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May 15, 2023

Via Electronic Mail board.secretary@bpu.nj.gov
Secretary of the Board
44 South Clinton Avenue, 1th 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 May 3, 2023. In accordance with the Notice, these comments are being filed electronically with the Board's Secretary at 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 H. Steindel*
Sarah H. Steindel, Esq.
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Enclosure
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STATE OF NEW JERSEY

BEFORE THE BOARD OF PUBLIC UTILITIES

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

COMMENTS OF THE NEW JERSEY DIVISION OF RATE COUNSEL ON STAFF STRAW PROPOSAL FOR THE PERMANENT COMMUNITY SOLAR PROGRAM

May 15, 2023

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 comments on the Staff Straw Proposal "Straw Proposal" for the permanent Community Solar Energy Program ("Permanent Program"). The Clean Energy Act ("CEA"), P.L. 2018, c. 17, 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"), which was to provide the necessary experience and groundwork for the development and implementation of the Permanent 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 the elements of the Straw Proposal as listed in the Notice issued by the Board on May 3, 2023. These comments will also include comments on the draft rule proposal that is contained in the Notice. Rate Counsel looks forward to continued participation in this stakeholder process.

RATE COUNSEL COMMENTS

Section I – Program Eligibility

1) Should the Board permit co-location of a community solar project with another solar installation?

Rate Counsel Comments:

Staff's recommendation is to allow the co-location of a community solar project with a net-metered project, in order to facilitate the use of rooftop or other space that was not needed for the net metered installation. Otherwise, community solar projects would be subject to the requirements of N.J.A.C. 14:8-11.4(f), which prohibits the co-location of multiple projects in the

Board's Administratively Determined Incentive ("ADI") program, unless the Board grants a waiver in response to a petition.

Rate Counsel supports Staff's recommendations, except that Rate Counsel sees no need to allow co-location of community solar and net metered projects. Rate Counsel is in agreement with Staff that a general prohibition on co-location is necessary to avoid circumvention of the five megawatt ("MW") statutory limit on the size of community solar projects. Rate Counsel believes this same rationale supports a prohibition on the co-location of net metered and community solar facilities. In addition to the five MW limitation for community solar projects, there is a five MW limitation for net metered projects participating in the Board's ADI program ADI; larger installations must compete for incentives in the CSI Program.[1] If co-location of net metered and solar facilities is permitted, installations over five MW could receive incentives under the ADI program.

A prohibition on co-location would not prevent customers from using excess rooftop or other space in the ADI Program, nor would it prevent such customers from receiving net metering credits for installations up to five MW. Installations up to the five MW limit could be developed as community solar projects, and the customer could receive net metering credits as a subscriber. Thus, there is no need to allow co-location of net metered and community solar projects. In the alternative, if co-location is allowed, the combined total capacity of both installations should be limited to five MW.

[1] N.J.A.C. 14:8-11.4(a).

2) What land use restriction 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 standards comparable to those in the Board's proposed solar siting rules for community solar facilities? What should those standards look like?

Rate Counsel Comments:

Staff has recommended that projects participating in the Permanent Program be limited to the following preferred site types: rooftops, carports, contaminated sites and landfills, and man-made bodies of water with little or no established floral and faunal resources. While Rate Counsel understands the Board's preference for certain site types, the proposed limitation is at odds with one of the key principles cited by Staff for the transition to the Permanent Program, that is "[p]rovid[ing] maximum benefit to ratepayers at the lowest cost."[2] The preferred sites are likely to be more expensive, thus increasing the subsidies required to support community solar projects, decreasing the benefits that are available to subscribers, or both. Instead, the Board should adopt siting criteria that are consistent with the siting restrictions adopted for the Board's CSI Program.

Under the CSI Program, the following sites are prohibited for solar development unless the Board grants a waiver after consultation with the Department of Environmental Protection ("NJDEP") or Secretary of Agriculture, as appropriate:

(1) Land preserved under the Green Acres Program;

(2) Land located within the preservation area of the pinelands area; as designated in subsection b. of section 10 of L.1979, c.111 6 (C.13:18A-11);

(3) Land designated as forest area in the pinelands comprehensive management plan adopted pursuant to L.1979, c.111 (C.13:18A-1 et 9 seq.);

[2] Straw Proposal, p. 5.

(4) Land designated as freshwater wetlands as defined pursuant to P.L.1987, c.156 (C.13:9B-1 et seq.), or coastal wetlands as defined pursuant to P.L.1970, c.272 (C.13:9A-1 et seq.);

(5) Lands located within the Highlands preservation area as designated in subsection b. of section 7 of L.2004, c.120 (C.13:20-7);

(6) Forested lands, as defined by the Board in consultation with the Department of Environmental Protection; and

(7) Prime agricultural soils and soils of Statewide importance, as identified by the United States Department of Agriculture's Natural Resources Conservation Service, which are located in Agricultural Development Areas certified by the State Agriculture Development Committee, in excess of the Statewide threshold of 2.5 percent of such soils established by paragraph (1) of subsection d. of the Solar Act of 2021.[3]

In addition, CSI Program projects may not "occupy more than five percent of the unpreserved land containing prime agricultural soils and soils of Statewide importance … within a single county's designated Agricultural Development Area, as determined by the State Agriculture Development Committee."[4] Finally all solar development is prohibited on preserved farmland, with a limited exception for facilities used to provide power to the farm, subject to approval by the State Agricultural Development Committee.[5]

These same siting restrictions should be adopted for the Permanent Program, with one modification. The CSI Program restrictions related to solar development on prime agricultural soils and soils of Statewide importance are geared to allowing limited siting of CSI Program facilities in the affected areas, and community solar projects would not count against either the 2.5% statewide limit or the 5% county limits. In order to protect the State's most valuable

[3] N.J.S.A. 48:3-119(c) and (f); I/M/O Competitive Solar Incentive ("CSI") Program Pursuant to P.L. 2021, c. 169, BPU Dkt. No. QO21101186, Order Launching the CSI Program at 36 (Dec. 7, 2022) ("CSI Program Order").
[4] N.J.S.A. 48:3-119 (f); CSI Program Order at 38.
[5] N.J.S.A. 48:3-119(e); N.J.S.A. 4:1C-32.4; CSI Program Order at 36.

agricultural soils from any additional development, Rate Counsel recommends that community solar projects be prohibited on prime agricultural soils and soils of Statewide importance.

Subject to the siting requirements discussed above, the Board should focus the Permanent Program on minimizing costs and maximizing benefits to subscribers, 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.[6] 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/kilowatt ("kW"), compared to the landfill segment which was estimated to be $5,266/kW.[7] Rate Counsel notes that the Board's CSI Program includes a tranche for grid supply projects on contaminated sites and landfills. [8] The CSI Program will use competitive forces to determine the incentive levels needed for development on these types of sites, and would be a more cost-effective approach than including this objective in the Permanent Program.

[6]The Appellate Division has cautioned the Board that it does not possess a broad mandate to implement environmental goals. I/M/O Centex Homes Petition for Extension of Service, 411 N.J. Super. 244, 265-67 (App. Div. 2009).

[7] 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 Dkt. 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).

[8] CSI Program Order at 15.

Section II – Program Capacity

3) What should be the annual Permanent Program capacity? Should the annual Permanent Program capacity limit account for potential project "scrub"?

Rate Counsel Comments:

Staff's recommendation is to allocate to the Permanent Program at least 225 MW in Energy Year ("EY") 2024 and again in EY2025, and at least 150 MW in EY2026 and thereafter. These capacity targets are intended to comply with the statutory mandated targets of 150 MW of community solar in each of the first five years of the Board's ADI Program. As noted in the Straw Proposal, the target of 150 MW for EY2022 was not filled because the Permanent Program had not been launched. Thus, it appears Staff is proposing to increase the targets for EY2024 and EY2025 by 75 MW for each year to make up for the unfilled capacity target in EY2022. Rate Counsel does not object to the proposed capacity targets.

However, Rate Counsel notes that the targets are stated as "no less than" the stated amounts. Rate Counsel urges the Board to exercise caution before increasing the capacity targets for community solar above the minimum levels. While community solar can provide benefits to customers who do not have suitable sites for solar facilities, the costs of extending community solar incentives to additional capacity is not clear, and could very likely result in increased development costs. Staff has not shown whether capacity expansions above legislative requirements are justified compared to the costs of subsidizing other, less expensive, types of solar, such as those in the CSI Program. Before increasing the targets for community solar, the Board should carefully evaluate whether the benefits justify the costs.

Rate Counsel does not have sufficient data to recommend a specific "scrub rate" for the Permanent Program. 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.

4) Should the CSEP capacity be divided into separate blocks, and if yes, how?

Rate Counsel Comments:

Staff's recommendation is to continue the practice of allocating community solar capacity among the four electric distribution companies ("EDCs") based upon their respective percentages of retail sales, but not to further divide the program into segments. Rate Counsel supports this recommendation. As discussed in the response to Question 6 below, Rate Counsel is recommending that community solar projects be selected through a competitive bidding process, with selection based on the amount of bill savings proposed to be passed through to subscribers. Segmentation can lead to inefficiencies and higher costs. In addition, segmentation increases the risk that capacity allocations will be tied up for projects that never materialize.

5) Should the Board set restrictions on the ownership of community solar projects?

Rate Counsel Comments:

Rate Counsel supports Staff's recommendation to continue the practice of not permitting the EDCs to develop, own, or operate community solar projects. Rate Counsel agrees with Staff that there is no need for ratepayers to bear the risks and costs of EDC-owned community solar projects and shares Staff's concern that the EDCs could have an unfair competitive advantage over other market participants. Further, Staff's proposed restriction on EDC ownership will lead

to a more diverse competitive solar market in New Jersey, expanding the number of suppliers, and hopefully leading to lower costs for the development of community solar projects.

At the April 24, 2023 stakeholder meeting, representatives of the EDCs urged the Board to allow EDC ownership of community solar projects in accordance with N.J.S.A. 48:3-87.11(f), which directs the Board to "adopt rules and regulations for the permanent program that set forth standards for projects owned by electric public utilities, special purpose entities, and nonprofit entities." Rate Counsel believes that the statutory language allows, but does not require EDC owned projects. Rather, the statute gives the Board discretion to adopt a standard that would permit EDC ownership only in the event there is insufficient interest in the program by non-utility developers. However, if the Board determines that EDC participation is mandatory, it should adopt standards to assure that the costs and risks of solar development are not borne by ratepayers, and that the EDCs do not have an unfair competitive advantage. The Board's Affiliate Relations and Public Utility Holding Company standards[9] could be used as a model for developing such safeguards.

Further, if EDCs are allowed to participate they should be subject to competitive bidding like any other market participant. The EDCs must be put in the same position as other competitors and not permitted to use ratepayer funds to unfairly compete against private, unregulated entities. Further, forcing EDCs to participate in a competitive bidding process, that ranks projects by energy savings, will focus attention on getting the most community solar capacity development at the highest benefit. Using a competitive bidding process also closes the door on EDC proposals to develop, with ratepayer funding, higher per-unit cost community solar projects under the guise of using "patient capital" for "hard to reach market segments."

[9] N.J.A.C. 14:4-3 and 14:4-4.

Section II[10] – Application Process and Project Selection

6) How should projects be selected for participation in the Permanent Program? Should the Board consider creating a waitlist for non-selected projects? Please comment on the proposed process for project registration. Do you believe using bill discount offering is an appropriate method to select projects, should there be more applicants than capacity available?

Rate Counsel Comments:

The Straw Proposal would establish strict prerequisites for applications, then accept applications on a first come, first serve basis. In the event of an oversubscription, projects would be selected up to the target capacity based on the level of bill savings offered to subscribers. Rate Counsel agrees with Staff that the Permanent Program should move away from the multi-factor selection process used in the Pilot Program. However, instead of using bill savings only as a "tiebreaker" in the event of an over-subscription, there should be a competitive solicitation process that uses bill savings as the primary selection criteria for all community solar projects. Rate Counsel strongly disagrees with the proposal to eliminate competition entirely from the selection process. As Rate Counsel has noted in earlier comments, the primary purpose of the Community Solar program is to maximize benefits to subscribers, particularly low- and moderate-income ("LMI") Subscribers.

In the April 24, 2023 stakeholder meeting, some solar industry participants asserted that a competitive solicitation process based on electricity savings is not workable given the incentive to "overstate" energy savings, and the inability to verify such proffered savings afteraward. Rate Counsel disagrees with this argument and suggests that there are several remedies to such potential problems. First, bidders could be required to certify, via affidavit, their proposed

[10] There are two sections numbered "II" in the Straw Proposal. To avoid confusion, Rate Counsel is retaining the numbering in the Straw Proposal.

energy savings. Second, the Board could periodically audit some sample of selected projects to assure savings and take later steps to address projects that have failed to deliver their proposed energy savings benefits.

Staff's proposal to ensure LMI participation by limiting the program to projects with at least 51% LMI customers is a reasonable approach. However, benefits to subscribers will not be maximized unless developers are provided with an incentive to "sharpen their pencils" by competing to provide the greatest bill savings. Community solar developers are unregulated entities that are not required to account for the profits they earn on these ratepayer-subsidized projects.[11] In the absence of regulatory review of the developers' books, competition is the best method to rely on when ratepayer-funded subsidies are involved. Competition for community solar support enables these projects to benefit subscribers without excess profits to developers.

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 provide the most benefits to subscribers, and would undermine the competitive process.

7) What minimum project maturity requirements should projects be required to meet before applying to participate in the Permanent Program? Do you believe the proposed project maturity requirements are sufficient to ensure that accepted projects are highly likely to begin operation within the 18 months allowed in the ADI program?

Rate Counsel Comments:

Rate Counsel recommends that the Board utilize project maturity standards that are consistent with those adopted in the ADI and CSI Programs. These standards are generally

[11] Rate Counsel continues to assert that requiring private developers who receive ratepayer funds to provide access to their accounts would best allow the Board to determine if ratepayer funded subsidies are appropriate or even needed.

comparable to one another, and were based on the by maturity standards in the community solar Pilot Program. Rate Counsel supports the use of these maturity standards since (a) they will provide a degree of uniformity across various solar financial support programs, (b) they are relevant and important to assure project completion, and (c) they will likely reduce risks of failing to achieve target community solar installation goals. Rate Counsel has supported the ADI and CSI maturity requirements in past comments before the Board and continues to support them for application to the Permanent Program.

8) What other project eligibility criteria should the Board consider for projects seeking to participate in the CSEP?

Rate Counsel Comments:

Rate Counsel supports Staff's recommendation not to allow projects that have already received Permission to Operate ("PTO") to participate in the Permanent Program. Projects that were able to be financed and built without the additional subsidies provided by net metering credits should not be permitted to receive the un-needed additional subsidies.

Rate Counsel also supports Staff's recommendation to limit the Permanent Program to projects connected with the one of the State's four EDCs. As noted in the Straw Proposal, this restriction is needed to meet a statutory requirement.[12]

Section III – LMI Access

9) What types of subscribers are considered low- and moderate-income?

Rate Counsel Comments:

Rate Counsel is in agreement with Staff's recommendation to use the same definitions of LMI subscribers that were used for the Pilot Program.

[12] N.J.S.A. 48:3-87.11(a).

10) How should a high level of LMI participation in the community solar program be maintained?

Rate Counsel Comments:

Rate Counsel supports Staff's recommendation to require all projects participating in the Permanent Program to reserve at least 51% of their capacity for LMI subscribers. This requirement is consistent with the program's objectives of maximizing benefits to LMI subscribers, and appears to be attainable based on the results of the Pilot Program.

11) How should incomes be verified for qualification of low- to moderate-income subscribers?

Rate Counsel Comments:

Staff is proposing to maintain and expand the methods that were allowed for verification of LMI status in the Pilot Program. Specifically, Staff is proposing to add to the list of programs that may be used to verify a subscriber as LMI, and to allow subscribers to qualify by providing a written attestation of their gross household income level. Rate Counsel supports Staff's recommendations. Rate Counsel notes that proposed section 14:8-13.7(d)(iii) would require self-attestation to be conducted by a third party platform, and that the third party be an "authorized administrator procured by the EDCs." These requirements would reduce the risk of fraud, and, since the administrator would be procured by EDCs, would allow the Board to assure that appropriate measures were in place to protect subscribers' privacy.

12) Should the Board consider modification to how affordable housing providers may subscribe to community solar projects?

Rate Counsel Comments:

In addition to Staff's proposed subscription requirements for affordable housing providers, this section of the Straw Proposal also addresses proposed changes to assure that residents of master-metered buildings receive benefits from the buildings' participation in

community solar projects. Under the Pilot Program, account holders for master-metered buildings are required to provide affidavits that "specific, identifiable, sufficient, and quantifiable benefits of the community solar subscription are being passed through to the tenants."[13] Under the Straw Proposal, the benefits passed through to residents would be required to be in the form of direct payments or rebates amounting to at least 75% of the financial benefits of the community solar subscription. Rate Counsel supports the proposed modification. However the Board may wish to consider whether this provision is needed for commercial buildings.

With regard to affordable housing providers, Staff is recommending allowing them to qualify as LMI subscribers by submitting affidavits that they will pass through at least 75% of their electricity bill savings to residents in the form of direct payments or rebates as least once per year. The Straw Proposal expresses concern about assuring that residents of affordable housing remain eligible for affordable housing when they receive community solar benefits. In addition, there should be assurance that community solar benefits are not offset by reductions in the housing subsidies provided to residents. To address these concerns, the affordable housing providers' affidavits should be required to include representations that residents will not lose eligibility nor have their subsidies reduced as a result of receiving community solar benefits.

[13] N.J.A.C. 14:8-9.6(g).

Section IV – Bill Credits

13) What modifications, if any, should the Board consider making to the value of the community solar bill credits? If demand charges are included in the calculation of the bill credit for affordable housing providers, would the proposed calculation process set appropriate rates, as demand is not connected to usage or project production? Would another method more effectively allow affordable housing to participate in community solar?

Rate Counsel Comments:

As noted in the Straw Proposal, the bill credits provided under the Pilot Program are based on the EDCs' supply and delivery charges to the subscribers. Staff is proposing to modify the bill credits provided to multi-family affordable housing buildings that are served through master meters on commercial rates. For these subscribers, Staff proposes to include demand charges in the determination of the bill credit amounts. Rate Counsel opposes this change.

Including demand charges in net metering credits would be a substantial change, and costly to other ratepayers. Further, Staff has provided no documentation that this proposed change is necessary. For master-metered buildings, community solar project owners will be dealing with a single subscriber, rather than handling subscriptions for the building's residents individually. For this reason, projects with master-metered buildings as subscribers should be less expensive to administer. In the absence of a demonstrated need to increase the net metering credits that apply to master-metered buildings, Rate Counsel recommends that the methodology used in the Pilot Program be maintained.

If any modifications to the net metering credits are to be considered, the Board should consider modifying the value of the community solar bill credits so that they are closer to the EDCs' avoided costs. Avoided costs represent the opportunity cost of the generation product offered by power generation. Setting net metering credits at any higher rates 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.

14) Should the Board modify the standards for banking of excess bill credits or unallocated generation?

Rate Counsel Comments:

Staff is proposing to modify and clarify the provisions for the banking of bill credits in the event a community solar project is undersubscribed. The Pilot Program rules contain a provision that generation delivered to the grid that has not been allocated to a subscriber may be "banked" by the community solar project owner for an annualized period of up to 12 months, and re-distributed to other subscribers during the same 12-month period.[14] For the Permanent Program, Staff proposes to clarify that the "banking" provisions for unallocated credits are intended only as a temporary measure to allow projects time to sign up subscribers after the project commences operation. Under the Straw Proposal, community solar projects would be allowed to "bank" unallocated generation for up to 12 months from the start of project operation, and the banked generation could be held for 12 additional months for allocation to new subscribers. Thereafter, any remaining unallocated generation would be compensated at the wholesale cost of power.

Rate Counsel supports Staff's proposal. The 12-month period proposed for banking should be sufficient for community solar developers to fully subscribe their projects, and an additional 12 months should be sufficient time to re-allocate any banked generation. The Board should reject suggestions by some stakeholders to allow banking of unallocated generation for one year from the month of generation throughout the life of the project. Rate Counsel opposes

[14] N.J.A.C.14:8-9.9(h).

this approach, which would undermine the incentive to keep community solar projects fully subscribed.

15) Should the Board adopt consolidated billing for community solar? Who should handle consolidated billing and how should it be conducted?

Rate Counsel Comments:

Staff is recommending that consolidated billing, to be handled by the EDCs, will be implemented for all Permanent Program projects, and be phased in no later than June 1, 2024 for all Pilot Program projects. Consolidated utility billing for community solar projects has the potential to improve customer convenience while reducing billing costs. Rate Counsel supports mechanisms that reduce costs and increase overall administrative efficiency. However, Rate Counsel has some concerns with Staff's specific proposal.

First, it is not clear that the time frames contemplated in the Straw Proposal are achievable. Rate Counsel recommends that any regulations mandating consolidated billing allow for some flexibility in the event more time is required for implementation.

Second, Staff is proposing that consolidated billing be implemented using a "net crediting" methodology, in which the subscriber's allocated bill credit would be multiplied by a "savings rate" and the product would be subtracted form the customer's bill for electric service, and the remainder of the bill credit. The remainder of the bill credit amount would be remitted to the project owners as the subscription fee. It is not clear from the description in the Straw Proposal whether the subscriber's bill would separately show the total bill credit and the amounts allocated to the subscriber and the project owner. In order to provide transparency, all three amounts should be shown on the subscriber's bill.

Third, Rate Counsel is concerned about Staff's proposal to limit the fee charged by the EDCs to project owners for handling consolidated billing to 1% of the value of the bill credits.

The Straw Proposal provides no rationale for limiting the fees charged to developers for project owners. To date, community solar developers have been required to absorb the cost of billing out of the revenues they receive for their projects. There is no reason why project owners should not continue to bear these costs. Ratepayers should not be required to add to the generous subsidies they already provide for community solar. The EDCs' full costs of implementing consolidated billing should be recovered from the fees charged to the project owners.

Section V – Project Interconnection

16) The CEA states that the CSEP 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." What changes, if any, should be made to the existing community solar interconnection standards and processes?

Rate Counsel Comments:

The Pilot Program rules require community solar projects to comply with the applicable interconnection requirements for each EDC, and provide that interconnection applications for community solar projects are to be processed following the EDCs' normal interconnection processes.[15] Staff is recommending that this provision be retained for the Permanent Program. Rate Counsel concurs with this recommendation. As noted in the Straw Proposal, the Board is addressing the interconnection processes as part of its grid modernization proceedings. Rate Counsel is in agreement with Staff that the interconnection requirements for community solar should align with the changes adopted in the grid modernization proceedings, and should therefore be addressed in that proceeding.

The Straw Proposal indicates that Staff is proposing to include provisions requiring community solar projects to meet applicable codes and requirements. However, the draft rules

[15] N.J.A.C. 18:8-9.9.

provided with the Straw Proposal do not include the provisions in the Pilot Program rules that require community solar projects to conform to all codes, standards, and licensing requirements that were applicable when the project was constructed, and to bear responsibility for compliance with applicable Federal and State securities laws, ruled and regulations.[16] These provisions should be included in the Permanent Program rules.

Staff is recommending one change to be implemented in the Permanent Program rules. That change is to require the EDCs to accept applications for interconnection from community solar projects ahead of a project's application for participation in the program. Rate Counsel disagrees with this proposal. First, Staff has not provided any strong evidence showing a clear net public benefit by such a proposal. While it may appear that moving LMI based community solar projects to the "front of the line" has public benefits, the cost of such a policy is that other, lower-cost solar projects, some of which may have been in the interconnection process for some time, will be delayed. In today's capital markets, with rising supply chain costs, and rising interest costs, such delays, created by an arbitrary re-ordering of the interconnection queue, could result in unanticipated consequences that ultimately cost ratepayers, and have negative impacts for New Jersey solar markets. Clearly these costs could outweigh the perceived benefits of moving community solar projects to the front of the interconnection line.

Second, such a proposal appears unnecessary and it also appears to be an incorrect remedy to a perceived problem. If EDC interconnection processes are lagging, then the Board should identify which EDCs are lagging in their interconnection responsibilities, research the root causes for these delays, and address them accordingly, as opposed to selecting

[16] N.J.A.C. 14:8-9.9(b) & (h).

interconnection winners and losers by moving some types or projects to the "front of the line" and others to the back.

17) What measures should the Board implement to minimize negative impacts to the distribution system and maximize grid benefits? What, if any, additional stipulations would need to be included in the Program in order to create the greatest benefits to the grid, including storage and compatibility with the proposed Storage Incentive Program?

Rate Counsel Comments:

As noted in the Straw Proposal, the Board's grid modernization proceedings include consideration of measures to support the distribution system. While Rate Counsel generally agrees that the grid modernization proceedings are the appropriate forum to assure that distributed generation is developed in manner that benefits the grid, Rate Counsel recommends that the Board retain the requirement in the Pilot Program rules that the EDCs make available and update hosting capacity maps.[17]

Section VI – ADI Program

18) 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:

Staff is recommending that the awarding of community solar projects be coordinated with registration in the ADI Program, by making registration automatic upon receipt of an award under the Permanent Program. Staff further recommends that the same 18-month time frame to achieve PTO that applies to other ADI projects should also apply to projects under the Permanent Program. Rate Counsel supports these recommendations, which will assure that

[17] N.J.A.C. 14:8-9.9(f).

Permanent Program projects will not be "stranded" without incentives, and will be completed within a reasonable period of time.

19) The Solar Act of 2021 allows 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" in the assignment of an SREC-II value. How should the Board address this criterion? What should the value of the ADI Program incentive be?

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, 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 already considered this factor in setting the SREC-II value at $90 for LMI projects in the Pilot Program. Based on the results of the Pilot Program, that SREC-II value was sufficient to incentivize projects that provided bill savings to LMI subscribers. For this reason, Rate Counsel would oppose consideration of a higher SREC-II value. Instead, consistent with Staff's stated principle of "[p]rovid[ing] maximum benefit to ratepayers at the lowest cost," the Board should engage in continuing evaluations to determine whether a lower SREC-II value would be sufficient. The competitive process recommended in Rate Counsel's response to Question 6 above would facilitate this evaluation.

Section VII – Community Solar Subscribers

20) Should the Board consider changes to the minimum and maximum number of subscribers to a project?

Rate Counsel Comments:

The Pilot Program rules set a minimum of 10 subscribers for each project, and a maximum of 250 subscribers per MW of installed capacity. In addition, no single subscriber

could subscribe to more than 40% of a project's energy production.[18] Staff is proposing to remove the maximum subscriber limit that is included in the Pilot Program. The Straw Proposal states that this requirement has been waived by Board for a petitioning Pilot Program project because the maximum subscriber limit may unnecessarily restrict community solar access for low-demand subscribers. Rate Counsel does not object to this proposed modification.

21) Should subscribers be required to live in the same or adjacent municipality or county as their projects? Without a preference for projects which serve only the municipality or county in which they are located and neighboring municipalities or counties, how should projects in the Program maintain focus on local communities?

Rate Counsel Comments:

Rate Counsel is in agreement with Staff's proposal not to require all subscribers to a single project under the Permanent Program to live in the same or adjacent municipalities or counties. Rate Counsel believes it is reasonable to allow projects to solicit subscribers anywhere within the service territory in which the project's solar facilities are located. As indicated in the Straw Proposal, this should simplify the enrollment process and expand the availability of community solar across the state. Without a preference for projects with subscribers in a limited geographic area, projects can still focus their marketing efforts in specific target areas.

22) Should the Board consider changes to the customer protection measures implemented under the Pilot?

Rate Counsel Comments:

Staff is proposing to maintain the current consumer protections implemented for the Pilot Program, with some additions, including a requirement that projects must provide at least a 10% bill savings rate to subscribers. The proposed consumer protections, with Staff's proposed

[18] N.J.A.C. 14:8-9.6(b), (c) & (f)(2).

additions, appear reasonable, except that the Board my wish to provide an exception to the 10% minimum bill savings requirement for larger non-residential "anchor" subscribers. However, as noted in Rate Counsel's May 6, 2022 comments in this stakeholder proceeding, there remains a significant omission, namely involvement by the Board in providing educational materials to potential subscribers, and in the dispute resolution process.

The Board should develop educational materials and make them available to ratepayers on the Board's website and through other media. The materials should explain the basics of solar energy and community solar projects, provide information on where community solar projects are available and how to access these projects, and explain key terms and provisions in subscription agreements. There should be a list of "frequently asked questions" for the community solar program with responses. Additionally, the BPU should share community education materials with the New Jersey Department of Community Affairs ("DCA"), which partners with local agencies that assist LMI customers with applications for financial assistance. Rate Counsel has reason to believe that LMI customers are currently being targeted with door-to-door solicitations to obtain community solar subscriptions and is concerned that uniformed LMI customers are subject to potential unscrupulous market practices.

The educational 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.

Finally, the rules should include provisions making the Board's customer complaint process available to subscribers. The Board's rules for the Pilot Program include a provision that "[c]ommunity solar developers, operators, and subscriber organizations are subject to formal pleadings and petitions procedures, as set out in N.J.A.C. 14:1-4 and 5."[19] This provision has been eliminated without explanation from the draft rules for the Permanent Program. This provision should be included in the Permanent Program rules. In addition, community solar projects should be required to provide the Board's telephone number to be included in all subscriber contracts and disclosure statements. These documents should also include a prominent statement advising subscribers of their right to file complaints at the BPU.

The proposed Permanent Program rules contain many provisions governing the relationships between community solar projects and their subscribers. The Board's customer complaint processes should be available to subscribers to hold community solar projects accountable for violations of their rights under the Board's rules. The Board should be especially cognizant of any predatory marketing tactics targeting LMI customers and address

[19] N.J.A.C. 14:8-9.10(b)(6)(iii).

them immediately. 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.

23) Should the Board consider allowing automatic enrollment of subscribers to community solar projects? How should projects using automatic enrollment ensure customers being subscribed are low- or moderate-income? What other standards should be put in place for these projects?

Rate Counsel Comments:

Staff is recommending allowing "opt out" enrollment for Permanent Program projects that are owned and operated by local government units. "Opt out" enrollment would be allowed only after the implementation of consolidated billing, and would be subject to a number of safeguards similar to those proposed in an a 2020 rule proposal, which Rate Counsel supported.[20] The current proposal would add an additional requirement that at least 80% of the subscribers be LMI subscribers. Rate Counsel supports this proposal. Projects could ensure compliance with the 80% LMI requirement by identifying and enrolling residents of affordable housing units or buildings, or by using "census tract" qualification of LMI subscribers.

[20] I/M/O Community Solar Energy Pilot Program Rules Proposed Amendments: N.J.A.C. 14:8-9.2, 9.4, and 9.8, BPU Dkt. No. QX20090594, Proposal No. PRN 2020-109, Rate Counsel Comments (Jan. 15,2021). The proposed amendments were not adopted.

Section VIII – Other

24) What requirements for community engagement should the Board set? What should community engagement and subscriber acquisition plans include to ensure that meaningful collaboration with the surrounding community has taken place and the project will be able to meet its LMI requirements?

Rate Counsel Comments:

Staff is proposing to ensure community engagement by requiring all applications to include a Community Engagement Plan. Rate Counsel supports this approach but shares the concerns expressed at the April 24, 2023 stakeholder meeting that there is a need for standards that can be objectively applied. Rate Counsel defers to stakeholders with expertise in this area to provide input on the specific criteria that should be included in the Permanent Program rules.

25) What other rules of the Pilot should the Board include in the Permanent Program? The Pilot rules included an option "to test new models for low-income community solar projects including, but not limited to, ownership of community solar assets by low-income subscribers." Should the Permanent Program explore any such alternative ownership models?

Rate Counsel Comments:

Staff is proposing that the Pilot Program rules that are not specifically addressed in the Straw Proposal narrative text generally be generally adopted for the Permanent Program, and this is reflected in the draft rules provided with the Straw Proposal. Rate Counsel agrees with this approach with the exceptions noted elsewhere in these comments.

26) What rules of the Pilot should the Board modify? Which other provisions of the Permanent Program should or should not also apply to the Pilot?

Rate Counsel Comments:

Staff is recommending incorporating a number of provisions proposed for the Permanent Program into the rules for projects approved during the Pilot Program. First Staff recommends requiring implementation of EDC consolidated billing for Pilot Program projects after a

transition period. Subject to the concerns expressed in Rate Counsel's response to Question 15 above, Rate Counsel supports this recommendation. In addition, Staff recommends incorporating the updated provisions regarding project marketing elimination of the maximum subscriber limit, banking and use of unallocated and excess bill credits, and LMI income verification standards. Rate Counsel supports these recommended updates to the Pilot Program.

27) How should community solar energy generation be accounted for? How should electricity produced by community solar facilities be measured and compensated to reduce unaccounted for energy?

Rate Counsel Comments:

The Straw Proposal notes that, while energy generated by community solar projects is metered at the point of interconnection with the distribution grid, it is not compensated directly, and instead is compensated indirectly via bill credits to subscribers. In the Straw Proposal, Staff expressed concern about how to ensure that the energy is appropriately accounted for as the community solar program grows.

Rate Counsel notes that, under the Pilot Program rules as well as the current proposal, the EDCs are responsible for measuring the generation that is delivered into the distribution grid by community solar projects, and assuring that this amount is in excess of the amount of energy corresponding to the bill credit provided to each project's subscribers.[21] Rate Counsel is in agreement that the EDCs are the appropriate entities to assure proper tracking of and accounting for the energy produced by community solar facilities. As the program expands, it is important to assure that the costs of performing these functions is borne by community solar projects, and not subsidized by ratepayers. For simplicity and administrative efficiency, these costs should be included in the fees to be charged by the EDCs for consolidated billing.

[21] N.J.A.C. 14:8-9.9; draft N.J.A.C. 14:8-13.8.