized toward achievement of the State's RPS goals. ComEd Rep. at 20.

The IPA posits that "utility" means – for the first time in the IPA Act – an electric utility, municipal utility, or rural electric cooperative despite no citation or evidence that the term utility has ever been interpreted to have such a meaning." IPA Resp. at 5-6. ComEd points out that the term "rural electric cooperative" does not include the word "utility." The definitions of electric utility and public utility, moreover, expressly exclude municipal utilities and rural electric cooperatives, and all other uses of "utility" clearly refer to the electric utility. The Joint Solar Parties, on the other hand, claim that "utility" generically means "the grid." JSP Resp. at 20. Like the IPA, the Joint Solar Parties offer no citation or evidence for this interpretation of "utility." ComEd Rep. at 17.

The plain language of the Community Renewable Generation Program set forth in Section 1-75(c)(1)(N) contains numerous provisions confirming that this program is limited to projects located in the service territories of the electric utilities charged with implementing the various operational, billing, and crediting requirements upon which the Program relies. *See* 20 ILCS 3855/1-75(c)(1)(N). In sum, the law limits the footprint of the Community Renewable Generation Program to the service territories of the electric utilities that are charged with implementing the operational and billing requirements on which the Program relies. Indeed, compliance with these requirements is so important that PA 99-0906 mandated that electric utilities file new tariffs clearly laying out the new terms and conditions. *See* 220 ILCS 5/16-107.5(l-5); ComEd Rep. at 18-19.

While the Plan would have the Approved Vendor obtain a certification confirming that the subject municipal utility or rural electric cooperative is in compliance with all of these requirements, the reality, as the IPA concedes, is that these "entities [are] not regulated by the state, [and] are free to choose to take these actions or decline to take these actions." Plan at 136. Therefore, nothing in Section 1-75(c)(1)(N) supports any departure from the plain language of the statute limiting the projects to the service territories of electric utilities who are required by law to provide the billing and crediting benefits that are crucial to the success of the Program. ComEd Rep. at 19.

While the IPA points to the Supplemental Photovoltaic Procurement in support of excluding the RECs from contributing toward the RPS targets, this example is plainly inapposite. The statutory provisions creating the Supplemental Photovoltaic Procurement expressly provide that it is carved out from and not subject to the RPS: "The supplemental procurement provided in this subsection (i) shall not be subject to the requirements and limitation of subsections (c) and (d) of this Section." 20 ILCS 3855/1-56(i). Consistent with this provision, the Commission's Order approving the Supplemental Photovoltaic Procurement Plan highlights that there are "no REC procurement target amounts." *Illinois Power Agency*, Docket No. 14-0651, Final Order at 35 (Jan. 21, 2015). In contrast, the programs under the new RPS do not exclude the contribution of any RECs procured under the Programs. ComEd Rep. at 21.

ComEd argues that the Plan's proposal to include within the programs those projects that are located within the service territories of municipal utilities, rural electric cooperatives, and Mt. Carmel faces a number of legal and policy challenges, none of

which appears to be readily surmountable. ComEd thus recommends that these projects be excluded from participating in the Programs. To the extent the IPA or Commission decides otherwise, all RECs must be counted toward the State's RPS goals consistent with the provisions previously identified. ComEd Obj. at 11.

2. Elevate/GRID

Elevate/GRID believe that it is very important for all environmental justice and economically disadvantaged communities and individuals to have opportunities to participate in the Illinois Solar for All Program, including those in municipal utility and rural electric cooperative territory. In their Plan development efforts with the Illinois Solar for All Working Group, Elevate/GRID have routinely supported that, if certain conditions are met, community solar projects in these areas should be allowed to participate. Elevate Resp. at 2-3.

3. ELPC

ELPC disagrees with ComEd and argues that the statute is clear that the legislature intended the IPA's community solar and adjustable block distributed generation programs to be available to projects located in the service territories of municipal utilities and rural electric co-operatives, so long as the projects comply with the IPA's rules and requirements for those respective programs. The best evidence of this legislative intent is that the statute explicitly defines "community renewable generation project" and "distributed renewable energy generation device" to include facilities that are interconnected at the distribution system level "of an electric utility …, a municipal utility … or an electric cooperative..." 20 ILCS 3855/1-10. ELPC maintains that the intent to include municipal utilities and rural electric co-operatives is clear, and ComEd's citations to ambiguous language in other unrelated sections of the statute are unpersuasive. ELPC Resp. at 14.

ELPC opines that ComEd also misunderstands the statute's overall structure and legislative intent when it argues that "the customers [of municipal utilities or electric cooperatives] do not pay any charges or fees to support or fund the programs to be offered under the Plan, … [y]et the Plan proposes to allow projects from these entities' service territories to participate in the Programs." ComEd Obj. at 8. The RPS creates a system in which the customers of Illinois electric utilities support the procurement of RECs from across the State—and even in some cases from adjacent states—in furtherance of public health, environmental, and grid diversity benefits that accrue to all the citizens of Illinois. Projects in municipal utilities and rural electric co-operatives territory can help "diversify Illinois electricity supply, avoid and reduce pollution, reduce peak demand, and enhance public health and well-being of Illinois residents" in the same way as projects in electric utility territory or in adjacent states. 20 ILCS 3855/1-5(6)). Furthermore, ComEd would be contracting for and receiving the RECs generated from projects in municipal utilities and rural electric co-operatives territories just as they would contract for and receive the RECs generated by projects in other utility service territories and, potentially, in adjacent states. The Commission should reject ComEd's argument to "limit eligible projects and devices to those interconnected to the contracting utility's system." ComEd Obj. at 10; ELPC Resp. at 14-15.

4. Joint Solar Parties

The Joint Solar Parties state that nothing in Section 1-75(c)(1)(K) restricts the Adjustable Block program as claimed by ComEd. ComEd instead points to Sections 1-75(c)(1)(L)(ii) and (iii). The flaw in ComEd's argument is revealed by actually quoting the statutory language:

> . . . the renewable energy credit purchase price shall be paid in full by the contracting utilities at the time that the facility producing the renewable energy credits is interconnected at the distribution system level of the utility and energized. The electric utility shall receive and retire all renewable energy credits generated by the project for the first 15 years of operation.

20 ILCS 3855/1-75(c)(1)(L)(ii). The contracting utility is ComEd (or Ameren or MidAmerican), and electric utility is a statutorily defined term. Unlike ComEd's implication, there is no requirement for interconnection behind the contracting utility or electric utility—only that the contracting utility and electric utility pay on certain terms and retire all RECs. ComEd apparently confused the use of "the utility" as referring back to "the contracting utility," but such a reading would, as ComEd argues, would conflict with Section 1-75(c)(1)(K)'s broader eligibility. The better reading is "the utility"—not the "electric utility" and not "the contracting utility"—is the grid, whether public utility (electric utility), municipal utility, or cooperative, behind which the system is interconnected. Such an interpretation is fully consistent and in fact effectuates the broader language of Section 1-75(c)(1)(K) and the definition of "community renewable generation project" in Section 1-10. 20 ILCS 3855/1-10 and 1-75(c)(1)(K); JSP Resp. at 20-21.

The rest of ComEd's argument appears to read too much into the Plan's use of the term "electric utility." The Plan can easily be corrected to demonstrate the intent that a public utility (as defined by 220 ILCS 5/3-105), a municipal utility, or a rural electric cooperative can be "the utility" behind which an Adjustable Block-qualifying facility is interconnected. JSP Resp. at 21.

In addition, the Joint Solar Parties wish to respond to ComEd's inaccurate policy argument that: "The customers of these entities thus do not pay any charges or fees to support or fund the programs to be offered under the Plan, including the Adjustable Block Program, Community Renewable Generation Program, and Illinois Solar for All Program." ComEd Obj. at 8. ComEd customers are having ComEd purchase and retire new build community solar RECs on their behalf—a transaction required by PA 99-0906. The contracts are REC-only, so ComEd is not purchasing other components (such as energy) that will not result in direct benefits to ComEd ratepayers. JSP Resp. at 21.

Taken to its logical extreme, the Joint Solar Parties assert that ComEd's argument contravenes the intent of PA 99-0906. The Joint Solar Parties cannot imagine that ComEd is suggesting, for instance, that ComEd customers should not pay for—and do not benefit from—Adjustable Block program-eligible facilities in the Ameren or MidAmerican service territories. However, ComEd's legal argument (if, for instance, an Adjustable Block-eligible facility was interconnected into Ameren's distribution system) would prevent ComEd from procuring those RECs. ComEd's recommendation is unduly

broad, contrary to previous distributed generation procurements, and should be rejected. JSP Resp. at 21.

5. CUB

CUB joins ELPC in opposing ComEd's proposal to carve out municipal utility and rural electric cooperative service territories from the Adjustable Block, Community Renewable Generation, and Illinois Solar for All Programs. *See* ELPC Resp. at 14–15. As ELPC explains, ComEd's proposal to "limit eligible projects and devices to those interconnected to the contracting utility's system" (ComEd Obj. at 10) rests on two factual premises that are simply untrue. CUB Rep. at 11.

First, ComEd supposes the legislation does not contemplate that customers in the service territories of municipal utilities and rural electric cooperatives may participate in these programs. ELPC disproves this premise by pointing to statutory provisions explicitly including facilities that are interconnected at the distribution system level of a municipal utility or rural electric cooperative in the definitions of "community renewable generation project" and "distributed renewable energy generation device." ELPC Resp. at 14 (citing 20 ILCS 3855/1-10). Like ELPC, CUB reads this statutory language as an expression of intent to include municipal utility and rural electric cooperative service territories as within the scope of the relevant programs the statute created. CUB Rep. at 12.

Second, ComEd contends that customers in municipal utility and rural electric cooperative service territories "do not pay any charges or fees to support or fund the programs to be offered under the Plan" and therefore ought not to be eligible to participate in the programs. ComEd Obj. at 8. As ELPC explains in its Response, this line of reasoning does not track the intent and structure of these programs. As ELPC points out, the RPS provides for the transaction of RECs from anywhere in the state, as well as from several facilities in adjacent states. This example illustrates a broader theme in the legislation. The stated value sought from procuring renewable resources is to "diversify Illinois electric supply, avoid and reduce pollution, reduce peak demand, and enhance public health and well-being of Illinois residents." 20 ILCS 3855/-15(6). Under the Plan, utilities would transact RECs regardless of service territory, so long as those facilities and REC contracts meet the requirements of the statute. CUB Rep. at 12.

Finally, CUB shares the IPA's view, reflected in the Plan, that projects located in the service territories of municipal utilities, rural electric cooperatives, and Mt. Carmel can and ought to be eligible to participate in the programs the Plan covers. CUB, like the IPA, sees no legal or policy justification for excluding these projects from participation. In addition to echoing points ELPC raised, the IPA points out that its 2015, 2016, and 2017 distributed generation procurements, under Commission-approved plans, were open to projects in the service territories. ComEd's proposal to limit program eligibility to the service territories of the contracting utilities asks the IPA to deviate from current practices without offering a compelling reason for doing so. CUB asks that the Commission approve the Plan's language keeping these programs open to projects located in the service territories of municipal utilities, rural electric cooperatives, and Mt. Carmel. CUB Rep. at 15.

6. NRDC

NRDC asserts that the Plan correctly allows distributed generation systems and community solar projects not located in public utility territories in Illinois to be eligible RECs under the Plan. Plan at 95. ComEd incorrectly argues projects in these areas should be prohibited. *See* ComEd Obj. at 8-12. As the IPA correctly notes, there is no prohibition that limits project eligibility to projects within utility service territories, and the IPA Act also expressly allows projects in adjacent states to qualify. IPA Resp. at 3-9; NRDC Rep. at 3.

7. IPA

As an initial matter, the IPA states that there is not now—and never has been—any requirement in Illinois law that renewable generating facilities producing RECs to meet the utilities' compliance obligations under the Illinois RPS actually be located in those utilities' service territories. Indeed, changes made through PA 99-0906 expressly contemplate the eligibility of RECs from facilities located in "states adjacent to Illinois," despite ratepayers in those states clearly not supporting Illinois RPS funding. IPA Resp. at 3.

Nor has this limitation ever been understood to apply to distributed generation systems. The 2015, 2016, and 2017 distributed generation procurements conducted by the IPA (under procurement plans approved by the Commission) contained no prohibition against systems in these entities' service territories. Nor did those procurements prohibit systems located behind the meter of RES customers, despite those customers never having paid "any charges or fees to support" that procurement's budget. Contracts in such procurements were assigned on a pro rata basis, thus resulting in ComEd, Ameren, and MidAmerican each entering contracts with distributed generation systems statewide, whether in another public utility's service territory or in the territory of a rural electric co-operative or municipal utility. The primary driver for regulatory compliance was—and continues to be—which utility is the counterparty to the underlying REC contract (and thus the recipient of the generated RECs to be retired for RPS compliance), and not a geographic connection between the renewable generating facility and the utility system. IPA Resp. at 3-4.

PA 99-0906 does, however, introduce new location requirements into the Illinois RPS. But these requirements, found in Section 1-75(c)(1)(I) of the IPA Act, expressly allow RECs from systems located in Illinois municipal utility and rural electric co-operative service territories to meet the RPS, as those facilities' RECs "are generated from facilities located in this State." The IPA Act contains no prohibition regarding where "in this State" such projects must be located, let alone a restriction that such projects must be located within an affected utility's service territory. IPA Resp. at 4.

Nevertheless, ComEd claims statutory support for the proposition that RECs from distributed generation and community solar projects located in rural electric co-operative and municipal utility service territories are prohibited. For the Adjustable Block Program, ComEd cites not an express prohibition, but instead a payment timing requirement, stating that Section 1-75(c)(1)(L)(ii)-(iii) of the IPA Act ties the payment requirement for RECs purchased under the Adjustable Block Program to "the time that the facility producing the renewable energy credits is interconnected at the distribution system level

of the utility and energized." In ComEd's view, because "electric utility" may refer only to regulated utilities, this verbiage (i.e., the very use of the word "utility") found in the IPA Act apparently demonstrates the Illinois General Assembly's intent to exclude projects located in municipal electric utility or rural electric co-operative service territories from the Adjustable Block and Illinois Solar for All Programs. IPA Resp. at 4-5.

The IPA opines that this argument must be rejected. First, the clause in question does not use the term "electric utility" to refer to the system's interconnection, let alone contain the necessary reference back to a specific statutory definition to establish any limitation. Indeed, the only portion of ComEd's cited statutory provisions which uses the term "electric utility" refers to the "electric utility" receiving and retiring RECs from the project—an arrangement entirely consistent with the Plan's proposal, in which projects in the territories of rural electric co-operatives and municipal utilities are grouped with those of ComEd, Ameren, and MidAmerican for block, pricing, and contract purposes (with only ComEd, Ameren, and MidAmerican serving as the resulting REC contractual counterparties). IPA Resp. at 5.

Second, as ComEd readily admits, the very definitions of "community renewable generating facility" and "distributed renewable energy generation device" found in the IPA Act expressly include projects "interconnected at the distribution system level of either an electric utility as defined in this Section, *a municipal utility as defined in this Section that owns or operates electric distribution facilities, or a rural electric cooperative as defined in Section 3-119 of the Public Utilities Act*." 20 ILCS 3855/1-10 (emphasis added). While ComEd attempts to downplay this express allowance by stating that Section 1-75(c) of the IPA Act perhaps did not seek to import the entirety of this definition, Section 1-75(c) is the only place in which the terms "community renewable generating facility" and "distributed renewable energy generation device" are used in the entire IPA Act. A far more plausible explanation is that the General Assembly sought to define terms used only in Section 1-75(c) of the IPA Act through their statutory definitions found in Section 1-10 of the IPA Act. That less restrictive choice should be respected. IPA Resp. at 5-6.

ComEd next turns to a provision which does use the term "electric utility"—the definition of the term "subscriber." In ComEd's view, because "subscriber" uses the term "electric utility" in its definition, ComEd believes a limitation can be inferred, leaving the underlying community renewable generating facility ineligible for the RPS. But this argument fails for at least two reasons. First, the Adjustable Block Program does not procure RECs from "subscribers;" it procures RECs from distributed generation "devices" and community renewable generating "projects." 20 ILCS 3855/1-75(c)(1)(K). And the definition of those terms contains an express allowance for facilities interconnected with rural electric co-operatives and municipal utilities. Second, ComEd's concern that "subscribers can take advantage of PA 99-0906's new electric utility net metering provisions available to community renewable generation projects" is addressed by the Plan, as the Plan requires equivalent provisions for any eligible municipal utility or rural electric co-operative project. To address ComEd's concern about ongoing compliance, the IPA and its Program Administrator can monitor the status of these programs. Lastly, establishing program eligibility for projects in these service territories is no more a "regulatory" activity than determining the eligibility of adjacent-state projects for competitive REC procurements, a task assigned to the IPA by law (20 ILCS 3855/1-

75(c)(1)(I)) despite the lack of any "regulatory" authority over non-Illinois projects. IPA Resp. at 6-7.

The IPA states that ComEd is incorrect that the IPA Plan, with respect to the Illinois Solar for All Program, requires that "RECs from projects procured through contracts with the IPA would not be applied to the utility's RPS goals." The IPA clarifies that it is only for those projects located in municipal utilities, rural electric cooperatives, or Mt. Carmel Public Utility for which the IPA—and not the utility—is the contractual counterparty that RECs procured through those contracts would not be applied to the utility's RPS goals. This is a sensible approach: for these projects, no utility with a compliance obligation is the contract counterparty or responsible for receiving and retiring the RECs, and the system in question contains no nexus with any one utility. But in situations where the utility does have some nexus with the underlying project—i.e., the project is located within its service territory—the Plan mirrors the law's requirement that "the credits shall count towards the obligation under subsection (c) of Section 1-75 of this Act for the electric utility to which the project is interconnected." 20 ILCS 3855/1-56(b)(3); IPA Resp. at 7.

The IPA further explains that the funds in question are alternative compliance payments (received no more recently than 2016) from RESs held in the RERF. As the State, and not the utility, is the underlying counterparty to those REC delivery contract, renewable energy credits purchased using that fund have never been used to meet Section 1-75(c)'s utility procurement targets. Not only was this true for the IPA's Supplemental Photovoltaic Procurement conducted pursuant to Section 1-56(i) of the IPA Act, this was even true in the case of curtailed RECs—those RECs due to be purchased by the utilities under 2010 long-term power purchase agreements selected under a procurement conducted pursuant to Section 1-75(c), but for which payment could not be made due to renewable resource budget limitations. Those RECs were purchased and retired by the state using the exact funds at issue here, but made no contribution to any quantitative or percentage-based goal in the Illinois RPS. IPA Resp. at 7-8.

The IPA agrees with Elevate/GRID that if such projects are prohibited, then geographic diversity will be compromised with impacts more acutely felt in environmental justice and economically disadvantaged communities whose projects would otherwise be eligible for the Illinois Solar for All Program. The IPA appreciates Elevate/GRID's perspective, and believes it reinforces the arguments offered in the IPA's Response. *See* IPA Resp. at 3-9; IPA Rep. at 3-4.

For the foregoing reasons, the IPA asserts that ComEd's arguments with respect to the eligibility of projects located in rural electric co-operatives, municipal utilities, and Mt. Carmel must be rejected. The IPA believes it has taken a sensible, pragmatic approach to municipal utility and rural electric co-operative project Adjustable Block Program participation. Most importantly, the approach does not create "legal or policy challenges," let alone ones not readily "surmountable." Instead, the IPA avers that its approach offers both the closest match with the RPS's underlying legal requirements and Section 1-75(c)(1)(K)'s broader objective of seeing "photovoltaic distributed renewable energy generation devices and new PV community renewable energy generation projects in diverse locations" and "not concentrated in a few geographic areas." 20 ILCS 3855/1-75(c)(1)(K). By contrast, creating unnecessary and unwarranted restrictions on project location would only serve to undermine this aim. IPA Resp. at 8-9.

8. Commission Analysis and Conclusion

The question here is whether to allow customers and projects located in the service territories of municipal electric utilities, rural electric cooperatives, or Mt. Carmel to participate in the Adjustable Block Program, Community Renewable Generation Program, and the Illinois Solar for All Program. As discussed below, the answer to this question is no. A separate, second question is whether the IPA can otherwise – outside of these Programs - procure RECs from community renewable generation projects and distributed renewable energy generation devices located in the territories of municipal electric utilities, rural electric cooperatives, or Mt. Carmel. As explained herein, the answer to this second question depends on whether those devices and projects are eligible to bid into the IPA's Spot Procurements.

With respect to the second question, the IPA and others raise many compelling policy arguments in support of allowing these devices and projects to participate in the IPA's Spot Procurements. For instance, the Commission agrees that the IPA should procure RECs from diverse locations throughout the State. Also, the Commission agrees that community and low-income programs provide benefits to participants that should be available to all Illinois residents regardless of their electricity provider. The Commission fully supports the IPA procuring RECs from such projects in the Spot Procurements. Procuring RECs from such projects located in the service territories of municipal electric utilities, rural electric cooperatives, or Mt. Carmel supports the goal to "diversify Illinois electricity supply, avoid and reduce pollution, reduce peak demand, and enhance public health and well-being of Illinois residents." 20 ILCS 3855/1-5(6). The IPA Act clearly envisioned that such projects could participate in Spot Procurements (and perhaps even forward procurements) through its broad definitions of "Community renewable generation project" and "Distributed renewable energy generation device" that allow them to be interconnected to an electric utility, a municipal utility, or an electric cooperative. *See* 20 ILCS 3855/1-10.

When specifically talking about the Adjustable Block Program, Community Renewable Generation Program, and the Illinois Solar for All Program funded by ComEd, Ameren and MidAmerican ratepayers, the Commission cannot read such a broad interpretation into the statutory language. While the Commission agrees with the IPA and others that the definitions of "Community renewable generation project" and "Distributed renewable energy generation device" are broad, the Commission finds that the definitions merely define what these devices and projects are, but the definitions do not say who gets to participate in the programs at issue.

ComEd correctly points out that various provisions within the IPA Act do not make sense if read in the manner suggested by the IPA. In particular, for community solar, the IPA Act states that a "subscriber" is:

> a person who (i) takes delivery service from an *electric utility*, and (ii) has a subscription of no less than 200 watts to a community renewable generation project that is located in the electric utility's service area.

20 ILCS 3855/1-10 (emphasis added). The IPA Act defines "electric utility" to mean that it has the same definition found in Section 16-102 of the PUA, i.e., it does not mean

municipal electric utilities, rural electric cooperatives, or Mt. Carmel. Subsection 1-75(c)(1)(N) states further that:

> *Electric utilities* shall provide a monetary credit to a subscriber's subsequent bill for service for the proportional output of a community renewable generation project attributable to that subscriber

20 ILCS 3855/1-75(c)(1)(N) (emphasis added). Here again, the plain language of the IPA Act shows that it cannot be expanded to include municipal electric utilities, rural electric cooperatives, or Mt. Carmel, when it specifically references electric utilities.

For the Adjustable Block Program, ComEd notes that Section 1-75(c)(1)(L)(ii)-(iii) of the IPA Act ties the payment requirement for RECs purchased to the time that the project is interconnected to the distribution system of the contracting electric utility. 20 ILCS 3855/1-75(c)(1)(L)(ii)-(iii). Also, under Section 1-75(c)(1)(L)(v), the utility is the counterparty to the contract that is executed, and the contracts are approved by the Commission under the process described in Section 16-111.5 of the PUA. The Commission notes that although the IPA Act in this Subsection uses “utility” not “electric utility,” it is clear that only electric utilities are subjected to Section 16-111.5 of the PUA. Finally, Subsection 1-75(c)(1)(L)(vi) states that the programs will be limited to funds collected by the electric utility or subject to the rate cap, which limits the amount that the RPS can increase electric utility customer bills.

In its RBOE, the IPA suggests that clarification is necessary regarding the structure of the Plan’s batch submittal and contracting process. The IPA claims that the Commission, by requiring that projects for these programs be located in the service territories of one of these three electric utilities, is also requiring that projects must be in the same service territory as the contracting utility. Although there is some merit to this suggestion, the Commission does not find it necessary and it would disrupt the IPA’s proposed process.

For the Illinois Solar for All Program, the IPA Act states that:

> the [RECs] shall count towards the obligation under subsection (c) of Section 1-75 of this Act for the electric utility to which the project is interconnected.

20 ILCS 38551-56(b)(3). The Plan states that the IPA does not intend to count the RECs procured from municipal electric utilities, rural electric cooperatives, or Mt. Carmel toward any utility’s RPG goal. The IPA argues that this Subsection only applies to Illinois Solar for All Programs that are interconnected with an electric utility, but the Commission finds that rather it means that Illinois Solar for All Programs are to only be interconnected with an electric utility. Importantly, the Illinois Solar for All Program is funded by ratepayers in the service areas of electric utilities.

ELPC argues that ComEd misunderstands the statute’s overall structure and legislative intent when ComEd argues that these non-electric utility customers do not pay to support the programs and therefore should not participate. ELPC Resp. at 14-15. The Commission disagrees. The Commission notes that ELPC continues by arguing that the RPS is to support the procurement of RECs from across the State and adjacent states if

they meet the public interest criteria. These customers that are outside electric utility territories will enjoy the health and environmental benefits that come from overall reduced reliance on fossil fuels. ELPC is also fails to acknowledge that the goal of these programs is not merely REC procurement; it is to allow customers to access solar that would otherwise not have the ability to enjoy the benefits of solar. The customers of these utilities pay for this opportunity through fees on their electric bills. The Commission finds that it is ELPC that misunderstands the statute's structure and legislative intent.

These programs do not merely provide for the purchase of RECs at market price, but provide many other benefits as well. The ratepayers in the service territories of ComEd, Ameren and MidAmerican are paying for the benefits, which no party disputes. The Illinois Solar for All Program requires that a participant have no up-front costs, tangible economic benefits, and is paid for by funds from the RERF. The RERF is funded by RES customers and RESs do not operate in the territories of municipal electric utilities, rural electric cooperatives, or Mt. Carmel. The Adjustable Block Programs are pre-paid 15-year contracts for small distributed generation and for large distributed generation and community solar, payments are made over the first four years of a 15 year contract. These are very beneficial contract terms that electric utility ratepayers are funding.

The Commission notes that the territories of Ameren, ComEd and MidAmerican comprise the majority of electric customers in the State of Illinois. The geographic breadth of these utilities combined with the Plan's co-location prohibition will more than satisfy the IPA Act's requirement of geographic diversity. The Commission agrees with ComEd that the Plan should be amended to limit application of these programs to the areas of Ameren, ComEd and MidAmerican.

XI. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having reviewed the entire record, 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 recital 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 initial 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 initial 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 60 days of this Order consistent with the findings herein.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that subject to the modifications adopted in the prefatory portion of this Order, the initial long-term renewable resources procurement plan, is hereby approved.

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 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 3rd day of April, 2018.

(SIGNED) BRIEN SHEAHAN

Chairman