

Agenda Date: 10/2/20
Agenda Item: 8D

STATE OF NEW JERSEY
Board of Public Utilities
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Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

CLEAN ENERGY

IN THE MATTER OF THE COMMUNITY SOLAR ENERGY PILOT PROGRAM)	ORDER
)	DOCKET NO. QO18060646
IN THE MATTER OF INCOME VERIFICATION MEASURES IN THE COMMUNITY SOLAR ENERGY PILOT PROGRAM)	DOCKET NO. QO20080588
)	

Parties of Record:

Stefanie A. Brand, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

In this Order the Board considers the existing requirements for verification of Low- and Moderate-Income ("LMI") status in the Community Solar Energy Pilot Program ("Pilot Program").

BACKGROUND

Community Solar Energy Pilot Program

The Clean Energy Act of 2018, L. 2018, c.17, ("CEA" or "the Act"), among various other mandates, directed the Board to develop rules and regulations implementing the Pilot Program. The Pilot Program allows participating customers to receive a credit on their utility bills for solar generation that may be remotely located from their properties. Community solar aims to promote access to clean energy generation for utility customers that cannot place solar generation on their own properties. In this way, it makes solar energy affordable and accessible to all customers, including LMI customers.

The Act required the Board to adopt Pilot Program rules within 210 days of the law's enactment. In compliance with the accelerated timeline, the Board adopted the Pilot Program Rules on January 17, 2019; they appeared in the New Jersey Register on February 19, 2019.¹ By their terms and in accordance with the Act, the Pilot Program Rules are effective for three years only, designated Program Years One, Two, and Three ("PY1", "PY2", and "PY3", respectively). N.J.A.C. 14:8-9.3(a).

¹ 51 N.J.R. 232(a).

Low- and Moderate-Income Access

The Act requires that the Pilot Program rules and regulations establish “access to solar energy projects for low and moderate income customers.”² The Pilot Program has a particular focus on promoting access for LMI ratepayers, defined in the Pilot Program Rules as households with total gross income at or below 80% of the median income (“moderate-income household”), or adjusted gross income at or below of 200% of the Federal poverty level (“low-income household”).³ The Pilot Program rules require that at least 40% of the annual capacity limit be allocated to LMI projects; these projects, in turn, are defined as those for which at least 51% of the project capacity is allocated to LMI subscribers.⁴

The emphasis on access for LMI customers was also reflected in the evaluation criteria adopted by the Board to score the applications received in PY1. Thirty (30) out of one hundred and five (105) possible points were allocated to “low- and moderate-income and environmental justice inclusion,” which was the highest number of points allocated to a single evaluation category.⁵

The application period for PY1 ran from April 9, 2019 through September 9, 2019, and conditional approvals were awarded by the Board at its December 20, 2019 agenda meeting. As a result of the evaluation criteria and the highly competitive applications received for PY1, all of the applications granted conditional approval by the Board in the December 2019 Order are LMI projects. The 45 conditional approvals total just under 78 MWdc (“PY1 Projects”). December 2019 Order at 7.

The Pilot Program Rules at N.J.A.C. 14:8-9.8(d) enumerate the documentation required to confirm a subscriber’s status as an LMI customer. Unless a community solar pilot project is sited on government-owned property, and is serving LMI subscribers living on that property, subscribers to a PY1 Project must be individually qualified as LMI customers for the purposes of the Pilot Program. The current Pilot Program Rules specify those documents sufficient to serve for qualification: i) Proof of participation in LIHEAP, Universal Service Fund, Comfort Partners, and/or the Lifeline Utility Assistance Program, or ii) copies of the first and second pages of the would-be subscriber’s previous three years’ Federal income tax returns. *Id.* Affordable housing providers may also qualify as LMI subscribers under certain circumstances.

Stakeholder Feedback

On July 9, 2020, the Board issued a request for comments regarding lessons learned from PY1. The first six questions focused on measures to improve equity and the inclusion of LMI households. They explored ideas such as easing the process for validating LMI status, allowing an “opt-out” method of subscriber enrollment that does not require affirmative consent from subscribers, leveraging existing low-income programs and partnerships with local community organizations, and improving access for master-metered housing.

² N.J.S.A. 48:3-87.11(b)(7).

³ N.J.A.C. 14:8-9.2.

⁴ N.J.A.C. 14:8-9.4(e) and N.J.A.C. 14:8-9.8(b).

⁵ In re The Community Solar Energy Pilot Program, BPU Docket. No. QO18060646, Order dated December 20, 2019 (“December 2019 Order”), at 3.

Staff received varied responses. Of specific relevance to this Order, many stakeholders recommended amending the income verification methods described above for confirming an individual subscriber's eligibility as an LMI subscriber. Stakeholders indicated that the requirement to provide federal income tax returns is overly burdensome, and presents a high barrier to enrollment for LMI households. It also presents complications for subscriber organizations that may not be equipped to receive and hold such sensitive information. Stakeholders also commented that as LMI subscribers do not receive any additional benefit through the Community Solar Pilot Program compared to non-LMI subscribers, the existing verification requirements place an unfair burden on LMI households.

Rule Proposal

On the basis of its experience with the first year of the Pilot Program, as well as the stakeholder feedback provided, Staff recommended that the Board approve Pilot Program rule amendments ("Rule Proposal") designed to make use of the lessons learned to improve the implementation of and access to the Pilot Program. Among the proposed modifications is the addition of alternative means of verifying LMI eligibility.

STAFF RECOMMENDATION

As the description above indicates, the Pilot Program was implemented quickly and is evolving rapidly. The lessons learned from less than one year of experience are already being put forward as a Rule Proposal. The Pilot Program Rules are designed to be flexible. Staff anticipates that if adopted, the Rule Proposal will make the Pilot Program significantly more responsive to the unique needs of the LMI customers it serves.

PY1 projects will not benefit from the Rule Proposal due to the schedule of the rulemaking process. Staff is concerned that the existing requirement that any would-be subscriber must either prove participation in one of four energy assistance programs or else provide three years of tax returns will unnecessarily burden PY1 subscriber organizations and their would-be subscribers. Ultimately, this burden will restrict access to the very customers the Pilot Program is intended to help.

Staff, therefore, recommends that the Board use its authority to waive the existing requirement that any customer that does not participate in LIHEAP, Universal Service Fund, Comfort Partners, or the Lifeline Utility Assistance Program must provide three years of tax returns. Only the forty-five projects approved for PY1 by the December 2019 Order would be affected by such action. Staff further recommends that PY1 applicants be directed to review the Rule Proposal for examples of alternative financial documentation to demonstrate LMI verification in lieu of three years of tax returns.

FINDINGS AND DISCUSSION

The Board is "particularly interested in ensuring that LMI customers are able to access community solar."⁶ For this reason, the Board gives great weight to Staff's statement that experience with PY1 of the Pilot Program has demonstrated that LMI eligibility verification requirements in the existing rules have proven to be more onerous than was anticipated or intended. The Board gives

⁶ In re The Community Solar Energy Pilot Program, BPU Docket. No. QO18060646, Order dated March 29, 2019 at 1.

additional weight to this statement as it intends to proceed with proposed rule amendments to address this issue.

The Board has the authority to waive its rules pursuant to N.J.A.C. 14:1-1.2(b), which provides that "[i]n special cases and for good cause shown," the Board may relax or permit deviations from these rules. Further, in accordance with the general purposes and intent of its rules, the Board shall waive sections of its rules if "full compliance with the rule would adversely affect the ratepayers of a utility or other regulated entity, the ability of said utility or other regulated entity to continue to render safe, adequate and proper service, or the interests of the general public."⁷

The Pilot Program Rules are intended to promote access to the benefits of solar energy to those unable to place solar upon their own property and in particular to promote such access to LMI customers. The eligibility verification requirements codified in the Pilot Program Rules were adopted in service of the overarching policy goal of providing LMI and other customers with a means of accessing the State's solar market notwithstanding an inability to place solar upon their own property. As described above, the Pilot Program Rules limited eligibility verification to either participation in one of four assistance programs or the customer's tax returns for the previous three years. However, Pilot Program participants have found this requirement so burdensome that it presents a significant barrier to enrollment for LMI households; that it may involve providing sensitive financial information to subscriber organizations not equipped to handle it; and that it may even unduly burden LMI subscribers by comparison with more affluent subscribers. Therefore, the Board **FINDS** that full compliance with the LMI verification requirements at N.J.A.C. 14:8-9.8(d)(2)(ii) adversely affects the interests of the general public by thwarting the underlying LMI purpose of the Pilot Program Rules.

However, waiver of the existing tax return income verification rule does not obviate the need to demonstrate LMI eligibility.

The Board, finding good cause, **HEREBY WAIVES** N.J.A.C. 14:8-9.8(d)(2)(ii) for any PY1 participants that can demonstrate LMI eligibility through alternative means acceptable to Staff. The Board **DIRECTS** any applicant to PY1 that wishes to avail itself of this waiver to provide proposed LMI documentation and evidence to Staff. PY1 developers may also wish to review the Rule Proposal for examples of alternative financial documentation that may be acceptable in lieu of tax returns. The Board designates Commissioner Holden to oversee the process of verifying income eligibility and to report back to the Board periodically as the Commissioner deems it necessary.

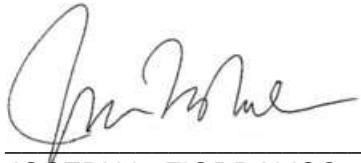
The Board **FURTHER REITERATES** that, if a Conditionally Approved project fails to comply with the requirements of this Order, the rules at N.J.A.C. 14:8-9 as modified by this Order, or fails to be built and operated as it was proposed in its original Application, this failure may be grounds to cancel the Board's conditional approval of a project.

⁷ N.J.A.C. 14:1-1.2(b).

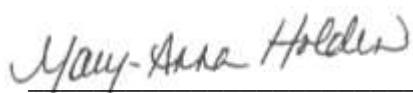
The effective date of this order is October 13, 2020.

DATED: October 2, 2020

BOARD OF PUBLIC UTILITIES
BY:



JOSEPH L. FIORDALISO
PRESIDENT



MARY-ANNA HOLDEN
COMMISSIONER



DIANNE SOLOMON
COMMISSIONER

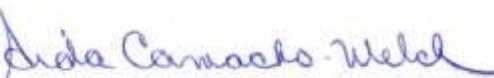


UPENDRA J. CHIVUKULA
COMMISSIONER



ROBERT M. GORDON
COMMISSIONER

ATTEST:



AIDA CAMACHO-WELCH
SECRETARY

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