601 Bangs Ave.
Asbury Park, NJ 07712
SolarLandscape.com

May 15, 2023

Re: Comments regarding Docket No. QO22030153, In the Matter of the Community Solar Energy Program

Dear Board Secretary Golden:

Solar Landscape respectfully offers the attached comments to Docket QO22030153, regarding the Community Solar Energy Program ("Permanent Program"). Solar Landscape is a vertically integrated community solar company headquartered in Asbury Park, New Jersey. We develop, design, construct, own, operate, and subscribe community solar projects. In Year 1 of the Community Solar Energy Pilot Program, Solar Landscape was awarded eight projects, totaling approximately 20 megawatts; and in Year 2 of the Pilot Program, Solar Landscape was awarded 46 projects, totaling approximately 51 megawatts. To date, Solar Landscape has had ***zero*** of its awarded New Jersey community solar projects fail (in contrast to the 56% failure rate of Pilot Year 1 projects cited by Staff in the Straw Proposal). The following pages contain our detailed comments, which are colored by our track record in New Jersey's unique community solar market. Our most important points can be summarized as follows:

1. The Permanent Program rules should aim only to award projects that will be built and subscribed. Accordingly:
    a) PLEASE DO require a substantial security deposit as a prerequisite for obtaining program capacity. This will ensure that applicants only take capacity if they are very confident in their ability to perform.
    b) PLEASE DO require an executed EPC contract. Without this, an applicant does not know its costs or timing and therefore does not know if/when it will build its project.
    c) PLEASE DO NOT implement a "tiebreaker" based on bill credit discount rates. A discount-rate tiebreaker would incentivize project developers to make unrealistic financial guesses to justify overly aggressive discount rates, which would lead to project failure when those guesses turn out wrong.

2. The Permanent Program rules should incentivize substantial engagement and investment (e.g., workforce development) in the communities where projects are sited to avoid continuing a history of environmental injustice. Accordingly:
    a) PLEASE DO allow opt-out municipal subscription programs (as the Straw Proposal suggests), but limit those programs to the same or adjacent municipality as where the project is located. Opt-out with this reasonable geographical restriction will lead to local low- to moderate-income (LMI) residents getting the benefits of the projects sited in their communities and will incentivize developers to invest in those communities.
    b) PLEASE DO apply an objective, easy-to-score, points-based "tiebreaker" that incentivizes community engagement and workforce development within the same or adjacent municipality as where a project is located. This can be simply

accomplished by (i) providing forms for municipal Green Teams, mayors, and municipal boards to sign based on their own judgment as to a project's commitment to the community and (ii) awarding a predetermined point value for each such signed form obtained by a project.

c) PLEASE DO NOT allow opt-out municipal subscription programs to be done with municipalities other than the same or adjacent municipality as where a project is located. While allowing EDC-wide subscriptions on an individual subscriber basis is an improvement to the rules, allowing projects to do opt-out programs with any municipality within the same EDC would perpetuate environmental injustice because developers could site projects in industrialized towns and then sell *all* the benefits of those projects via opt-out programs with wealthier towns on the other side of the state.

3. The Permanent Program should award at least 750 MWs of SREC-II community solar projects before the end of Energy Year 26, as required by the Solar Act of 2021.

Thank you for considering our comments and for your dedication to this important program.

Sincerely,

Mark Schottinger
President
Solar Landscape
MarkFS@SolarLandscape.com

solarlandscape

RESPONSES TO SELECT QUESTIONS POSED BY STAFF

6. **Staff question for stakeholders 6:** 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?

SOLAR LANDSCAPE RESPONSE:

The Tiebreaker:

Ties are inevitable. *Solar Landscape estimates that between 500 MW and 1 GW of good projects are currently ready to apply for community solar capacity (pending whatever interconnection requirements are finalized). So "ties" are highly likely in the coming years, and an effective tiebreaker is essential for program success.*

The proposed discount-rate tiebreaker should not be implemented, as it would lead to a higher scrub rate (and the bill-credit discount on a project that does not get built is effectively 0%). *A project's guaranteed minimum discount off the bill credit is not a good tiebreaker because it would lead to a higher project scrub rate (i.e., awarded projects not being built). Specifically, the proposed tiebreaker would incentivize developers to bid unrealistically high discount rates based on improbable financial assumptions; and in the majority of cases where those financial assumptions failed, those discount rates would make project financing impossible, which would lead to project failure. (Almost all project failure ultimately relates back to financing issues, including where a developer blames project failure on site control problems, inasmuch as those site control problems often could have been solved with additional money.)*

At the point in the Straw Proposal's proposed application process where developers would bid their minimum discount rate, there are a number of financial unknowns. For example: (i) most developers would not have financing arranged (i.e., they would not know the bank providing debt, the tax equity investor, or the terms of the debt and tax equity investment); (ii) no developers would have certainty of their federal tax credits (i.e., even once the federal government finalizes its rules around ITC adders, there will be an annual limit on the of adders that will be allowed nationally related to LMI subscriptions, so no developer will have certainty of receiving that adder); (iii) unless the Permanent Program rules are changed to require an executed EPC contract as a project maturity prerequisite (more on that below), most developers would be guessing about major costs (i.e., the "P" in EPC stands for "procurement," and without having procured solar panels in a market with constantly changing solar panel prices, a developer is guessing about a major component of its costs); and (iv) any developer who has not subscribed and operated a community solar project in New Jersey's unique market (i.e., most developers at this point) will be guessing about costs more directly related to subscriber discount rates (e.g., cost to acquire new subscribers, cost to retain subscribers, and cost to replace subscribers in the event of attrition). A discount-rate tiebreaker would incentivize developers to make overly aggressive assumptions about all these unknowns; and if any of those aggressive assumptions failed, the project would be at high risk of failing. Importantly, from the perspective of the subscribers who stand to benefit from a proposed community solar

project, the applicable bill-credit discount is effectively 0% when that project wins capacity but does not get built.

The proposed discount-rate tiebreaker would create administrative difficulties. *In early Program years, a discount-rate tiebreaker could lead to a large variety of discounts, because—à la The Price Is Right—developers would aim to bid a point or a fraction of a point over what they imagine will be the next best discount; and, all else equal, this would lead to more discount rates for the EDCs to administer on consolidated bills. In later Program years, after winning discount rates are made public, the likelihood increases that many projects bid the same discount rate, meaning that a tie could continue even after application of the discount rate tiebreaker, which would create the need for a further tiebreaker. Furthermore, ignoring all the problems set forth above, an apples-to-apples discount-rate bidding process should require stating a discount-rate that applies for a baseline 30% ITC and a discount-rate adder that would apply per additional point of ITC thereafter; but objectively scoring bids framed that way would be impossible. Namely, if one developer offers a high baseline discount with a low adder and another offers a medium baseline discount with a higher adder, choosing which offer is better would require making impossible guesses about where each project's ITC will land.*

High bill-credit discount rates are already incentivized by market forces. *The apparent purpose of the Straw Proposal's proposed discount-rate tiebreaker is good – i.e., to incentivize higher discounts for subscribers. However, market forces already incentivize higher discount rates because projects need to compete over customers. These market forces will become ever stronger as community solar scales because more projects will be competing for customers.*

The tiebreaker should be a simple and objective measure of a project's community engagement, including its commitment to workforce development. *As currently framed, the Straw Proposal has no meaningful incentive for community engagement or workforce development; so a tiebreaker that incentivizes these things in an effective, easy-to-score way would be a great improvement.* ***Solar Landscape recommends the following tiebreaker:***

- *The BPU should create short, simple forms for: (i) a letter to be signed by the Green Teams from the same or adjacent municipality as where the project is located, (ii) a letter to be signed by the mayor from the same or adjacent municipality as where the project is located, and (iii) a resolution to be entered by the municipal board from the same or adjacent municipality as where the project is located.*
    - *Each form should include instructions to the prospective signer that the form should only be signed if (i) in the signer's judgment, the applicant has either performed or committed to perform meaningful community engagement in the municipality and (ii) the applicant has discussed with the prospective signer the possibility for doing an opt-out subscription program in the town.*
    - *Each form should also have a box that the signer of the form can check if, in the signer's judgment, the applicant has performed or promised in a binding way (regardless of whether the applicant receives a community solar award) to*

perform solar workforce development in the town, including job training or educational programs in the public schools.

- *These signed forms should count for points that would serve as the tiebreaker: a letter signed by a Green Team or a mayor from the same or adjacent municipality as where the project is located gets one point; a resolution signed by the board of the same or adjacent municipality as where the project is located gets two points; and any form that has the workforce development box checked gets an additional point for that form.*
- *In applying for community solar capacity, applicants would self-certify as to the number of points they scored from these forms. Applicants would submit the forms for the scorer of the tiebreaker to audit.*
- *Providing three different point-scoring forms, each with a possible workforce development adder, and allowing applicants to obtain these forms in multiple municipalities for each project would make for substantial variation in points (i.e., it is unlikely that there would be continued ties after application of the tiebreaker).*

This points-based tiebreaker would cause substantial community engagement, including workforce development; would leave it to the local government and Green Teams to assess a developer's commitment to the community and to workforce development; and would take no time for the scorer of community solar applications to administer (other than to the extent the scorer of applications audits projects' submitted forms to audit their self-certified scores).

7. **Staff question for stakeholders 7:** 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?

SOLAR LANDSCAPE RESPONSE:

The proposed maturity requirements are insufficient to ensure that awarded projects are built and turned on within applicable deadlines (or at all). As noted above, projects typically succeed or fail as a product of financial issues. Accordingly, a higher project success rate can be achieved by requiring greater financial accountability as a prerequisite for receiving Program capacity.

The following are reasonable measures of financial accountability that should be prerequisites for a project's receipt of Program capacity:

- *A substantial security deposit (e.g., $25,000-$50,000 per MWdc)*
    - *In a first-come-first-served program with an interconnection-study prerequisite, no reasonable developer should object to posting a substantial security deposit as a precondition to receiving Program capacity. If the developer is not willing to post a security deposit, then the developer is unsure of factors that the developer should be sure of prior to taking up limited Program capacity.*

- *Regarding Staff's concerns over projects owned by community groups, towns, or smaller private companies: (i) town-owned and community-owned projects are rare and thus could be exempt from a security deposit requirement without risking a large number of failed megawatts; and (ii) any private developer, regardless of its size, should be able to obtain financing for a security deposit (unless that developer's project has problems or is insufficiently mature, in which case, that project is not ready to take up Program capacity).*
- *The security deposit could be in the form of cash (to be returned to the developer when the project is energized) or a bond.*

- *An executed EPC contract*
  - *An engineering, procurement, and construction ("EPC") contract is the operative contract for getting a solar project built. Until a developer executes an EPC contract, it has substantial uncertainty over costs and timing. For example, solar panel prices can fluctuate substantially, so until panels are procured (i.e., the "P" in EPC), the developer has cost uncertainty; and construction contractors (i.e., the "C" in EPC, who actually build the projects) are in high demand in New Jersey, which means there is substantial timing uncertainty until an EPC contract is executed (i.e., it may be difficult to get on a solar construction contractor's schedule).*

12. **Staff question for stakeholders 12:** Should the Board consider modification to how affordable housing providers may subscribe to community solar projects?

SOLAR LANDSCAPE RESPONSE:

The proposal to require master-metered housing providers to pass on 75% of the electricity bill savings to residents in the form of direct payments is unworkable because it will cause negative impacts to both housing providers and residents of affordable housing. Instead, the Permanent Program should implement the Pilot Program's simple and workable affidavit requirement for affordable housing providers.

Regular Direct Payments will put residents at risk of losing eligibility for affordable housing and other benefits programs. *According to a recently released memo[1] from the U.S. Department of Housing and Urban Development, cash payments and gift cards, provided to pass along community solar bill savings to tenants of master-metered buildings, would generally be included in family annual income. Given the low threshold to participate in certain income-qualified government programs, having to report even a modest increase in annual income could inadvertently cause many recipients to lose vital benefits.*

Providing direct cash payments to residents of affordable housing will cause an undue administrative burden to housing providers. *In our experience conducting outreach and building relationships with providers of affordable housing, the primary impediment to*

[1] https://www.hud.gov/sites/dfiles/Housing/documents/MF_Memo_re_Community_Solar_Credits_in_MM_Buildings.pdf

their interest in participating in the community solar program has been the added administrative burden of overseeing the subscriptions. These organizations can often only afford to have one or two individuals handling all the administrative work required to keep their operations running. With these organizations already stretched thin, there is concern that they won't have enough time to oversee a new energy program. This concern will increase significantly if the housing administrators have to deal with the administrative burden of accounting for and distributing payments to all tenants.

Providing accurately accountable direct payments will be practically impossible for organizations that serve transient communities. *Given that many providers of housing for transient communities don't require strict identity verification for the residents they serve, which comprise a large, ever-changing makeup of individuals for indeterminate periods of time, it will be impossible to ensure that these residents receive direct payments. Any attempt to create a system to account for and provide benefits for these members on an individual basis will further contribute to the administrative burden faced by housing providers.*

In light of the above issues, the Permanent Program should adopt the Pilot Program's simple and workable affidavit requirement for master-metered accounts of affordable housing providers.

13. **Staff question for stakeholders 13:** 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?

SOLAR LANDSCAPE RESPONSE:

The current method for calculating the value of the community solar bill credit for master-metered affordable housing accounts assigned to non-residential rate classes does not provide a high enough value to incentivize subscriber organizations to subscribe these customers to their projects.

While we support the staff recommendation to include demand charges in the bill credit for master-metered affordable housing accounts, this will still not adequately address the issue. *Including demand charges will bring the value of the distribution portion of the credit for these accounts closer in line with the value applied to the distribution portion of residential subscribers. However, this increase will still leave the bill credit for affordable housing much too low because the supply portion of the bill credit will still be significantly lower than the supply credit applied to residential accounts.*

The reason for the large discrepancy in the value of the supply portion of the bill credit for residential subscribers when compared to master-metered affordable housing accounts is that the residential rate class includes capacity value blended into the rate, whereas the non-residential rate classes have the capacity charge broken out separately and billed in kilowatts instead of kilowatt hours.

To illustrate our point, we have provided as ***Exhibit A*** *a copy of the Residential sample bill for community solar subscribers that PSE&G has uploaded to the New Jersey Clean Energy website, and an anonymized example bill taken from an actual affordable housing provider on a commercial rate class. Note that the value of the supply portion of the Community Solar Credit for residential subscribers is $.122970/kWh, representing the full cost of the supply portion of the customer's bill. Now note that the value of the supply portion of the Community Solar Credit for commercial rate classes is only $.0544/kWh and does not include any value for the BGS Capacity Generation and Transmission charges. We recommend that the Board include the full value of the Generation and Transmission portions of the Supply Charges when calculating the value of the supply portion of the bill credit for master-metered affordable housing subscribers. As noted in our Recommendation to Include in Bill Credit, if the full value of capacity on the sample bill were included in the supply credit value then the rate would rise to $.124/kWh, much closer in line to the value provided to individual residential accounts.*

We urge the Board to consider including all demand and capacity-related charges included in the delivery/distribution and supply portions of the utility bill when calculating the bill credit for affordable housing subscribers whose accounts are assigned to non-residential rate classes. Since community solar projects produce electricity during the early evening hours in the summer when system capacity charges are incurred, these subscribers are contributing value to the electrical grid for which they are not compensated. Incorporating capacity and demand value into the bill credit for master-metered affordable housing subscribers won't bring the value of the bill credit as high as the residential bill credit, but it should bring it close enough to ensure affordable housing subscribers receive a meaningful discount and system owners are motivated to subscribe them. ***If only the demand charge is included in the bill credit, the New Jersey Community Solar Program will continue to disenfranchise affordable housing tenants in favor of "residential" accounts.***

Exhibit A

Supply charges

Cost of electric supplied by PSE&G:

Charges		
For the first	506 kWh x $0.120375	$60.91
For the next	14 kWh x $0.130000	$1.82
For the next	94 kWh x $0.122979	$11.56
For the next	3 kWh x $0.123333	$0.37
Total electric supply charges		**$74.66**

Community Solar Credit:

Delivery	600 kWh x -$0.030453	-$18.27
Supply	600 kWh x -$0.122970	-$73.78
Total Community Solar Credit		**$92.05 CR**

Details of your electric charges

Your rate: General Lighting & Power (GLP)

Meter #		Usage
	Estimated reading May 2022	63672
	Estimated reading Apr 2022	63558
	Difference	**114**
	Meter multiplier	80
	Total kWh	**9,120**

Supply charges

BGS Capacity	37.224 kW x $5.686718	$207.96
Transmission	35.018 kW x $12.174881	$426.34
Cost not adjusted by PSE&G	9,120 kWh x $0.054416	$496.27
Charges		
Total electric supply charges		**$1,130.57**

Total electric charges $1,493.71

Residential			Straw Proposal to Include in Bill Credit	Recommendation to Include in Bill Credit
Supply charges				
Cost of electric supplied by PSE&G:				
Charges				
For the first	506 kWh x $0.120375	$ 60.91		
For the next	14 kWh x $0.130000	$ 1.82		
For the next	94 kWh x $0.122979	$ 11.56		
For the next	3 kWh x $0.123333	$ 0.37		
Total electric supply charges		$ 74.66		
Community Solar Credit:				
Delivery	600 kWh x -$0.030453	$ (18.27)		
Supply	600 kWh x -$0.122970	$ (73.78)		
Total Community Solar Credit		$ (92.05)		
		Unit of Measure	Charge	
Supply Capacity Generation		kW	$ 207.96	207.96
Supply Capacity Transmission		kW	$ 426.34	426.34
Supply Charges		kWh	$ 496.27	$ 496.27 496.27
Total Charges			$ 1,130.57	$ 496.27 1,130.57
Estimated Community Solar Supply Credit Value*				$ 0.0544 0.1240

*ultimate bill credit value would also be reduced by the exclusion of any non-bypassable charges not broken out in the bill sample used for illustration

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17. **Staff question for stakeholders 17:** 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?

SOLAR LANDSCAPE RESPONSE:

The Straw Proposal correctly states that projects that can "pencil" (i.e., work financially) in the CSI program should enter the CSI program. This is important because smaller projects (typically on industrial rooftops) provide unique grid benefits, but cannot pencil in the CSI program because they are more expensive (on a dollar per watt basis) than larger projects. (E.g., industrial roof lease rates are typically 2X to 3X ground-lease rates and smaller projects do not share the economies of scale in build costs that come with building larger ground-mount projects.) Unfortunately, a small number of companies who have interests in several large grid-scale projects (which pencil in the CSI program) are lobbying for changes that would allow portions of their grid-scale projects to enter the Community Solar Program. If this were allowed, it would result in a windfall for those few companies and less solar overall, because every megawatt of a would-be CSI project that instead enters the Community Solar Program will displace a smaller community solar project that cannot pencil in the CSI program. With this in mind, an improvement to the rules would be a stipulation that if a site or any portion of a site has been approved for the CSI program, that entire site is precluded from the Community Solar Program. For example, if a developer has site control for a landfill that can host 50 MWdc and the developer enters and wins 45 MWdc of that site into the CSI program, that developer should be prohibited from entering (i) any of that 45 MWdc into the Community Solar Program and also (ii) the other 5 MWdc portion of the landfill into the Community Solar Program. Bidding into the CSI program is a plain acknowledgement from the developer that its project pencils with wholesale rates at the REC value bid; so if a project is approved for CSI, participating in community solar instead would entail a windfall for the developer at the expense of smaller, would-be community solar projects that cannot be built in the CSI program.

21. **Staff question for stakeholders 21:** 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?

SOLAR LANDSCAPE RESPONSE:

Local community focus should be incentivized and accomplished in the Permanent Program in two ways:

First, as set forth above in response to Staff question 6, the Program should implement an objective, easy-to-score, points-based tiebreaker using BPU-approved forms to enable municipal Green Teams, mayors, and boards to exercise their own judgment in assessing a proposed project's commitment to the community and to workforce development; and this tiebreaker should be limited to Green Teams, mayors, and boards of the same or adjacent municipality as where the project is located.

Second, opt-out/automatic-enrollment subscription programs should only be allowed within the same or adjacent municipality as where a project is located. While allowing EDC-wide subscriptions on an individual subscriber basis is an improvement to the rules (inasmuch as it will make projects more financeable and attrition less difficult to cure), allowing projects to do opt-out with any municipality within the same EDC could perpetuate environmental injustice because developers could site projects in industrialized towns and then sell all the benefits of those projects via opt-out programs with a small number of wealthier towns (or even a single wealthier town) on the other side of the state. For example, if a medium-sized town within an EDC offered to do opt-out on commercially preferable terms (e.g., a relatively lower discount off the bill credit compared to the requirements of other towns), that medium-sized town would attract and would have enough population to do opt-out with hundreds of megawatts of community solar projects within the EDC. Conversely, limiting opt-out to the same or adjacent municipality as where a project is located would incentivize developers to engage the local municipal governments from the outset of project development and would ensure that if an opt-out program is conducted, all the benefits of the project remain local. Moreover, by limiting opt-out to the same or adjacent municipality as where the project is located, a town wishing to conduct an opt-out program will have leverage to require any local community solar projects to invest in the community as a condition for participation (because the project will only have a limited number of towns within which to do an opt-out program). For example, a town wishing to serve as the subscriber organization for local community solar projects could require any such projects to conduct workforce development or build a community garden as a prerequisite for participation.

23. **Staff question for stakeholders 23:** 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?

SOLAR LANDSCAPE RESPONSE:

A municipality conducting an opt-out program, whether as the project owner or the subscriber organization, should contract in accordance with public procurement laws for a third-party expert to manage the opt-out program (as the Straw Proposal already contemplates); and with the Straw Proposal's expanded menu of options for qualifying subscribers as LMI, that third-party contractor should be able to identify a surplus of qualifying LMI households. (Every town in New Jersey should have more than enough LMI households to satisfy the LMI demand for any opt-out community solar projects within its borders.) The town conducting the opt-out program could decide in coordination with its third-party contractor how to select participants from among the inevitable surplus of LMI households. For example, the third-party contractor could conduct a lottery to ensure objectivity; or the town could choose to subscribe lower-income LMI residents prior to higher-income LMI residents.

Regarding other standards that should be implemented for opt-out projects, as noted above, the rules should limit opt-out to the same or adjacent municipality as where the project is located. Additionally, the rules should clarify that a municipality can decide to serve as an opt-out subscription organization for projects that have already achieved

commercial operation and that a project that has already achieved commercial operation can choose to sign up with a municipality as a subscriber organization for an opt-out program. This appears to be the intent of the proposed opt-out rules, but some stakeholders have raised questions as to whether the rules as written would limit opt-out to towns and projects that finalize an opt-out arrangement prior to commercial operation, which would drastically limit opt-out programs for the worse. Furthermore, the opt-out rules should prohibit including in opt-out anyone who already has a community solar subscription (just as the rules already prohibit inclusion of net-metering customer-generators). Lastly, there appears to be a typo in Section 14:8-13.5(j)(8)(iii), which includes a provision contemplating that "enrolled subscribers will receive, and be expected to pay, a bill separate from their utility bill for the cost of their participation in the automatic enrollment project, unless or until community solar consolidated billing is enacted." This is contrary to other provisions that rightly prohibit opt-out from taking place until consolidated billing is implemented.

Otherwise, the rules should leave it to participating towns to determine the requirements for projects to participate. For example, as noted above, a town serving as an opt-out subscriber organization will have the leverage to require substantial local investments (e.g., workforce development) as a prerequisite for participation by any community solar project.

24. **Staff question for stakeholders 24:** 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??

SOLAR LANDSCAPE RESPONSE:

The Straw Proposal's requirements for a "community engagement plan" and a "subscriber acquisition plan" plainly have good intentions; but they should be deleted because (i) they do not have "teeth" (i.e., as framed, they could be satisfied by any developer capable of writing a good essay, which should be every developer); and (ii) they open the door for disputes (e.g., if a developer is denied community solar capacity because its essay is deemed insufficient, the developer may file a petition or lawsuit in response). Moreover, this essay formulation would require the gatekeeper of the applications to actually read and assess the essays, which would be time consuming.

Instead of the community engagement plan, the rules should incentivize community engagement as proposed above (i.e., by implementing a points-based tiebreaker that would incentivize municipal engagement and workforce development and by limiting opt-out programs to the same or adjacent municipality as where the project is located). And instead of requiring a subscriber acquisition plan, the rules should simply require that the project has a contract with a subscriber organization experienced in New Jersey community solar.

ADDITIONAL SOLAR LANDSCAPE COMMENTS

Compliance with the Solar Act of 2021's Megawatt Requirements

Page 10 of the Straw Proposal says: "Staff recommends that the Permanent Program annual capacity be set on an energy year basis, through the ADI Program MW Block annual capacity allocation process defined at N.J.A.C. 14:8-11.7. ***Staff recommends that, pursuant to the Solar Act of 2021, the annual capacity be set at no less than 150 MW and the cumulative capacity for energy years 2022 to 2026 be no less than 750 MW****, with flexibility to increase this capacity allocation depending on market conditions and the Board's policy priorities.* ***Staff recommends allocating at least 225 MW each in EY24 and EY25 and at least 150 in EY26 and beyond to meet statutory requirements and anticipated demand****."*

As Staff notes, the Solar Act of 2021 requires 750 MWs of SREC-II community solar from EY22-EY26; but the Straw Proposal only calls for 600 MWs (225+225+150) of SREC-II community solar before the end of EY26. With respect to EY22 and EY23, the Board allocated community solar 150 MWs of SREC II capacity in EY22 and another 150 MWs of SREC II capacity in EY23, but then did not allow anyone to apply for or use any of those megawatts. In other words, to date, 0 MWs of SREC II community solar have been applied for or awarded. Accordingly, because EY23 ends approximately two weeks after the date of these comments, the only way to hit the Solar Act of 2021's requirement is to do 750 MWs in EY24-26; but again, the Straw Proposal calls for only 600 MWs before the end of EY26.

A simple fix to this problem would be roll forward the 300 MWs that were allocated but not used in EY22 and EY23 into EY24/EY25/EY26, in addition to the MWs set forth in the Straw Proposal. That would result in 150 megawatts more than required by the Solar Act of 2021 over the five years from EY22-26, which would be a modest increase in light of the industry's pipeline of shovel-ready projects on open circuits. Alternatively, if only 150 of those missing 300 MWs were rolled forward and used before the end of EY26, in addition to the MWs set forth in the Straw Proposal, then the Permanent Program would at least meet the requirements of the Solar Act of 2021. Either of these fixes would be fiscally conservative (particularly the latter option, which would be a $0 increase from the Solar Act of 2021's requirement).

Other Comments

Bill Credit Banking:

- *It is reasonable to allow projects at least some bill credit banking after the first 24 months of the project's operation to account for inevitable attrition.*

LMI Subscriber Requirements:

- *Section 14:8-13.5(f) says "All community solar projects must have a minimum of 51% of project capacity subscribed by LMI subscribers throughout the qualified life of the project." This should be adjusted to read that 51% of project capacity needs to be "reserved" for LMI subscribers throughout the qualified life of the project. Namely, it is reasonable and important to prohibit projects from allocating to non-LMI subscribers any of the 51% capacity reserved for LMI subscribers; but virtually all projects would violate a rule requiring all 51% of project capacity reserved for LMI subscribers to be actually subscribed at all times for the entire project life. In other words, as currently*

written, a project would be in violation of this rule if it used the permitted banking window in the first 24 months of the project's operation or if it thereafter experienced any LMI attrition whatsoever. Every project will be incentivized to keep all its capacity—including its LMI capacity—subscribed for financial reasons, so this rule should simply prohibit allocating to non-LMI subscribers any of the 51% of capacity reserved for LMI subscribers.

- *A similar issue applies for Section 14:8-13.7(c), which says "If a project is less than 51 percent subscribed by LMI customers, the subscriber organization shall provide written notification to the Board within 30 days which details steps taken to ensure the standard is met." Again, the rules should prohibit subscribing to non-LMI subscribers any of the 51% capacity reserved for LMI subscribers; but this rule as written would require projects to send the Board written notifications during the 24-month banking window at the outset of the project's operation and anytime thereafter that the project experienced any LMI attrition whatsoever.*
- *A related issue arises from Section 14:8-13.7(d)(3), which requires re-verification of LMI status every five years. This re-verification process could cause projects to be in violation of Section 14:8-13.5(f) through no fault of the project, which further illustrates why Section 14:8-13.5(f) should be adjusted as set forth above. Furthermore, several stakeholders have raised the reasonable concern that this reverification requirement would effectively penalize subscribers who transition from being LMI to being non-LMI.*
- *Section 14:8-13.7(f) addresses penalties for failing to "meet or maintain LMI subscriber requirements on an annualized basis." If the above rules are not edited as suggested in the preceding bullet points, this section as written would impose very substantial penalties for scenarios that every project will inevitably face (e.g., projects would be subject to penalties for experiencing ordinary LMI attrition or for confirming during the 5-year reverification process that some number of subscribers no longer qualify as LMI). And even if the above rules are adjusted per the preceding comments, the penalty allowing a change in the project's SREC-II incentive value may create problems for project financing, as banks and tax investors will likely take issue with what could be read as an uncapped/unlimited penalty affecting what is otherwise seen as a fixed, bankable incentive.*

Consumer Protection:

- *There may be a typo in Section 14:8-13.9(b)(1), inasmuch as it appears that the reference to NJAC 14:8-13.6(q) might be meant to reference a different section (perhaps the Section regarding opt-out).*

Thank you for considering Solar Landscape's comments!

solarlandscape