AMPION

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May 15, 2023

Sherri L. Golden, RMC
Board Secretary
New Jersey Board of Public Utilities
44 South Clinton Ave, 1st Floor
PO Box 350
Trenton, New Jersey 08625-0350

RE: I/M/O the Community Solar Energy Program (BPU Docket No. QO22030153)

Dear Secretary Golden,

Please see Ampion's written comments on the BPU Staff's Community Solar Energy Program Straw Proposal recommendations below. Ampion is a community solar subscriber organization that is active in a number of northeastern states, including New York, Massachusetts, and Maine.

(3) Overall program capacity

- Due to the canceled solicitation of 150 MW in year 3 of the Pilot and the additional delays experienced in finalizing the Permanent Program, Ampion believes that Energy Year 2024 should be allocated at least 300 MW, which can then be stepped down to 150 MW for each subsequent energy year. This would effectively allow the state to make up for lost time and progress that could have been made towards reaching the governor's goals of 50% clean electricity by 2030 and 100% by 2035. Increasing the capacity of the first year of the Permanent Program will also generally improve the reputation of the program, as it will result in a wider and more immediate impact to New Jerseyans, allowing them to access the associated benefits and savings of the new program without having to wait for future energy years.

(5) Qualifications for Project Ownership

- Ampion supports Staff's recommendation that the EDCs' responsibilities be limited to the interconnection and billing management of these projects. It has already been demonstrated through the Pilot application process that there is more than enough private developer interest in this market to fully subscribe the available capacity without EDC participation. Therefore, Ampion strongly agrees with Staff that there is no reason to transfer risks and costs associated with community solar project development from non-EDC entities to ratepayers through EDC-owned projects. Furthermore, EDCs possess competitive advantages in all stages of project development from interconnection to low-income customer verification and enrollment. Ampion believes that EDC involvement in the ownership of community solar projects would create unfair market conditions at the cost of ratepayers.

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(6) Application Process and Project Selection

- Ampion strongly supports Staff's recommendation for a first-come, first-served application process, with stringent requirements for project quality and maturity. As we and others noted in our comments on previous proposals, the RFP approach, while valid in theory, has proven to be inefficient in practice, as shown by the relatively low completion percentage of projects in Pilot Year 1. The approach recommended by Staff has had success elsewhere, notably in New York, Massachusetts, and Maine. We also commend Staff for anticipating that New Jersey's successor program will see strong demand resulting in over-subscription, at least in the first two years and possibly in every year, making the choice of an appropriate tie-breaking measure critical to the overall success of the program. A tie-breaker that is too qualitative could lead losing bidders to question the fairness of the process and also places a heavy burden on Staff to make judgements that might later be challenged by unsuccessful applicants. A process that is quantitative but that includes multiple criteria (or a single criterion - like "project maturity" - that includes multiple factors that would each be scored or ranked) might come to look a great deal like the RFP approach. Staff would have to go beyond an evaluation process that allows them to compare applications to a standard for inclusion or exclusion from the award pool and engage in scoring and ranking, which would take more time and might also be subject to challenge by unsuccessful bidders.

- Staff's recommendation to use the minimum discount rate given to subscribers has some appeal; it would be a single criterion and seemingly gets at the core purpose of the program, which is to bring savings to participating homes and businesses. Staff's recommendation has some limitations, however, and we would propose an alternative that makes use of a tool that New Jersey has pioneered at the state level, which is the clock auction. One problem with using the minimum discount rate is that, in Ampion's experience across many community solar markets, the lowest discount rate is given to commercial and industrial subscribers. In practice, this has meant that larger subscribers get lower discount rates, enabling smaller subscribers to get somewhat higher discount rates. By ranking applicants based on the minimum discount rate, applicants will likely need to increase their discount rates for larger subscribers, possibly resulting in lower discount rates being available for smaller residential and LMI subscribers. Thus, at the very least, Ampion would recommend that any tie-breaker based on discount rates focus at most on residential subscribers and, preferably, LMI subscribers (which, should Staff's recommendation be adopted on this point, will include at least half the available credits for each site).

- Beyond that recommendation, we also see potential problems in simply ranking applicants based on the level of the discount rate, even that provided to LMI subscribers. Ampion absolutely believes the discount rate can and should be a deciding factor in the market for community solar, but we believe it can be more effectively deployed as a differentiating factor when projects are actually being marketed to subscribers rather than when projects are being chosen to go forward. Specifically, we are concerned that ranking projects by discount rate will cause owners to submit potentially unrealistic discount rates so they do not miss out on capacity, possibly compromising the long-term viability of the project. This effect seems to have occurred in the first Pilot year, when 44 percent of awarded capacity did not get built in a timely manner.

- What Ampion recommends instead is that Staff conduct a clock auction (in this case, an ascending clock auction) based on the discount rate provided to LMI subscribers among all projects that pass the initial screening for eligibility. Because the minimum discount rate for the initial screening is 10 percent, the auction might start at 10.5 percent and ascend until the number of projects submitting bids just meets the amount of available capacity. (Board Staff know more about clock auctions than your writer could ever know and thus we will not attempt to provide details of auction design.) This process would find that discount rate that clears the market, thus identifying the projects that would receive capacity awards and establishing the minimum discount rate those projects would be required to give their LMI subscribers. They would be free to give other types of subscribers a lower discount rate and, of course, would be allowed to give LMI subscribers (or any other subscribers, for that matter) a higher discount rate.

- Using an auction based on LMI discount rate to identify the applicants that would be awarded capacity would have several advantages. First, it would be relatively quick and easy to administer, considering Staff's experience with this kind of auction. Second, being entirely quantitative and transparent, it would not be subject to challenge as would more qualitative measures. Third, it would allow applicants to make realistic bids rather than overbidding simply to win capacity, as they might in the kind of single bid approach in the Staff proposal. Finally, it would ensure that all projects are offering the same minimum discount rate to LMI subscribers rather than potentially having widely disparate offers to LMI subscribers in the market based purely on the owners' strategies for winning capacity. Project owners can still seek an advantage in the market by offering higher discount rates, but they can do so based on actual market conditions for subscriber acquisition rather than overbidding to win capacity.

(11) LMI Income verification standards

- Ampion agrees with BPU Staff in expanding the list of assistance programs that qualify someone as an eligible LMI subscriber, and we recommend that they add participation in the Affordable Connectivity Program (ACP) to their list of qualifying programs. The ACP is a federal program designed for low-income residents and provides a broadband internet discount. To qualify for the ACP, a recipient may prove their income is at or below 200% of the FPL or through participation in certain assistance programs such as SNAP and

Medicaid, both of which will qualify someone as LMI in the ADI Program if the proposed rules are approved as written.

- We also support the use of a standardized self-attestation form. This will ensure that subscriber organizations are confirming income eligibility with acceptable data, improve recordkeeping, and ease any potential audit experience for both the subscriber organization and the BPU. Ampion sees no value added by having multiple self-attestation templates throughout the ADI Program. Ampion also recommends that the BPU include self-attestation of participation in a qualifying assistance program to the standardized form. Similar to income information, a potential subscriber may not be comfortable sharing their assistance membership information, and they should have the option to self-attest. Additionally, someone may not know their annual income, but they know that they participate in an assistance program such as SNAP. In this scenario, they could attest to participating in a qualifying program, but they may not be able to comfortably attest to their income level.

- Ampion suggests that the BPU accept 1.) qualifying assistance program award letters, 2.) screen captures of approval/eligibility letters for qualifying assistance programs, 3.) utility bills with assistance on them (e.g. energy assistance and ACP line items,) 4.) screen captures of an individual's assistance program online portal, 5.) images of membership cards (e.g. SNAP/EBT or Medicaid card.)

- Ampion supports Staff's recommendations for the BPU to conduct periodic audits to confirm that reported LMI subscribers are properly verified whether through completed self-attestation forms, proof of participation in an assistance program, or another approved verification method.

- Ampion urges the BPU not to mandate a third-party platform or organization to issue and maintain the records for self-attestation forms. This would cause an unpleasant and confusing customer enrollment experience where the sales representative would have to incorporate another enrollment phase for the subscriber to sign and submit a self-attestation form. Making the enrollment process more difficult for LMI customers will decrease the participation rate of the demographic that the BPU is trying to include most with no clear identifiable benefit. A separate system would also make record keeping and the audit process more difficult for subscription organizations.

(12) Participation by affordable housing providers

- Ampion believes that one of the core tenets of community solar is providing clean energy access and savings to renters and low-income households. As such, we strongly support the inclusion of master-metered affordable housing properties in the community solar program. Ampion agrees in principle that residents of master-metered should receive direct benefits associated with their subscription. However, through our experience in other community solar markets, Ampion is concerned that it may not be possible for certain master-metered affordable housing facilities to meet the required 75% pass through of the electricity bill savings to residents. Many regulated affordable housing facilities are unable to provide direct savings without impacting the amount of funding they receive from organizations like HUD due to certain contractual obligations. In New York's most recent proposal on the Inclusive Community Solar (ICSA) Adder, the New York State Energy Research and Development Authority (NYSERDA) created an exemption to their pass through of savings requirement for rent-regulated properties to account for this exact issue. The rent-regulated property exemption in the Proposed ICSA Round 2 Program Design Version 2.0 reads, "Master-metered properties that are not submetered, rent-regulated, and can demonstrate in their regulatory agreement that there is no feasible way for the properties to pass-through the savings onto their residential customers, can apply for an exemption from demonstrating pass-through and still be considered eligible residential subscribers. Projects will need to share the regulatory agreements or statute that they are regulated under, highlighting the specific passages that hinder pass-through for NYSERDA to review. This exemption is only available to public housing authorities and regulated affordable housing that is owned and managed by non-profit or public entities."[1] Ampion encourages the BPU to implement a similar exemption so that these regulated master-metered affordable housing facilities can still participate in and benefit from the community solar program.

- Furthermore, Ampion believes that master-metered affordable housing properties should be exempt from the 10-subscriber minimum regardless of whether the community solar project is located on-site. If the affordable housing provider can prove that the master-metered load of the affordable housing facility includes more than 10 residents and that the 75% of bill credit savings is being passed to at least 10 residents (or the facility qualifies for an exemption), they should satisfy the 10-subscriber minimum regardless of where the project is located.

(13) Value of the bill credit

- Ampion agrees with the Staff's assessment that the current crediting methodology disincentivizes affordable housing provider participation in the program and should be remedied in the Permanent Program. While Ampion generally supports the proposed revision to include a pro-rated demand component in the value of the bill credit, we also acknowledge that this added layer of complexity could create more errors with utility billing and the developer/subscriber organization's ability to accurately size allocation/subscription percentages since each affordable housing provider utility

[1] https://www.nyserda.ny.gov/-/media/Email/Version-2-ICSA-Proposed-Rd-2-Program-Design-Final.pdf (pg. 9)

account would have a unique bill credit value. A simpler alternative that we would recommend is aligning their bill credit value to the basic residential rate for each EDC. Given that the tenants of the affordable housing provider would qualify as residential accounts if they were individually/sub-metered, we believe this approach is fair and would be effective in attaining the stated goal of increasing participation.

(15) Consolidated billing

- Ampion agrees with Staff that implementing consolidated billing for community solar is critical to the long term success of the program and its ability to effectively reach the LMI community that has historically been left out of the equation. With that said, given the utility admin fee of up to 1% of the bill credit value and the existing billing capabilities of many community solar providers in the space, we do not believe it should be required for all projects. Instead, we would recommend a model similar to that of NY and IL where each project has the option to convert to consolidated billing or not. Furthermore, if a project does elect consolidated billing, the subscriber organization should still have the flexibility to opt out individual subscribers on the allocation list, which could be limited to just large C&I subscribers. This flexibility would allow subscriber organizations to service these large C&I subscribers utilizing their own billing systems and avoid the 1% utility admin fee if the developer and subscribers prefer it. Large C&I subscribers are already comfortable with receiving multiple bills for electricity, as is commonplace in the retail electricity industry with the presence of Dual Billing.

- Ampion would also like to call out the importance and need to explicitly allow for multiple different discount/savings rates within a single project. This particular issue has been a topic of much debate in the NY Billing & Crediting Working Group, which has been struggling to reach consensus on whether the EDCs should be required to update their billing systems to allow for multiple discount rates for years now.

- Ampion also recommends that Staff implements a true NY-style net crediting model and makes the mechanics of the financial flows as explicit as possible. Specifically, in true net crediting not only is the subscriber guaranteed their savings rate (e.g. 10%), but the developer/subscriber organization is also guaranteed the remainder of the bill credit revenue, less the utility admin fee (e.g. 90% - 1% = 89%). This revenue should not be contingent on the customer paying the remaining balance of their EDC bill to which the net credits were applied. Instead, the funds should be required to be remitted to the developer/subscriber organization within a given timeframe after the net credits are applied to subscriber bills (e.g. 30 days).

- Lastly, Ampion would like to emphasize the importance of holding the EDCs accountable for the June 1, 2024 rollout deadline and we believe that financial penalties should be leveraged if they fail to do so. We fear a scenario where developers are stranded for several months as the EDCs continue to delay the release of utility consolidated billing and are left with no recourse for collecting payment. Not only would this hurt developers and their investors financially, but it would also sow great distrust and reputational damage to the overall CSEP, undermining the success of the program at large and enrollment rates in future energy years. Ampion recommends that Staff be explicit that if EDCs are not prepared to roll out an automated utility consolidated billing process by the deadline, then they should instead be prepared to administer credits and remit payments to developers manually in the interim.

(21) Geographic distance between project and subscribers

- Ampion strongly supports the recommendations of Staff to lift the geographic restrictions present in the Pilot and allow for open participation within each EDC's service territory. In addition to the various benefits mentioned in the Straw Proposal, lifting the geographic restrictions for the Permanent Program would also ensure wider LMI participation, allowing large populations of LMI customers in metropolitan areas to access community solar projects located anywhere in their service territory. We don't believe this lessens the program's focus on local communities due to the expansion of the Community Engagement Plan requirement as part of demonstrating a project's development maturity in the Permanent Program.

(22) Consumer protection

- Ampion agrees with Staff's intent to protect consumers, and we suggest that Staff focus on protecting residential subscribers in particular when finalizing the ADI Program rules. Ampion supports a template subscriber agreement, but we believe it should be an option as opposed to mandatory for all subscriber organizations. Additionally, Ampion supports Staff's effort to guarantee 10% savings for subscribers, however, Ampion urges Staff to remove that minimum for large C&I customers. By allowing large anchors to receive a smaller discount, it is possible for a project to offer higher discounts to LMI customers. Lastly, Ampion understands Staff's intent by requiring project-specific details in marketing materials to properly set potential subscribers' expectations. However, we do not support it for two reasons. The first is that a specific project is not always known when acquisition is taking place. A single developer may have multiple projects in development with differing timelines that can each shift throughout the development process for reasons such as interconnection or permitting delays. Hence, the added flexibility to move subscribers across different projects after they are contracted oftentimes leads to a faster delivery of credits to subscribers. Secondly, one company may provide acquisition services for multiple subscriber organizations, and they will want flexibility to reassign subscribers to a different site after the acquisition phase is complete. We suggest following the To Be Determined "TBD" model utilized in IL that allows a subscriber organization to leave project details as "TBD" until the subscriber is eventually allocated/assigned to a project, at which point the required details are communicated to the subscriber.[2]

(23) Automatic enrollment

- Ampion strongly supports the inclusion of automatic enrollment type projects in the Permanent Program. As vocal advocates for the Opt-Out CDG model for CCAs in NY, Ampion firmly believes that these types of programs are the most effective way of reaching the LMI customer base, which at the end of the day is one of the primary policy goals of the Permanent Program. We agree that Net Crediting is a necessary prerequisite for automatic enrollment. We disagree, however, with the Staff recommendation that in order to utilize automatic enrollment the municipality must serve as the subscriber organization. Instead, we believe automatic enrollment should be available to any developer/subscriber organization developing a project "in partnership or collaboration with a municipality," as already defined by Staff in Section X. Community Engagement of the Pilot Program Year 2 RFP Application Form and Process[3]. Amending this requirement would further encourage engagement with local communities and remove the burden of becoming a subscriber organization from the municipality itself. Lastly, we agree that LMI verification poses a potential barrier for automatic enrollment. To overcome this barrier, Ampion recommends that Staff require each EDC to develop an internal database of customers who receive any sort of energy assistance that could be utilized by subscriber organizations for the sole purpose of verifying LMI customers enrolled via automatic enrollment.

(26) Pilot Program

- Ampion supports the Staff's recommendations for various new provisions in the Permanent Program to be adopted by projects already participating in the Pilot after a transition period. We agree that these provisions should be limited to those that would not materially change the score awarded to projects via the competitive bid and application process utilized in the Pilot. We feel particularly strongly about making utility consolidated billing available to Pilot projects once it is implemented within each EDC service territory.

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[2] https://illinoisabp.com/wp-content/uploads/2023/04/PY2023-24-Program-Guidebook-FINAL-230417-1745.pdf (pg. 59)

[3] https://www.nj.gov/bpu/pdf/boardorders/2020/20201002/8C%20-%20ORDER%20Community%20Solar%20Year%202%20Application%20Form%20and%20Process%202020-10-01.pdf (pg. 29)

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We appreciate this opportunity to provide written comments and hope that we can continue to work together in designing a permanent program that serves New Jersey well in the years to come.

Sincerely,

/s/ Chris Kallaher
Chris Kallaher
SVP and General Counsel
Ampion, PBC.