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May 6, 2022

**Via Electronic Mail** [board.secretary@bpu.nj.gov](mailto:board.secretary@bpu.nj.gov)

Secretary of the Board  
44 South Clinton Avenue, 1<sup>th</sup> Floor  
P.O. Box 350  
Trenton, NJ 08625-0350

**Re: In the Matter of the Community Solar Energy Program  
BPU Docket No. QO22030153**

Dear Secretary:

Please accept for filing these comments being submitted on behalf of the New Jersey Division of Rate Counsel in accordance with the Notice issued by the Board of Public Utilities (“Board”) in this matter on April 11, 2022. In accordance with the Notice, these comments are being filed electronically with the Board’s Secretary at [board.secretary@bpu.nj.gov](mailto:board.secretary@bpu.nj.gov).

**Please acknowledge receipt of these comments.**

Thank you for your consideration and attention to this matter.

Respectfully submitted,

Brian O. Lipman, Esq.  
Director, Division of Rate Counsel

By: */s/ Sarah Steindel*  
Sarah H. Steindel, Esq.  
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Enclosure

cc: Kelly Mooij, BPU  
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**STATE OF NEW JERSEY**  
**BEFORE THE BOARD OF PUBLIC UTILITIES**

**In the Matter of the Community Solar     )**           **Docket No. QO22030153**  
**Energy Program                                    )**  
**)**

**COMMENTS OF THE**  
**NEW JERSEY DIVISION OF RATE COUNSEL**  
**IN RESPONSE TO INITIAL REQUEST FOR STAKEHOLDER FEEDBACK**  
**ON PERMANENT COMMUNITY SOLAR PROGRAM**

**May 6, 2022**

## **Introduction**

The Division of Rate Counsel ("Rate Counsel") would like to thank the Board of Public Utilities ("Board" or "BPU") for the opportunity to provide initial comments on the design of a Community Solar Energy Program ("Permanent Program") in response to the Request for Comments issued by the Board on April 11, 2022. The Clean Energy Act ("CEA"), which was signed into law on May 23, 2018, directed the BPU to adopt rules and regulations establishing the Community Solar Energy Pilot Program ("Pilot Program") within 210 days. The Pilot Program was intended to provide the necessary experience and groundwork for the development and implementation of a full-scale Community Solar Energy Program. Moving forward the Permanent Program should be designed to maximize benefits to subscribers, particularly low- to moderate-income ("LMI") subscribers, and avoid unnecessary costs to ratepayers. The comments below are offered in response to list of topics in the Request for Comments. Rate Counsel looks forward to continued participation in this stakeholder process.

### **I. Program Design and Eligibility**

- 1) The Solar Act of 2021 states that the new Successor Solar Incentive Program should aim to provide incentives for at least 150 MW of community solar facilities per year. How should the annual Permanent Program capacity limit account for potential project "scrub" (i.e., planned projects that do not reach commercial operation)?**

#### **Rate Counsel Comments:**

Rate Counsel encourages the Board to base any scrub rate on actual program data. An assumed rate can be used until such time that enough information or data can be made available. However, Rate Counsel encourages the Board to utilize a conservative assumption. The use of a scrub rate that is too high could have the unintended consequence of creating an over-subscription that would require the Board to reject projects that had previously been notified of

acceptance. The resulting uncertainty could discourage participation in Community Solar solicitations and thus could undermine the integrity of the Permanent Program.

- 2) **Should the Permanent Program capacity be divided into separate blocks, and if yes, how? (i.e., By EDC service territory? By project type or size)? Additionally, the Solar Act of 2021 requires the Board to consider “the economic and demographic characteristics of the area served by the facility, including whether it is located in an overburdened community[.]”<sup>1</sup> How should any blocks address this requirement?**

**Rate Counsel Comments:**

Rate Counsel does not encourage the segmentation of capacity into blocks. As Rate Counsel has noted in the past, Rate Counsel supports a competitive bidding process to allow the market to set not only the price, but also the level and type of participation for solar development. Segmentation can lead to inefficiencies and also tie up valuable capacity allocations on projects that never materialize. To the extent the Board does segment the market, Rate Counsel suggests that the segmentation (a) be minimal (i.e., as few blocks as possible) and (b) be based on some type of project type, that supports various public policy goals such as low-income installations, rather than focusing on project size.

- 3) **Staff intends to recommend similar qualifications and ownership restrictions for solar developers participating in the Permanent Program as were implemented in the Pilot Program. Please comment.**

**Rate Counsel Comments:**

Rate Counsel supports the Board’s recommendation to employ qualifications and ownership requirements for solar developers participating in the Permanent Program that are similar to those implemented in the Pilot Program.

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<sup>1</sup> N.J.S.A. 48:3-116(c)(3).

**4) What land use restrictions and limitations, if any, should apply to the siting of Community Solar projects?**

**While Section 6 of the Solar Act of 2021 does not establish siting standards for Community Solar projects, should the Board adopt comparable standards be extended to also apply to community solar facilities? What should those standards look like?**

**Rate Counsel Comments:**

Rate Counsel recommends that the Board maintain the provisions in N.J.A.C. 14:8-9.5, which prohibit the siting of Community Solar projects on preserved farmland, and requires special approval by the New Jersey Department of Environmental Protection (“NJDEP”) to site these facilities on Green Acres preserved open space or land owned by the NJDEP. 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 the rule proposal.

In addition, although, as noted, the siting provisions in Section 6 of the Solar Act of 2021 apply only to projects participating in the Board’s Competitive Solar Incentive (“CSI”) Program, the Board should consider restrictions on siting Community Solar facilities on forested land, wildlife habitat and other environmentally sensitive locations. Such restrictions should be developed in consultation with the NJDEP. Similarly, the Board should also consider measures to protect the State’s prime agricultural soils or soils of statewide importance, similar to those under consideration for projects under the Board’s proposed CSI Program siting rules.

Subject to these the siting requirements discussed above, the Board should focus the Permanent Program on minimizing costs, rather than attempting to serve additional land use goals such as encouraging solar development on landfills or brownfields. Such additional goals

could add to the cost of the Permanent Program.<sup>2</sup> As an example of the potential for higher costs, in Public Service Electric and Gas Company’s proposal to extend its Solar Generation Investment Program, the unit cost for the program’s warehouse roof segment was \$3,700/kW, compared to the landfill segment which was estimated to be \$5,266/kW.<sup>3</sup> Rate Counsel notes that Staff’s Straw Proposal for its CSI Program includes a proposed tranche for grid supply projects on contaminated sites and landfills.<sup>4</sup> This proposal would use competitive forces to determine the incentives needed to incentivize development on these types of sites, and would be a more cost-effective approach than including this objective in the Permanent Program.

- 5) **The CEA states that the Permanent Program rules and regulations shall “establish standards, fees, and uniform procedures for solar energy projects to be connected to the distribution system of an electric public utility” (Section 5(f)(11)). What changes, if any, should be made to the existing Community Solar interconnection standards and processes?**

**Rate Counsel Comments:**

Rate Counsels supports maintaining the current rules and regulations under the Pilot Program and recommends the Board adopt such standards under the Permanent Program.

- 6) **What measures should the Board implement to minimize negative impacts to the distribution system and maximize grid benefits?**

**Rate Counsel Comments:**

Rate Counsel recommends that the Electric Distribution Companies (“EDCs”) be required to identify areas of constraint and areas where capacity and/or resiliency improvements

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<sup>2</sup> The Appellate Division has cautioned the Board that it does not possess a broad mandate to implement environmental goals. In re: Centex Homes Petition for Extension of Service, 411 N.J. Super. 244, 265-67 (App. Div. 2009).

<sup>3</sup> See I/M/O the Petition of Public Service Electric and Gas Company for Approval of a Solar Loan III Program and Associated Cost Recovery Mechanism and for Changes in it’s the Tariff for Electric Service, B.P.U. N.J. No. 15 Electric Pursuant to N.J.S.A. 48:2-21 and N.J.S.A. 48:2-21.1, BPU Docket No. EO12080721, Direct Testimony of David E. Dismukes on Behalf of the New Jersey Division of Rate Counsel at 32:6-10 (January 18, 2013).

<sup>4</sup> New Jersey Competitive Solar Incentive Program (“CSI”) Program Daymark/Staff Straw Proposal at 7 (Apr. 26, 2022), available at: <https://nj.gov/bpu/pdf/publicnotice/20220426%20Consolidated%20Straw%20Version%2013%20with%20Notice.pdf>

may be needed, as well as where projects may provide the highest value, and to post this information on their websites. The EDCs are likely to be in the best position to identify areas where Community Solar development could result in additional grid upgrades and infrastructure investments that would impose costs onto ratepayers. Likewise, the EDCs are in a better position to identify areas where Community Solar can provide grid benefits and complement the EDCs' own grid modernization and/or resiliency activities.

## II. Project Selection

- 7) **How should projects be selected for participation in the Permanent Program? Please provide a detailed description and discussion of the advantages and disadvantages of your proposed method of selection, with an emphasis on establishing criteria that are transparent and easily verifiable.**

### **Rate Counsel Comments:**

The current selection process should be modified to prioritize projects that maximize the benefits to subscribers, and particularly LMI subscribers. Community Solar projects, by statute, are part of the ADI program and receive Solar Renewable Energy Certificates II ("SREC-IIs") with administratively determined values. N.J.S.A. 48:3-116(a). Similarly, the methodology for determining the value of Community Solar bill credits is required to be determined by regulation. N.J.S.A. 48:3-97.11(f)(7). Accordingly, the amount of the ratepayer-funded subsidies for Community Solar projects cannot be subject to competitive bidding. However, competition can be utilized to prioritize projects that best meet the primary purpose of the Community Solar Program, which is to allow more customers, and especially LMI customers, to benefit from the State's solar program. The selection process for the Pilot Program does not maximize the benefits of the Community Solar Program for LMI and other subscribers.

The evaluation criteria and scoring rubric for the Pilot Program are summarized below:<sup>5</sup>

<b>Evaluation Criteria</b>	<b>Points (total 100)</b>
<b>Low- and Moderate-Income and Environmental Justice Inclusion</b> Preference for LMI projects	25
<b>Siting</b> High, medium and low preference site types, with bonus points for “site enhancements” and location in redevelopment area or economic opportunity zone.	20 + 5 potential “bonus points”
<b>Community and Environmental Justice Engagement</b> Preference for formal agreements or collaboration with municipality or community organization.	15
<b>Product Offering</b> Preference for varying levels of savings, and for flexible terms (e.g. no cancellation fee, short-term contract)	15
<b>Other Benefits</b> Preference for jobs, job training, pairing with storage, EV charging station, energy audits, energy efficiency	10
<b>Geographic Limit Within EDC service territory</b> Preferences for subscribers in same or adjacent municipalities, or same or adjacent counties	5
<b>Project Maturity</b> Preference for all non-ministerial permits and competed interconnection study	5

Of the above selection criteria, only two, “Low- and Moderate-Income and Environmental Justice Inclusion” and “Product Offering,” directly advance the primary objectives of the Community Solar Program. Rate Counsel recommends that these two be the only criteria in the evaluation/scoring rubric, with at least a 50% weight give to “Product Offering.” Rate Counsel has the following observations about the remaining criteria:

<sup>5</sup> See I/M/O of the Community Solar Energy Pilot Program and I/M/O of the Community Solar Energy Pilot Program Year 2 Application Form and Process, BPU Docket Nos.QO18060646 and QO20080556, Order at 4 (October 2, 2020).



Siting: As discussed in Rate Counsel’s response to Question 4, Rate Counsel supports the establishment of siting criteria similar to those under consideration for the Board’s CSI Program. Establishing preferences among projects that meet the criteria has the potential to incentivize projects at more costly sites, thus reducing the amount of benefits available to be allocated to subscribers.

Community and Environmental Justice Engagement: This factor is duplicative of “Low- and Moderate-Income and Environmental Justice Inclusion.” While engagement with municipalities and community organizations may facilitate enrollment, Rate Counsel recommends that the choice of enrollment strategies be left to subscriber organizations. The methodology used to enroll subscribers is less important than the actual achievement of LMI enrollment targets. In order to assure that accepted projects are likely to succeed, the Board may wish to include a demonstration of plans for enrolling subscribers as part of the maturity requirements for Community Solar projects. Also, the Board can incentivize subscriber organizations to have adequate enrollment plans by enforcing the LMI enrollment commitments that are included in accepted proposals.

Other Benefits: The “other benefits” included in this factor are secondary to the key objectives of the Community Solar Program, and attempting to value these benefits unnecessarily complicates the evaluation process. Rate Counsel notes also that only two of the “other benefits,” specifically energy audits and energy efficiency, would provide direct benefits to Community Solar subscribers.

Project Maturity: As discussed in Rate Counsel’s response to Question 9, there should be consistent maturity requirements for all ADI projects. Maturity requirements necessarily represent a balance: they should be strict enough to discourage anticompetitive behaviors such

as “queue sitting,” but not so strict that they discourage participation by bona fide projects. For this reason, there should be no need to grant additional preference to projects that exceed the maturity requirements. Further, projects that meet such additional requirements may be projects that would have been completed without the additional subsidies provided by the Community Solar Program.

- 8) **Should the Board consider creating a waitlist for non-selected projects? If yes, why would a waitlist support the continued development of community solar projects without increasing program oversubscription? How should this waiting list be implemented to avoid a situation where all capacity is spoken for months or years ahead of a solicitation?**

**Rate Counsel Comments:**

There should be no waitlist for non-selected projects seeking to enter a capacity block once its limit has been fully subscribed. Such a waitlist would undermine the developers’ incentives to propose projects that best meet the Board’s selection criteria, and would undermine the objective of selecting the highest-scored projects.

- 9) **What minimum maturity requirements should projects be required to meet before applying to participate in the Permanent Program? To what extent should the Community Solar Energy Program maturity requirements be different from, or similar to, the requirements for projects to apply to the Administratively Determined Incentive (“ADI”) Program?**

**Rate Counsel Comments:**

As discussed in Rate Counsel’s response to Question 7, the Board may wish to require demonstrated plans to enroll subscribers as part of the maturity requirements for Community Solar projects. Otherwise, Rate Counsel recommends that the Board adopt maturity requirements for the Permanent Program that are consistent with the requirements for other projects under the ADI program.

- 10) Should the Board consider any changes to the coordination between Community Solar project awards and the process for registering for the ADI Program?**

**Rate Counsel Comments:**

Rate Counsel does not have comments on this issue at this time.

**III. Low- and Moderate-Income Access**

- 11) What policies and measures should the Board consider to ensure that the Permanent Program maintains a high level of low- to moderate-income (“LMI”) participation? How can the Board support community outreach and education?**

**Rate Counsel Comments:**

As discussed in the response to Question 7, the Board should modify the selection criteria so that they prioritize projects that serve LMI customers and deliver the maximum benefits to subscribers.

Customer educational materials should be made available to ratepayers to assist in the understanding of the basics of solar energy and Community Solar projects; where Community Solar projects are available; how to access these projects; key terms in subscription agreements; and the development of potential “commonly asked questions” for the Community Solar Program with responses.

Additionally, the BPU should share community education material with the New Jersey Department of Community Affairs (“DCA”), which partners with local agencies that assist LMI customers with applications for financial assistance. These materials should be in various languages, including Spanish, and they should contain the telephone number of the BPU prominently displayed. Additionally, a BPU-sponsored workshop or some other forum targeted toward local community organizations that service low income communities directly, including those organizations that administer financial assistance applications, may be the best method of obtaining education and community input. The local agencies should then be encouraged to

share the customer education materials with New Jersey utility customers as they apply for financial assistance so they are educated before receiving any direct marketing material from the solar developers.

Moreover, customer assistance representatives at the BPU should be available by telephone to answer questions that New Jersey utility customers, especially LMI ratepayers, could have regarding Community Solar. It is important that LMI ratepayers have an easily accessible manner in which to ask questions directly to the BPU about how to shop for Community Solar if there is direct marketing of Community Solar occurring in their neighborhoods. Rate Counsel is concerned about the possibility of unscrupulous marketing practices in low income communities that could confuse customers.

**12) Should the Board modify the Pilot Program’s income verification standards (see the Pilot Program rules at N.J.A.C. 14:8-9.8)? If so, how?**

**Rate Counsel Comments:**

Rate Counsel supports the current standards for income verification under the current Pilot Program, which were amended in December of 2021, to facilitate enrollment of LMI customers in Community Solar projects. 52 N.J.R. 2039(a), 53 N.J.R. 2053(a). The Board should continue to consider input from community organizations that represent low income consumers on further improvements to the enrollment process for LMI customers.

**13) How should the Board consider “the economic and demographic characteristics of the area served by the facility, including whether it is located in an overburdened community, as that term is defined in section 2 of P.L.2020, c.92”?**<sup>6</sup>

**Rate Counsel Comments:**

Rate Counsel notes that this question appears to refer to N.J.S.A. 48:3-116(c), which identifies “the economic and demographic characteristics of the area served by the facility,

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<sup>6</sup> N.J.S.A. 48: 3-116(c)(3).

including whether it is located in an overburdened community, as that term is defined in section 2 of P.L.2020, c.92” as one of the factors the Board may consider in setting the value of SREC-IIs for the ADI Program. The Board has already considered this factor in setting the SREC-II values for Community Solar projects at \$70 for non-LMI projects and \$90 for LMI projects.<sup>7</sup> Rate Counsel would oppose any further differentiation of SREC-II values for Community Solar projects. As discussed in the response to Question 7, the Board should modify the evaluation criteria for the Permanent Program to prioritize projects that are the most economical, and provide the most benefits to LMI subscribers.

#### **IV. Community Solar Subscribers**

- 14) What should the geographic limitations for community solar projects and subscribers be (i.e., How far from the project can subscribers to the project reside)?**

**For context, the Pilot Program allowed projects to self-select the geographic limits of the project. Projects could choose between three options: municipality and adjacent municipalities, county and adjacent counties, and no limit (EDC-wide).**

**Rate Counsel Comments:**

Under N.J.S.A. 48:3-87.11(a), Pilot Program projects, and their respective participants, were required to be located within the same EDC service territory. This limitation should be maintained for the Permanent Program. Rate Counsel believes additional restrictions within each EDC service territory are unnecessary and may deter maximum participation in the Permanent Program.

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<sup>7</sup> I/M/O a Solar Successor Incentive Program Pursuant to P.L. 2018, c. 17U, BPU Docket. No. QO20020184, Order at 140 (Appendix B) (July 28, 2021).

- 15) The Pilot Program mandated that each community solar project must have a minimum of 10 subscribers, and a maximum of 250 subscribers per MW of installed capacity. Should either of these mandates be changed under the Permanent Program?**

**Rate Counsel Comments:**

Rate Counsel does not have comments on the issue at this time.

- 16) Should the Board make any modifications to the consumer protection measures implemented under the Pilot Program?**

**Rate Counsel Comments:**

As mentioned previously, the BPU should consider offering information over the telephone for consumers who are considering participating in one or more Community Solar Programs. Speaking to customers on a regular basis about the marketing that solar developers are utilizing in the field would give the BPU a clearer perspective of how Community Solar developers are marketing in LMI and other communities.

To facilitate communications with customers, the Board should amend its customer service regulation to require the Board's telephone number to be included in all subscriber contracts under N.J.A.C. 14:8-9.10(b)(3), and in the disclosure statement required under N.J.A.C. 14:8-9.10(b)(4). These documents should also include a prominent statement advising subscribers of their right to file complaints at the BPU.

The Board should be especially cognizant of any predatory marketing tactics targeting LMI customers and address them immediately. Rate Counsel reiterates that if consumers can contact the BPU via telephone with questions regarding Community Solar, and if they are aware of their rights to utilize the BPU's complaint process, this will provide the BPU with a better understanding of the marketing practices occurring in communities.

- 17) **In November 2020, the Board proposed a rule amendment to the Community Solar Energy Pilot Program rules, which would have allowed certain projects owned and operated by public entities to automatically enroll subscribers without first seeking subscribers’ affirmative consent to join the project. Subscribers would then have the option to “opt-out” of the project should they not wish to participate. How can the Board best support subscriber education and acquisition? Should the Board revisit its automatic enrollment proposal, and if yes, how can automatic enrollment be implemented consistent with customer data privacy rights?**

**Rate Counsel Comments:**

Consistent with Rate Counsel’s comments on the November 2020 rule proposal, Rate Counsel would support a rule that allows public entities to implement “opt out” enrollment. The November 2020 rule proposal included a number of consumer protections, which should be included in any rule allowing “opt out” enrollment. See Rate Counsel Comments, I/M/O Community Solar Energy Pilot Program Rule Proposed Amendments: N.J.A.C. 14:8-9.2, 9.4, and 9.8, BPU Docket No. QX20090594. Proposal No.: PRN 2020-109 (Jan. 15, 2021).

**V. Community Solar Bill Credits**

- 18) **If applicable, please discuss your experience with subscriber management and the allocation of Community Solar bill credits. What changes, if any, should be made to communications between Community Solar subscriber organizations and the EDCs, or to the allocation of bill credits by the EDCs?**

**Rate Counsel Comments:**

Rate Counsel has no specific recommendations to offer on this topic other than to note that program transparency needs to be assured in the Permanent Program.

- 19) **What modifications, if any, should the Board consider making to the value of the Community Solar bill credits?**

**Rate Counsel Comments:**

Rate Counsels suggests that the Board consider modifying the value of Community Solar bill credits so that they are closer to the EDCs’ avoided costs rather than the current full retail rate. Avoided costs represents the opportunity cost of the generation product offered by power

generation and should serve as a sufficient financial incentive for developers. Setting these credits at any higher rate, such as the full retail rate, results in an inefficient subsidy amount that over-incentivizes Community Solar installations. The implementation of the Permanent Program should reduce development risk for Community Solar projects, and thus should provide an opportunity to move bill credits toward avoided costs.

- 20) **In May 2021, following an opportunity for public comment, the EDCs submitted a report to the Board with options and recommendations regarding the implementation of consolidated billing for Community Solar. In summary, the EDCs recommend that, if the Board adopts consolidated billing for Community Solar projects, this billing process be handled by the EDCs. The EDCs further recommended that the method of reflecting subscription fees on a subscriber's EDC bill be determined by each EDC based on the format that best corresponds to their existing billing practices. The EDCs did not recommend that the Board allow non-EDC billing options. Do you agree with the EDCs' recommendations? If not, why? How do you recommend the Board address payment default by customers?**

**Rate Counsel Comments:**

Consolidated utility billing for Community Solar has the potential to improve customer convenience while reducing billing costs. Rate Counsel supports mechanisms that reduce costs and increase overall administrative efficiency. However, ratepayer interests need to be considered in this process. Consolidated billing, while likely more efficient, will still result in a costs to the EDCs. The costs of implementing this approach, however, should be paid for by its primary beneficiaries: Community Solar developers and subscriber organizations, and not imposed on all ratepayers. These costs can be recovered through cost-based fees charged to Community Solar developers and subscriber organizations. Community Solar developers and subscriber organizations can reflect this cost in their subscriber fees.



## **VI. Other**

**21) Please provide comments on any issues not specifically addressed in the questions above. Staff anticipates the stakeholder process unfolding as follows, with the caveat that this anticipated schedule is subject to change:**

- **April 2022: Release of Request for Comments; stakeholders submit written comments.**
- **May – June 2022: Release of Staff Straw Proposal; stakeholder meetings and written comments.**
- **Summer 2022: Development of rules and regulations for the establishment of the Permanent Program.**
- **Fall 2022: Permanent Program opens to new registrations.**

### **Rate Counsel Comments:**

Rate Counsel has no further comments at this time.