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BOARD OF PUBLIC UTILITIES  
TRENTON, NJ

STEFANIE A. BRAND  
Director

November 30, 2018

**VIA ELECTRONIC MAIL** ([rule.comments@bpu.nj.gov](mailto:rule.comments@bpu.nj.gov))  
**AND HAND-DELIVERED**

The Honorable Aida Camacho-Welch, Secretary  
New Jersey Board of Public Utilities  
ATTN: BPU Docket Number: QO18060646  
44 S. Clinton Avenue, 3<sup>rd</sup> Floor, Suite 314  
Trenton, New Jersey 08625-0350

**Re: I/M/O Community Solar Energy Pilot Program Rules**  
**Proposed New Rules: N.J.A.C. 14:8-9**  
**BPU Docket No. QO18060646**  
**Proposal No.: PRN 2018-090**

Dear Secretary Camacho-Welch:

Please accept this letter as the comments of the New Jersey Division of Rate Counsel ("Rate Counsel") regarding the above-referenced rulemaking. Enclosed is one additional copy. Please date stamp the copy as "filed" and return to our courier. Thank you for your consideration and attention to this matter.

### **INTRODUCTION**

The above-referenced rule proposal has been issued by the New Jersey Board of Public Utilities ("BPU" or "Board") to implement Section 5 of P.L. 2018, c. 17 (the "Clean Energy Act"), N.J.S.A. 48:3-87.11, which provides for the establishment of a "Community Solar Energy Pilot Program" to allow electric utility customers to participate in and receive bill credits from

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solar projects that are located remotely from the properties where they receive electric service. The purpose of the pilot, as stated in the legislation, is to facilitate the implementation of a permanent community solar program within 36 months of the adoption of the rules establishing the pilot program. N.J.S.A. 48:3-87.11(f). The legislatively established goal for the permanent program is “at least 50 megawatts of solar energy projects per year, taking into account any changes in the SREC program; ....” N.J.S.A. 48:3(f)(2).

Instead of establishing a pilot program that would provide necessary experience and groundwork for the development and implementation of the permanent program, the proposed rules would mandate a full-scale program with a target capacity starting at 75 megawatts in the initial year of the pilot, and potentially increasing in the succeeding two years. The purpose of a pilot program is to provide information and feedback on program design, market responses and lessons learned to inform the development of a more permanent program down the road. A full-scale roll-out of community solar does not serve this purpose. Further, the proposed rules do not provide for the data collection, reporting and evaluation activities that are essential component of a pilot.

The Board also must be cognizant of the fact that New Jersey’s solar energy market is in transition. The Clean Energy Act states that the Board must adopt rules to close its current Solar Renewable Energy Certificate (“SREC”) program to new applicants upon the attainment of 5.1 percent of retail sales, and no later than June 1, 2021, and must also develop a modified or new program to replace the current program. N.J.S.A. 48:3-87(d)(2). At this time, the Board is in the process of making the decisions that will shape New Jersey’s future solar energy market. Based on input provided in the stakeholder proceeding that the Board is currently conducting to consider how the transition will be achieved, it appears likely that the current SREC market will

close during the first quarter of calendar year 2019, and that thereafter an interim program will be in effect until a permanent replacement program can be developed and implemented. See Comments on behalf of New Jersey League of Conservation Voters et al. regarding New Jersey's Solar Market Transition (Nov. 2, 2018). Implementation of a large-scale program during the transition could disrupt the State's solar energy market and complicate the transition.

Further, the rules expose non-participating ratepayers to rate increases to pay for incremental costs incurred by New Jersey's electric distribution companies ("EDCs"), including the costs of providing above-market "retail" net metering credits, system upgrades, advanced meters, information technology upgrades, and incentive "adders" for specific types of projects. The EDCs may also seek to recover claimed "lost revenues."

The Clean Energy Act establishes caps on the rate increases that may be incurred to meet the State's goal. N.J.S.A. 48:3-87 (d) (2) requires that 50% of the kilowatt-hours of electricity sold in the State to come from Class I renewable energy sources, and limits the cost of achieving that goal to nine percent of the total amount paid for electricity by all consumers in New Jersey through energy year 2020 and seven percent of the total amount paid for electricity by all consumers in New Jersey thereafter. Achieving the goal within the cost cap will be challenging, as the need to compensate the owners of "legacy" solar projects will consume a large share of the available budget. Accordingly, it is important for the Board to carefully evaluate the costs of all initiatives to incentivize solar development. The rule proposal does not quantify or even acknowledge the potential costs of the program envisioned by the Board, or its impact on the State's ability to achieve its overall clean energy goals. A smaller scale pilot will help the Board in evaluating and managing the costs of community solar.

For these reasons, the Board should not implement the full-scale program contemplated in the rule proposal. The pilot program should be limited to projects totaling no more than 16 megawatts (“MW”) per year, for a total of 48 MW. Further, these projects should be limited to those that serve low-income and moderate-income households, and communities that have been historically disproportionately affected by the health and other impacts of environmental degradation. The limited resources available for the pilot program should be used to assist households and communities that face the steepest obstacles to participation in the solar market, and that have experienced the greatest adverse impacts from the State’s dependence on fossil fuels.

It will also be important to structure the program to allow competitive forces to minimize costs. Rate Counsel supports the Board’s decision to select projects through a competitive process, rather than on a “first come, first serve” basis. However, it is unclear whether the application process provided in the rules will result in the selection of projects that will accomplish the State’s goals at the lowest cost. Since the proposed rules do not specify any of the criteria the Board proposes to use to select projects, it is unclear to what extent cost effectiveness will be considered. The rules should be amended to provide for the selection of projects through an RFP process. The Board should not select projects based on multiple factors that involve subjective judgments, and should not establish “adders” or additional incentives for specific project characteristics. Instead, the Board should specify the relevant requirements, so that the market can find the most cost-effective projects.

Rate Counsel’s comments on specific provisions of the proposed rules are set forth below.

## **COMMENTS ON REQUIRED IMPACT ANALYSES**

### **Economic Impact**

*The proposed new rules will provide the opportunity for the development of a new market for solar generation. In conformance with the Clean Energy Act, the proposed rules establish a value of the credit on each subscriber's bill. This value, set at retail rate net metering minus fixed, non-by-passable charges, has been selected based on reasonable and prudent estimates of the cost of community solar project development. Additionally, the proposed credit and annual capacity set forth in this subchapter are within the scope of the existing solar Renewable Portfolio Standard (RPS). The majority of those costs and impacts have already been accounted for in previous rulemaking proceedings. The Community Solar Energy Pilot Program may be subject to changes to existing solar compensation mechanisms (including, but not limited to, Solar Renewable Energy Certificates (SRECs) and the RPS) as they may be modified. Finally, the three-year pilot program will generate actual market information and data that will be used to inform the development of the full-scale Community Solar Energy Program, including an evaluation of the value of the bill credit.*

#### **Comments:**

This statement fails to provide the expected economic impact of the proposed rules. Based on the above statement, the Board has not provided any quantitative analysis because the "majority" of the costs and impacts of the proposed rules "have already been accounted for in previous rulemaking proceedings." However, this is not the case. The rules as proposed would create several categories of costs that would presumptively be paid by non-participating ratepayers. In addition to rate increases to cover the costs of above-market net metering credits, the rules create a presumption that non-participating ratepayers would pay for any incremental costs incurred by the EDCs to accommodate community solar projects, as well as, specifically, the costs of installing advanced meters, the implementation of "Green Button" or similar data sharing, administration of the bill credits, and "adders" or additional incentives the Board may establish for specific types of projects.

All of these costs would have an impact on the State's economy. When utility rates are increased to pay for renewable energy initiatives, there is a corresponding reduction of economic activity in other sectors of the economy. A complete analysis of the economic impact of the proposal must consider both the positive impacts mentioned in the above-quoted statement and the negative impact that resulting from the rate increases that are contemplated in the proposal.

The Board's economic impact statement is also deficient because it does not consider the potential impact of the proposed rules on the State's ability to meet its overall renewable energy goals within the cost caps established in the Clean Energy Act. Following the closure of the current SREC program to new applicants, existing "legacy" projects will continue to receive SRECs for the remainder of their 15-year SREC eligibility period. The cost cap must accommodate both the costs of compensating legacy projects for their SRECs and the costs of new renewable energy development.

At current retail sales levels and SREC prices, the funds needed to cover the cost of SRECs generated by legacy projects will meet, or even exceed the Clean Energy Act cost cap. Assuming total retail sales of 75 million MWh and an average retail rate of \$0.13 per kWh, the cost cap will be about \$900 million for the first three years and \$700 million for each year after. Based on SREC prices at \$212 per MWh, the total dollar amount needed to fund the SREC program at 5.1 percent would be over \$800 million, or 90 percent of the cap for Energy Year 2019 through Energy Year 2021. This leaves very little, if any, funds remaining for new programs and even exceeds the cost cap of \$700 million for EY22 and beyond.

Current SREC Program Estimated Cost		
Total Retail Sales (MWh)	(a)	75,000,000
Solar RPS (%)	(b)	5.1%
Solar RPS (MWh)	(c) = (a)*(b)	3,825,000
Current SREC Price (\$/MWh)	(d)	\$ 212.00
Total SREC Cost (million \$)	(e) = (c)*(d)	810.9

Thus, the Board must reduce the amounts paid for SRECs from legacy projects to create a budget for the costs of new renewable energy initiatives that will affect utility rates during and after energy year 2022. The additional costs for community solar that are contemplated in the proposed rules will be included in that budget. A quantification of those costs is essential in order to establish the budget for the pilot and permanent community solar programs, and the economic impact of these rules.

Rate Counsel notes also that the Board has not supported the statement that one of costs of the program, the net metering credit, “has been selected based on reasonable and prudent estimates of the cost of community solar project development.” The rule proposal contains no analysis of the “cost of community solar project development” nor the level of the net metering credit required to cover such costs.

### **Jobs Impact**

*The proposed new rules are designed to operate within, and expand, the solar market in New Jersey, by enabling access to solar energy for customers unable to benefit from traditional solar. The proposed new rules are designed to operate within the existing solar RPS, and, thus, contribute to the associated impacts on jobs in the development, construction, and operation of solar facilities, and in the sales and management of community solar subscriptions.*

#### **Comments:**

The jobs impact statement is flawed because it does not consider the impact of the rate increase that would result from the proposed rules. When rates and other costs increase to pay for clean energy investments such as community solar, there is a corresponding reduction of economic activity in other sectors of the economy, and a reduction in jobs in those sectors. Although the lost jobs are not as easily identifiable as the created jobs, they can be estimated

using accepted economic models. A complete jobs impact analysis must consider both positive and negative jobs.

### **COMMENTS ON PROPOSED RULE PROVISIONS**

#### **N.J.A.C. 14:8-9.2 Definitions**

##### **“Existing solar project”**

*“Existing solar project,” for the purposes of the Community Solar Energy Pilot Program, refers to a solar project having begun operation and/or been approved by the Board for connection to the distribution system prior to January 1, 2019.*

##### Comments:

Rate Counsel supports this definition of “existing solar project.” This definition properly excludes projects that have already been deemed financeable without the net metering credits available to community solar projects.

##### **“Low-income household” and “Moderate-income household”**

*“Low-income household” means a household with adjusted gross income at or below 200 percent of the Federal poverty level.*

*“Moderate-income household” means a household with a total gross annual household income in excess of 50 percent, but less than 80 percent of the median income, as determined by annual HUD income limits.*

##### Comments:

Under the definitions as proposed, the upper end of the “low-income” range is not the same as the lower end of the “moderate-income” range. The two definitions should be coordinated so that there is no gap or overlap between the two definitions. Also, the term “LMI” is used in the proposed rules but is not defined. A definition of this term should be added.

##### **“Service area”**

*“Service area” means the entire geographic area over which a gas or electric light, heat or power company has a privilege or franchise granted by the State or by any political subdivision of the State, in accordance with the provision so N.J.S.A. 48:2-13 and 14.*

Comments: This definition is inconsistent with the text of the rules, which uses the term “EDC area.”

##### **“Solar panel”**

*“Solar panel” shall have the same meaning as set forth in P.L. 2018, c.17.*

##### Comments:

This definition is inconsistent with the text of the rules, which uses the term “PV panel.”

**“Telemarketing sales call” and “Unsolicited advertisement”**

*“Telemarketing sales call” shall have the same meaning as set forth in N.J.A.C. 14:4-7.2.*

*“Unsolicited advertisement” shall have the same meaning as set forth in N.J.A.C. 14:4-7.2.*

**Comments:**

The referenced definitions contained in N.J.A.C. 14:4-7.2 refer specifically to sales calls and advertising related to the competitive market for electric generation and gas supply. These definitions should be re-written so that they apply to the community solar market. In addition, the term “telemarketing sales call” does not appear elsewhere in the text of the proposed rules, which uses the term “telemarketing.”

**Unused definitions**

**Comments:**

The following definitions do not appear to be needed, as they are not used elsewhere in the draft rules:

- “Customer information”
- “Good utility practice”
- “Historic fill”
- “Regulated entity”
- “Regulated service”
- “Renewable Portfolio Standard” or “RPS”
- “Sanitary landfill”
- “Solar power”

**N.J.A.C. 14:8-9.3 Pilot Program Structure**

**Subsection (c)**

*For each of the three program years, Board staff shall initiate an annual application process pursuant to the Clean Energy Act as follows:*

- 1. Board staff shall present to the Board for approval the application for participation in the Pilot Program and the criteria for evaluation of said applications.*
- 2. Board staff shall open applications for the Pilot Program for a length of time to be enacted at the official approval of the application.*
- 3. Following the close of the application period, Board staff will evaluate and score projects based on criteria identified in the application. Only applications that are substantively complete by the close of the application*



*period will be considered for participation in the Pilot Program for that program year.*

- 4. Board staff will not accept applications for EDCs to develop, own, or operate community solar projects beyond the billing and other responsibilities set forth in this subchapter.*
- 5. Projects will be presented to the Board for approval for participation in the Pilot Program beginning with the highest-scored project, and until the allocated program capacity for that year is filled.*
- 6. Board staff may reject applications that are substantively incomplete at the close of the application period, that are not in compliance with this subchapter, or that do not meet a minimum standard for selection, as set forth in the application. The Board reserves the right to request additional or modified information to complete an application.*
- 7. Approved projects are expected to begin construction within six months of their approval by the Board. Board staff may approve one or more two-month extensions if substantial progress is shown towards beginning construction within the initial six month-period, as determined upon review by Board staff based on the specific circumstances of the project.*
- 8. Approved projects are expected to become fully operational (up to and including having subscribers receive bill credits for their subscription to the project) within 12 months of their approval by the Board. Board staff may approve one or more six-month extensions if substantial progress is demonstrated towards becoming fully operational within the initial 12-month period, as determined upon review by Board staff based on the specific circumstances of the project.*
- 9. Board staff may initiate more than one application period per Program Year.*
- 10. The application periods for PY2 and PY3 may be opened as early as 90 days prior to the end of the previous program year.*
- 11. In the approval process, Board staff may determine that it is appropriate to limit the number of projects approved for a single developer in a program year, in order to promote a diverse pool of developers.*

Comments:

Rate Counsel supports the Board's proposal to use a competitive process to select community solar projects. However, the details of the application and subsequent scoring process are not specified in the proposed rules, making it nearly impossible for stakeholders to evaluate the intention and process in these provisions. The Board should issue a detailed proposal for public comment.

As discussed elsewhere in these comments, it is important that the Community Solar program be conducted in the most cost-effective manner possible. In order to accomplish this, a competitive RFP process should be used to select projects for both the pilot and permanent

programs. A competitive RFP process for the pilot program will provide the necessary groundwork and experience for designing an RFP process for the permanent program. In addition, it is important to focus on cost-effectiveness for the pilot program to provide the basis for budgeting for the costs of a permanent Community Solar program. A focus on cost-effectiveness will help to ensure that this program and other renewable energy initiatives are not limited by the payment of unnecessarily high incentives to some projects.

Rate Counsel also notes the absence of provisions for data collection and program evaluation in this proposed rule. Data collection as part of a pilot program is critical so that the Board and stakeholders can track program development and identify both successes and/or failures of the program. The RFPs issued for community solar projects should include sufficient data collection requirements to support the Board's evaluation activities. .

Rate Counsel supports the Board's proposal to exclude the State's EDCs from participating in this program beyond the billing and other responsibilities specified in the proposed rules. Although the Clean Energy Act provides for EDC participation in the permanent Community Solar program, this provision does not appear in connection with the pilot program. Allowing participation in the pilot program by EDCs that can receive a return on their investments from captive customers would hinder the Board's ability to use competitive market forces to identify the lowest-cost options for community solar.

**Subsection (d)**

*Electric distribution companies shall, subject to review and approval by the Board, be entitled to full cost recovery for any incremental costs incurred in implementation, compliance, and administration of the Pilot Program. EDCs may not set a separate fee or surcharge for community solar projects unless explicitly authorized to do so by the Board.*

Comments:

This appears to be an open-ended provision guaranteeing the EDCs cost recovery for incremental costs coupled with the presumption that those costs will fall on all ratepayers. Any allowable incremental EDC costs should be defined in the rules, as should a process for challenging these recoverable charges. Incremental costs associated with development and interconnection should be the responsibility of the developer. This would include a variety of administrative and other costs, including advanced metering (as required in subsection 14:8-9.7(j)); any Green Button capability costs (as required in subsection 14:8-9.7(k)), any EDC interconnection costs and any EDC billing and collection fees (as outlined in subsections 14:8-9.7(l) through (p)). Any costs incurred by ratepayers and/or EDCs would only reduce the funds left available under the Clean Energy Act cost cap.

Additionally, EDCs and project developers should be required to work together to identify areas of constraint as well as areas where capacity and/or resiliency may be needed and where projects may provide the highest value. Rate Counsel suggests this be part of the regulations.

The Board should reject suggestions presented during the public hearings held in this rulemaking proceeding that these rules establish special mechanisms for the recovery of "lost revenues" by the State's electric distribution utilities. The utilities already have the ability to file

for base rate increases in the event their revenues are insufficient to cover their cost of service, including a reasonable return on their investments. The utilities currently benefit from a number of special rate mechanisms that allow them to increase rates outside of a base rate proceeding. There has been no showing that additional mechanisms are necessary to provide the utilities with an opportunity to cover their costs and earn a fair rate of return. Such mechanisms would be unreasonable for ratepayers, and would further reduce the resources available under the Clean Energy Act cost cap to meet the State's renewable energy goals.

#### **N.J.A.C. 14:8-9.4 Pilot Program Capacity Limits**

##### **Subsections (a) and (b)**

- (a) The annual capacity limit for all community solar projects approved for participation in the Pilot Program during PY1 shall not exceed 75 MW, defined as the sum of the nameplate capacity in DC rating of all PV panels in projects approved for participation.*
- (b) No later than 30 days prior to the start of PY2 and PY3, the Board shall set by Board Order an annual capacity limit for community solar projects approved for participation in the Pilot Program during PY2 and PY3. The annual capacity limit for PY2 and PY3 shall be at least 75 MW per program year, defined as the sum of the nameplate capacity in DC rating of all PV panels in projects approved for participation.*

##### **Comments:**

The above provisions would establish a capacity cap of 75 MW for the first program year, with increases in unspecified amounts for the second and third program years. The first-year programs size represents over 25 percent of the solar capacity that was installed on average over each of the last three energy years, EY2016 through 2018. In addition, these caps exceed the 50 MW per year target provided in the Clean Energy Act for the permanent program. N.J.S.A. 48:3-87.11(f)(2). The proposed caps are too high for New Jersey's community solar pilot.

The purpose of a pilot program is to provide information and feedback on program design, market responses and lessons learned; and to give policy makers an opportunity to adjust the program structure as needed. A cap is a necessary component of any pilot program and should allow for enough projects to provide information and feedback, but not so many that the program becomes overwhelmed before it can be evaluated for problems or needed changes. While an uncapped program may allow the market to determine the scale of deployment it may also cause implementation issues if growth exceeds expectations. For instance, uncapped programs in Minnesota and New York had unexpectedly high numbers of applicants shortly after the introduction of their programs.

Program caps vary by state and experience. In Connecticut, a 2015 law established a two-year pilot program for shared clean energy facilities (including community solar), authorizing a competitive solicitation for projects totaling no more than 6 MW. Capacity in the program was split between service territories: 4 MW in the Eversource service territory; and 2 MW in the United Illuminating service territory. This pilot program was initiated after a study

on the topic of shared clean energy facilities had been completed by the state. Other states are limited by pre-existing caps on net metering, such as the 1 MW cap in New Hampshire and a 30 MW cap in Rhode Island. Virginia has a 40 MW cap on community solar but has required each investor-owned utility to develop its own pilot program. In Maryland, the Public Service Commission is piloting a community solar program with three program caps totaling approximately 193 MW over three years of which 30% is allocated for small projects under 500 kW, 40% is allocated for larger projects between 500 kW and 2 MW (the maximum allowable project size), and 30% is allocated for projects that primarily serve low- and moderate-income households.

The Board should take a cautious approach with the community solar pilot program. As previously discussed, New Jersey's solar market is undergoing a major transition. It is unclear how this pilot program and the subsequent permanent community solar program will fit in with the ongoing changes in the SREC program and its imminent closure. Specifically, it is unclear what value SRECs generated in the community solar pilot program will receive.

More importantly, the costs of this program, including the compensation provided for community solar projects under the current SREC program and the successor program, will be subject to the cost cap established under the Clean Energy Act. Given the range of pilot programs in other states, and the current status of New Jersey's solar energy market, the pilot program capacity limits should be at the lower end of the range of the caps in effect in other states. Thus, Rate Counsel recommends a program cap of no more than five percent of recent annual installations, or about 16 MW for each of the three years of the pilot program, for a total of 48 MW.

Further, the pilot program should be focused on projects that serve low-income and moderate-income utility consumers, and projects that benefit "environmental justice" communities, that is, communities that have historically been disproportionately affected by air, water and soil pollution and other impacts of environmental degradation. The objective of community solar is to make the benefits of solar energy available to those for whom solar energy is presently inaccessible. In view of the limited resources available for the pilot program, those resources should be devoted to customers facing the greatest obstacles to access, and those who have historically sustained the most harm from the State's reliance on fossil fuels.

Rate Counsel agrees that the annual capacity limit for all community solar projects be defined as the sum of the nameplate capacity in DC rating of all PV panels in projects approved for participation. In the public hearings held in this rulemaking proceeding there was some discussion about the possibility of expressing the limit in terms of AC capacity. If the Board chooses to define the limit in terms of AC capacity, it should provide a standard conversion rate to adjust this measure to DC capacity, as this is how solar capacity in the State has been measured since the inception of the Renewable Portfolio Standards and the SREC program.

**Subsection (c)**

*Unallocated capacity at the end of a program year may be reallocated to subsequent program years.*

Comments:

The roll-over of unsubscribed capacity is unnecessary. If there is a lack of interest in the program adding more capacity to subsequent program years is likely to be futile. The foregoing comment is consistent with the Board's experience in the SREC-II financing program, approved by Board Order dated December 18, 2013 in BPU Dkt. Nos. E012090799, E012080750 and E013020118, where there was little interest in unsubscribed capacity that was carried over to subsequent solicitations.

**Subsection (d)**

*The annual capacity limit will be divided among each EDC area based on their average respective percentages of in-State retail electric sales. The anticipated PY1 breakdown is as follows:*

1. Atlantic City Electric ..... 12.8%
2. Jersey Central Power & Light ..... 27.5%
3. Public Service Electric & Gas ..... 57.2%
4. Rockland Electric Co. .... 2.5%

Comments:

Rate Counsel agrees with this allocation.

**Subsection (e)**

*At least 40 percent of the annual capacity limit shall be allocated to LMI projects.*

Comments:

It is unclear from the rule provision as proposed whether the 40 percent is to be applied to the overall capacity limit, or each EDC's allocated capacity limit. If the pilot program is focused on low- and moderate-income households and environmental justice communities as recommended by Rate Counsel, this provision will not be necessary.

**Subsection (f)**

*In the application process approved by the Board, the Board may set aside up to an additional 10 percent of the annual capacity limit, in order to test new models for low-income community solar projects including, but not limited to, ownership of community solar assets by low-income subscribers. The application and criteria for these low-income projects shall be developed by the Board.*

Comments:

As discussed elsewhere in Rate Counsel's comments, the pilot program should be limited to 16 MW per year, for a total of 48 MW.

**Subsection (g)**

*The capacity limit for individual community solar pilot projects is set at a maximum of five MWs per project, measured as the sum of the nameplate capacity in DC rating of all PV panels comprising the community solar facility.*

Comments:

Based on Rate Counsel's recommended size for the pilot program, the capacity limit for individual projects should be much smaller. Rate Counsel recommends a one MW cap for projects within ACE, JCP&L and PSE&G and a 400,000 kW cap for RECO.

**Subsection (h)**

*Each project shall be equipped with at least one utility grade meter.*

Comments:

Assuming this refers to a meter to measure output from the solar generation facility, Rate Counsel agrees with this provision. Rate Counsel suggests that the language be amended to specify the type of meter required.

**Subsection (i)**

*Existing solar projects may not apply to requalify as a community solar project.*

Comments:

Rate Counsel agrees with this provision, for the reasons stated in Rate Counsel's comments on the proposed definition of "Existing solar project."

**Subsection (j)**

*Co-location of solar facilities shall be permitted, subject to specific review and permission by the Board through the application process.*

Comments:

Rate Counsel agrees with this provision as it may help to facilitate lower-cost market-based community solar projects.

**14:8-9.5 Project siting requirements**

- (a) Community solar projects may have subscribers anywhere in the EDC service territory in which they are located, unless they have indicated otherwise in their application to participate in the Pilot Program. Projects that have elected, in their application, to place a geographic restriction on the subscribers to the project must maintain that restriction for the lifetime of the Pilot Project. The Board may consider waiving this restriction during the project's operational period upon special request.*
- (b) For the purposes of this section, the location of a subscriber and/or a community solar project is identified by the location of its physical utility meter.*

*(c) The following siting restrictions shall apply to community solar projects:<sup>o</sup>*

- 1. Community solar projects shall not be allowed on preserved farmland.*
- 2. Community solar projects shall only be allowed on land designated as Green Acres preserved open space, or on land owned by the New Jersey Department of Environmental Protection, by special approval of the DEP.*

Comments:

Rate Counsel agrees with the provisions in this section. The rules should also include a provision to clarify that these rules do not override local land use restrictions such as limitations on the development of “open space” as defined in this rule proposal. In addition, there should be restrictions on siting solar facilities on forested land, wildlife habitat and other environmentally sensitive locations. Such restrictions should be developed in consultation with the DEP.

#### **14:8-9.6 Subscription requirements**

##### **Subsection (f)**

*The following subscription requirements shall apply:*

- 1. Community solar pilot project subscriptions shall not exceed 100 percent of the subscriber's historic annual usage, calculated over the past 12 months, available at the time of the application. In cases where a 12-month history is not available, the community solar subscriber organization shall estimate, in a commercially reasonable manner, a subscriber's load based on available history.*
- 2. No single subscriber shall subscribe to more than 40 percent of a community solar project's total annual net energy.*
- 3. Subscriptions are portable, provided that the subscriber remains within the original EDC service territory and the same geographic limitations (if any) as the community solar pilot project to which they are subscribed. Appropriate notice of the change in residence and/or location must be provided to the EDC, no later than 30 days after the effective date of the change in residence and/or location. In cases of relocation, subscribers are entitled to one revision per move to their subscription size to account for a change in average consumption.*
- 4. Subscriptions may be sold or transferred back to the project owner by subscribers. Subscribers may not sell or transfer a subscription to another party other than the project owner.*
- 5. A subscriber may not participate in more than one community solar project. It is the responsibility of the subscriber organization to verify that their subscribers are not already subscribed to another community solar project.*

Comments:

This section should define whether a subscriber's share is on an energy basis (kWh) or a capacity basis (kW). If the subscriber's share is based on a capacity basis (kW), a method for calculating the subscriber's share based on its historic annual usage should be defined (e.g., capacity factor).

**14:8-9.7 Community solar bill credits**

**Subsections (a) and (b)**

- (a) The value of the bill credit shall be set at retail rate net metering, inclusive of supply and delivery charges.*
- (b) The calculation of the value of the bill credit shall remain in conformance with retail rate net metering, as determined in (a) above and shall remain in effect for the life of the project.*

Comments:

The value of the bill credit should be set at the EDC's avoided cost. There is no reason to set the bill credit at any rate higher than the avoided cost, particularly for the pilot program. As stated, the purpose of a pilot program is to provide information and feedback on program design, market responses and lessons learned, and to give policy makers an opportunity to adjust the program structure as needed. If the pilot program generates interest and development using the avoided cost, then it will show that avoided costs are sufficient as an incentive and there is no need to over-incentivize by using the retail rate, or any rate higher than the avoided cost.

At the stakeholder meeting held in this matter there were suggestions to increase bill credits for commercial customers, such as by including demand charges or by crediting multi-family building owners based on hypothetical residential bills for the residents. If the Board chooses to adopt a "retail" bill credit it should not change the current reimbursement methodology for commercial customers which is currently based on specific, measurable usage and tariffed rates. It is unclear how the proposed adjustments would be determined, how they would be made operational, or how they would differ across utilities. There has been no showing that this type of adjustment is required to assure adequate participation in the pilot program. Further, there has been no analysis of the costs and benefits and ratemaking implications of this proposal.

**Subsection (c)**

*The credit may not be applied to fixed, non-by-passable charges.*

Comments:

Assuming the Board's intent is to require community solar subscribers to pay the societal benefits charge ("SBC") and other non-bypassable charges, Rate Counsel is in agreement with this provision. The word "fixed" should be deleted from the provision as proposed, to clarify that it is intended to cover charges such as the SBC that vary with the customer's usage.



**Subsection (h)**

*Any generation delivered to the grid that has not been allocated to a subscriber may be "banked" by the project operator in a dedicated project EDC account for a period of up to 12 months. The banked credits may be distributed by the project operator to any new or existing subscriber during that 12-month period, in conformance with subscription requirements set forth in N.J.A.C. 14:8-9.6. At the end of the up to 12-month period, any remaining generation credits shall be compensated at the EDC's or BGS provider's avoided cost of wholesale power, calculated at the nearest node to the point of delivery of the community solar project.*

Comments:

Rate Counsel agrees that project operators should be allowed to distribute banked credits to new or existing subscribers during that 12-month period. However, developers should not be allowed to carry over unlimited banked credits from year to year, as this would create a disincentive for developers to initially enroll and maintain subscribers for the full capacities of their projects. There should be reasonable limits on year-to-year carryovers to assure that the resources being spent on community solar provide the intended benefits. At the end of each 12-month period, the amount of remaining generation credits should be limited to a specific share of the project. Rate Counsel recommends a 10 percent cap on the total annual project generation that could be carried over at the end of a 12-month period. This limit would provide developers with flexibility and certainty, while providing them with incentives to use the full capacities of their facilities.

**Subsection (k)**

*EDCs must make appropriate data available through Green Button, subject to appropriate privacy protections. If Green Button capabilities are not available or are insufficient, the EDCs will work with Board staff to determine data sharing mechanisms and requirements between the EDCs and developers.*

Comments:

This provision may unnecessarily increase costs by requiring the EDCs to implement a Green Button or similar interface. There is no explanation as to why this capability is needed and it could involve significant cost to ratepayers. If the capability is needed, the costs incurred to establish Green Button capabilities should be borne by the developer as noted in Rate Counsel's comments to Section 14:8-9.3(d).

**Subsection (s)**

*The Board may decide to create one or more additional incentive(s) paid and/or credited to community solar developers for specific types of community solar projects, including, but not limited to, community solar projects located in environmental justice communities and/or LMI projects.*

Comments:

Rate Counsel disagrees with this provision. There should be no incentives or adders for specific types of projects. In addition, as written, this appears to give the Board unlimited discretion to implement additional incentives, with no criteria to guide the Board in the exercise of its discretion, except the presumption that the cost of these additional incentives will fall onto ratepayers. Any capacity developed through this program should be market-driven and secured in a least-cost, competitive fashion. As noted by Rate Counsel in subsection 14:8-9.4 (a), (b) and (e), this pilot should be limited in size and focused on LMI subscribers and environmental justice communities. Based on this recommendation, there would be no need for special incentives for these types of projects. In addition, rather than using additional incentives or adders, the Board should allow competitive forces to determine the costs of projects with the relevant characteristics. As stated elsewhere in Rate Counsel's comments, the Board should use an RFP process to select projects. The RFPs should specify the requirements for such projects, and allow competitive forces to determine the costs. Projects with differing characteristics should be solicited through separate RFPs.

**14:8-9.8 Low- and moderate-income provisions**

*(a) A low- and moderate-income subscriber for the purposes of this subchapter is as follows:*

- 1. A low-income residential household or a moderate-income residential household as determined by annual adjusted HUD income limits.*
- 2. Affordable housing providers may also qualify as an LMI subscriber for the purposes of a community solar project. In order to do so, they must:*
  - i. Demonstrate in their application to the Board and sign an affidavit that they are passing along specific, substantial, identifiable, and quantifiable long-term benefits to their residents/tenants; and*
  - ii. Sign and submit to the Board, an affidavit indicating that they will pass along said specific, substantial, identifiable, and quantifiable long term benefits to their residents/tenants.*

*(b) An LMI community solar pilot project is defined as a community solar pilot project in which a minimum 51 percent of project capacity is subscribed by LMI subscribers.*

*(c) An LMI community solar project may not accept participation by a non-LMI subscriber if doing so would cause LMI participation in the project to fall below 51 percent of project capacity.*

*(d) The following LMI eligibility criteria shall be applied:*

- 1. If the community solar pilot project is sited on government-owned property, and is serving LMI subscribers living on that property, the government site owner may provide a sworn statement that those*

*community solar pilot project subscribers are considered LMI for the purposes of the Pilot Program.*

2. *In all other cases, subscribers must be individually qualified as LMI for the purposes of the Pilot Program. The subscriber organization for each project shall receive and review proof of LMI eligibility for each LMI subscriber. Any of the following may be accepted by a subscriber organization as proof of LMI status for individual subscribers:*
  - i. *Proof of participation in one or more of the following: LIHEAP, Universal Service Fund, Comfort Partners, and/or Lifeline Utility Assistance Program; or*
  - ii. *A copy of the first and second page of the subscriber's three previous years' Federal income tax returns. The second page must be signed if self-prepared. The returns shall be submitted directly to the subscriber organization, along with a sworn statement that the information contained within the tax returns is true and accurate. Tax returns are to be treated as confidential under all applicable Federal and State laws. For subscribers that are not required to file, a non-filing verification letter from the IRS would need to be provided.*
3. *Qualification of a household as low-income or moderate-income is required only once per subscription, at the time of execution of the subscription agreement or contract.*
4. *A community solar subscriber whose subscription has, for any reason, ended must re-submit a new application along with LMI qualifying criteria if applicable.*

Comment:

It is not clear whether this proposal reflects any input from communities with low and moderate-income consumers. These proposed rules reflect a set-aside for LMI subscribers, but the provisions do not include suggestions offered by community representatives in the stakeholder process conducted by the Board before these rules were published for comment. The rules should include provisions for projects developed in collaboration with target communities, as it is important to meet the needs of the communities, not the developers.

#### **14:8-9.10 Consumer protection**

##### **General**

Comments:

Rate Counsel supports the proposal to include detailed consumer protection standards, including oversight by the Board.

**Subsection (b)(3)(i)**

*Contracts must contain a plain-language description of the subscription agreement, including the type of agreement, date of enactment of the contract, duration of the contract, payment and pricing calculations, a good-faith written estimate of the savings a subscriber will earn per year (if applicable) and its disclosed assumptions, a clear description of the billing arrangements, and a complete list of any other fees, including, but not limited to, any applicable transfer and/or cancellation fees, due date for payment, late payment fees and the number of days after which a late payment fee may be applied, and any interest charges. The contract must also contain the specific conditions under which such penalties and/or fees can be imposed.*

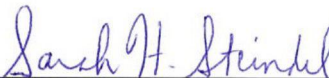
Comments:

This subsection could be improved by the addition of language specifically requiring a plain-language description of the subscription fee and other clarifying changes. A suggested revision is as follows, with deleted text enclosed in square brackets and added text underlined.

*Contracts must contain a plain-language description of the subscription agreement, including the type of agreement, effective date of [enactment of] the contract, duration of the contract, a clear description of the amount and terms of payment of the subscription fee [payment and pricing] and the underlying calculations, a good-faith written estimate of the savings a subscriber will [earn] realize net the of subscription fee per year or other applicable period [(if applicable)] and [its disclosed] the assumptions underlying such estimate, a clear description of the billing arrangements, and a complete list of any other fees, including, but not limited to, any applicable transfer and/or cancellation fees, due date for payment, late payment fees and the number of days after which a late payment fee may be applied, and any interest charges. The contract must also contain the specific conditions under which such penalties and/or fees can be imposed.*

Respectfully submitted,

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